EUROPEAN CENTRAL BANK

EUROSYSTEM

# OPINION OF THE EUROPEAN CENTRAL BANK

**of 15 September 2011**

**on the categories of intermediaries authorised to maintain accounts for dematerialised securities denominated in foreign currency or units of account**

**(CON/2011/71)**

## Introduction and legal basis

On 15 August 2011, the European Central Bank (ECB) received a request from the Belgian Ministry of Finance for an opinion on a draft royal decree amending the Royal Decree of 14 June 1994 laying down the rules for maintaining accounts for dematerialised securities denominated in foreign currency or units of account (hereinafter the 'draft royal decree').

The ECB's competence to deliver an opinion is based on Article 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the fifth 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[1], as the draft legislation concerns settlement systems. 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 royal decree

1.1 The draft royal decree aims to improve the marketability of dematerialised Belgian public debt securities denominated in foreign currency or units of account[2] by increasing the number of intermediaries authorised to maintain accounts for such securities[3]. These securities are held in the securities settlement system administered by the Nationale Bank van België/Banque Nationale de Belgique (NBB), the NBB-SSS[4]. The two new categories of intermediaries that will be authorised

1 OJ L 189, 3.7.1998, p. 42.

2 These public debt securities are mainly governed by: (a) the Law of 2 January 1991 on the market for public debt securities and on monetary policy instruments; and (b) the Royal Decree of 14 June 1994 laying down the rules for maintaining accounts for dematerialised securities denominated in foreign currency or units of account.

3 Currently, these intermediaries are the following NBB-SSS participants: (a) the NBB; (b) Clearstream Banking and Euroclear France; (c) Euroclear Bank; and (d) the participant who is either the issuer, or the paying agent designated in the issuing agreement (Article 1 §2 of the Royal Decree of 14 June 1994).

4 See Article 4 of the Law of 2 January 1991 which designates the NBB as the settlement institution entrusted with holding dematerialised Belgian public debt securities and the settlement of transactions therein.

to maintain accounts for these securities[5] were selected for their ability to process cash flows in foreign currency or in units of account[6].

1.2 In addition, the concept of 'foreign currencies' defining the scope of the Royal Decree of 14 June 1994 will cover the 'foreign currencies for which the ECB publishes daily foreign exchange reference rates'[7], instead of referring to the monetary units of the members of the Organisation for Economic Co-operation and Development. These daily foreign exchange reference rates will also be used for calculating the euro value of the securities[8]. Finally, the draft royal decree will reflect in the Royal Decree of 14 June 1994, the abolition of the principle of 'direct and single access' to the NBB-SSS that entered into force in 2006 already[9].

## 2. General observations

The ECB welcomes the draft royal decree as it will allow for a much wider range of financial institutions participating in NBB-SSS to maintain accounts for dematerialised Belgian public debt securities denominated in foreign currency or units of account. In June 2011, a TARGET2-Securities (T2S) taskforce had indeed already indicated that the restricted categories of NBB-SSS participants authorised to maintain accounts for such securities were obstacles to smooth cross-CSD settlement in T2S[10]. In addition, this development is in line with the recommendation issued by the European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR) concerning access (recommendation 14)[11], which states that rules and requirements restricting access to securities settlement systems should be aimed solely at controlling risk.

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

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5 The two following categories of NBB-SSS participants will be added: (a) securities settlement institutions, as defined in Article 2 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services; and (b) paying agents responsible for the servicing of an on-going issue of securities with NBB-SSS (new Article 1 §2 of the Royal Decree of 14 June 1994, amended by Article 1 of the draft royal decree).

6 Fourth recital to the draft royal decree.

7 New Article 1 §3 of the Royal Decree of 14 June 1994, amended by Article 1, 3° of the draft royal decree.

8 New Article 3, 1° of the Royal Decree of 14 June 1994, amended by Article 2 of the draft royal decree.

9 The requirement in the Law of 2 January 1991, that authorised intermediaries maintain dematerialised public debt securities only and/or directly on accounts held with the NBB's settlement system or with a participant in that system (i.e. the principle of 'direct and single access') was repealed by Article 19 of the Law of 15 December 2004 relating to financial collateral and various tax provisions in relation to *in rem* collateral arrangements and loans relating to financial instruments. This allowed for the establishment of a multi-tiered system of indirectly held dematerialised public debt securities (see Opinion CON/2004/27, paragraph 15).

10 See section 2.8.2 of the June 2011 Issue List for Task Force on smooth cross-CSD settlement, available on the ECB's website at www.ecb.europa.eu.

11 See the ESCB-CESR Recommendations for securities settlement systems and recommendations for central counterparties in the European Union (2009), available on the ECB website at www.ecb.europa.eu.

Done at Frankfurt am Main, 15 September 2011.

[signed]

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Vítor CONSTÂNCIO