



## OPINION OF THE EUROPEAN CENTRAL BANK

of 31 July 2008

at the request of the Belgian Ministry of Finance

on a draft law establishing, *inter alia*, an audit committee in listed companies and in financial undertakings and on a draft law on reinsurance

(CON/2008/33)

### Introduction and legal basis

On 18 July 2008 the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Belgian Ministry of Finance, for an opinion on the following two draft laws (hereinafter together the 'draft laws'): (i) a draft law establishing, *inter alia*, an audit committee in listed companies and in financial undertakings (hereinafter the 'draft law on the audit committee'); and (ii) a draft law on reinsurance (hereinafter the 'draft law on reinsurance').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions<sup>1</sup>, as the draft laws relate to the NBB. This opinion only deals with the provisions of the draft laws amending the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

### **1. Purpose of the draft law on the audit committee**

- 1.1 The draft law on the audit committee is intended to transpose into Belgian law the provisions of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC<sup>2</sup>, that have not yet been transposed: Articles 38 and 41 and Article 42(1).
- 1.2 In order to transpose the obligation for public-interest entities to have an audit committee<sup>3</sup>, the draft law on the audit committee provides that the NBB's Board of Censors, in addition to its current task, will be the NBB's audit committee and in this capacity perform the tasks entrusted to the

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> OJ L 157, 9.6.2006, p. 87.

<sup>3</sup> Article 41 of Directive 2006/43/EC.

NBB's audit committee<sup>4</sup> listed in the draft law<sup>5</sup>. The ECB understands that the Board of Censors is an NBB body composed of 10 members currently entrusted with supervising the preparation and implementation of the budget<sup>6</sup> and that the NBB's general meeting of shareholders elects its members amongst persons with special qualifications in supervisory procedures<sup>7</sup>. The Explanatory Memorandum to the draft law on the audit committee explains that it is not possible to create the audit committee within the NBB's Board of Directors as all its members are executive members. It was on the other hand considered logical to set up the audit committee within the NBB's Board of Censors given that it is already entrusted with supervising the preparation and implementation of the NBB's budget and given the existing requirement for censors to be appointed among persons with special qualifications in supervisory procedures. Furthermore, the NBB's General Meeting of shareholders elects censors which also complies with Directive 2006/43/EC.

- 1.3 According to Article 24(1) of the draft law on the audit committee, the NBB's audit committee is entrusted with the following advisory tasks as a minimum, without prejudice to the statutory tasks of the NBB's bodies: (i) monitoring the financial reporting process; (ii) monitoring the effectiveness of the NBB's internal control and risk management systems and the internal audit<sup>8</sup>; (iii) monitoring the statutory audit of the annual accounts, including compliance with the statutory auditor's questions and recommendations; and (iv) reviewing and monitoring the statutory auditor's independence, and in particular their provision of additional services to the NBB. In this latter respect, the statutory auditor is required to confirm annually to the audit committee their independence and to disclose any additional service provided to the NBB<sup>9</sup>. The statutory auditor also discusses with the audit committee any threats to their independence and the safeguards applied to mitigate those threats as documented in the audit documents<sup>10</sup>. Finally, the audit committee has an advisory competence in the tender procedure for appointing the NBB's statutory auditor and, following such procedure, makes a proposal to the Board of Directors for the appointment of the statutory auditor<sup>11</sup>.

## **2. Specific comments concerning the draft law on the audit committee**

- 2.1 The ECB welcomes the draft law on the audit committee as a further contribution to strengthening the NBB's governance framework. The ECB nevertheless considers it advisable for the internal allocation of tasks within the Board of Censors to be organised so as to mitigate the risk of conflict between its supervision of the preparation and implementation of the budget and the tasks entrusted

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4 Article 23 of the draft law on the audit committee, amending Article 21 of the Law of 22 February 1998.

5 Article 24 of the draft law on the audit committee, inserting Article 21 bis in the Law of 22 February 1998.

6 Article 21 of the Law of 22 February 1998.

7 Article 23(4) of the Law of 22 February 1998.

8 According to Article 24(3) of the draft law on the audit committee, without prejudice to their obligation to report to the NBB's bodies, the NBB's statutory auditor also reports to the audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal controls in the financial reporting process.

9 Article 24(4) of the draft law on the audit committee, inserting Article 21 bis (4) in the Law of 22 February 1998.

10 Article 24(4) of the draft law on the audit committee, inserting Article 21 bis (4) in the Law of 22 February 1998.

11 Article 24(2) of the draft law on the audit committee, inserting Article 21 bis (2) in the Law of 22 February 1998.

to it by the draft law on the audit committee in its capacity as audit committee. Relevant provisions for this purpose could for instance be set out in the NBB's Rules of Procedure referred to in Article 24(5) of the draft law on the audit committee.

- 2.2 According to the Explanatory Memorandum to the draft law on the audit committee, the Council of the European Union, on a recommendation by the ECB's Governing Council, must approve the appointment of the NBB's statutory auditor. The ECB would welcome a reference in the text of the draft law to these ECB and Council competences under Article 27.1 of the Statute of the European System of Central Banks and of the European Central Bank, similarly to the reference to the Works Council's competence in Article 24(2). In particular, the ECB considers that the draft law should clarify that the audit committee's tasks and activities may interfere neither with the performance of the NBB's ESCB-related tasks nor with their review by the NBB's statutory auditor<sup>12</sup>.
- 2.3 The ECB understands that when reviewing and monitoring the independence of the statutory auditor under Article 21 bis (1)(d) of the Law of 22 February 1998 and advising on the tender procedure for appointing the statutory auditor, the NBB's audit committee will take account of the Eurosystem's good practice in selecting and mandating external auditors.

### **3. Purpose of the draft law on reinsurance and specific comments**

- 3.1 The draft law on reinsurance is intended to transpose into Belgian law Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC<sup>13</sup>. In this context, the draft law on reinsurance adds the authorities responsible for supervising reinsurance undertakings to the list of supervisory authorities to which the NBB is allowed to communicate information covered by professional secrecy under the first paragraph of Article 35 of the Law of 22 February 1998 if such information is necessary for their supervisory function<sup>14</sup>.
- 3.2 The ECB has no specific comments on this provision of the draft law on reinsurance.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 31 July 2008.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<sup>12</sup> See paragraph 3.2 of ECB Opinion CON/2006/44 of 25 August 2006 at the request of the Banca d'Italia on the amended Statute of the Banca d'Italia.

<sup>13</sup> OJ L 323, 9.12.2005, p. 1.

<sup>14</sup> Article 143 of the draft law on reinsurance, amending Article 35 of the Law of 22 February 1998.