



## OPINION OF THE EUROPEAN CENTRAL BANK

of 25 March 2011

**on the abolition of the task of the Nationale Bank van België/Banque Nationale de Belgique of acting as central depository of deeds of protest**

(CON/2011/28)

### **Introduction and legal basis**

On 4 March 2011, 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 Justice, for an opinion on a draft law abolishing the task of the Nationale Bank van België/Banque Nationale de Belgique of acting as central depository of deeds of protests and amending various provisions concerning deeds of protests (hereinafter the ‘draft law’) and a draft royal decree abolishing the task of the Nationale Bank van België/Banque Nationale de Belgique of acting as central depository of deeds of protests and amending various provisions concerning deeds of protests (hereinafter the ‘draft royal decree’) (the draft law and the draft royal decree are hereinafter collectively referred to as the ‘draft legislation’).

The ECB’s competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, 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 legislation relates to the NBB. 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 legislation**

1.1 The draft legislation will abolish<sup>2</sup> non European System of Central Banks related tasks currently entrusted to the NBB which concern: (a) the centralised processing of bills of exchange and promissory notes<sup>3</sup>, and (b) the NBB’s ancillary task of acting as central depository of deeds of

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

<sup>2</sup> See in particular Articles 8 to 11 of the draft law and Articles 1 to 7 of the draft royal decree.

<sup>3</sup> This system allows for eliminating the material transfer of all bills of exchange and promissory notes indicating a bank account opened in the books of a credit institution established in Belgium, notably by providing for their centralised presentation for payment at the Centre for Exchange and Clearing managed by the NBB (see in particular Article 1 of the Royal Decree of 16 July 1957 implementing Article 38, second subparagraph, and Article 42 of the Coordinated Law on bills of exchange and promissory notes). In this context, a framework agreement was concluded between the NBB and the Belgian banking sector, which is to expire in 2011.

protest<sup>4</sup>. The processing of bills of exchange and promissory notes will in the future be done in a decentralised manner<sup>5</sup>. The rules governing the instruments themselves will not be affected.

- 1.2 The rationale behind the draft legislation is to be found essentially in: (a) the steady decline in the use of bills of exchange and promissory notes and, hence, of protests, (b) the costs that would need to be invested to modernise the IT system currently used for the centralised processing, and (c) the fact that, from a general point of view, the Belgian banking sector tends to discourage the use of payment instruments such as paper-based cheques, bills of exchange and promissory notes<sup>6</sup>.

## 2. General observation

The ECB has no objection to the draft legislation. The ECB observes that, as pointed out in the explanatory memorandum, the decision not to encourage the use of paper-based bills of exchange and promissory notes is in line with the European Commission's position in favour of a gradual repositioning of paper-based payment instruments and their replacement by more efficient electronic payments<sup>7</sup>.

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

Done at Frankfurt am Main, 25 March 2011.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<sup>4</sup> In case of non-payment of a bill of exchange or promissory note payable at the Center for Exchange and Clearing, the NBB is also the authority with which the bailiffs draw up the deed of protest (Article 2 of the Law of 3 June 1997 on protests and Article 2 of the implementing Royal Decree of 15 September 1997), and which subsequently makes data available to the relevant parties (Articles 4 and 9 of the Law of 3 June 1997). As central depository, the NBB keeps the deed of protest or the certified copies thereof (Article 4 and 8 of the Law of 3 June 1997).

<sup>5</sup> See Article 13 of the draft law, under which the bailiffs who draw up the deeds of protests will be required to send certified copies thereof to the competent Commercial Court.

<sup>6</sup> See the explanatory memorandum to the draft law, pp. 1 and 2.

<sup>7</sup> See for instance the Commission's Consultative paper on SEPA Incentives, 13 February 2006, available at [http://ec.europa.eu/internal\\_market/payments/docs/sepa/sepa-2006\\_02\\_13\\_en.pdf](http://ec.europa.eu/internal_market/payments/docs/sepa/sepa-2006_02_13_en.pdf).