



OPINION OF THE EUROPEAN CENTRAL BANK

of 10 May 2012

on supervision-related operating costs

(CON/2012/35)

Introduction and legal basis

On 23 March 2012, 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 a draft royal decree on the operating costs of the Nationale Bank van België/Banque Nationale de Belgique in relation to the supervision of financial institutions, implementing Article 12bis, § 4 of the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique (hereinafter the ‘draft royal decree’).

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 provisions¹, as the draft royal decree contains provisions concerning 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 royal decree

- 1.1 The draft royal decree is part of the reform of the Belgian financial supervisory structures towards a ‘twin-peaks’ type model under which the NBB is the sole authority responsible for the financial sectors’ micro- and macro-prudential stability².
- 1.2 The draft royal decree defines the arrangements under which the NBB’s operating costs in relation to the supervision of financial institutions are to be borne by such institutions³, in accordance with Article 12bis, § 4 of the Law of 22 February 1998⁴. Each year, the NBB determines the share of its operating costs⁵ related to the supervision of the insurance and banking sectors, using a cost

¹ OJ L 189, 3.7.1998, p. 42.

² The ECB discussed this reform in Opinions CON/2010/7 and CON/2011/5.

³ Article 1, §1 of the draft royal decree.

⁴ See paragraph 1.5.4 and 3.3 of Opinion CON/2011/5.

⁵ The operating costs are broadly defined to include: personnel costs, administrative costs, depreciation of tangible and intangible assets and other costs that need to be attributed to the supervision of financial institutions (Article 1 §2 of the draft royal decree).

calculation application⁶. In order to pre-finance these costs, which can only be determined at year-end, the supervised institutions must pay a yearly contribution determined on the basis of 90% of the NBB's actual operating cost for the previous year relating to the respective sector. Specific allocation criteria are then applied to this amount to calculate the individual contributions⁷. A special contribution is charged to systemically relevant insurance companies and credit institutions⁸ to reflect the specific supervisory tasks entrusted to the NBB⁹. The NBB informs the supervised institutions of the basic, and possibly specific, contribution that they must pay by 30 September each year. Where individual contributions collected from the banking and/or insurance sectors appear to exceed the NBB's actual supervision-related operating costs relating to the respective sector, the surplus is repaid to the institutions concerned¹⁰. Conversely, any shortfall between individual contributions collected and the NBB's actual operating costs for the relevant sector is made up by requiring an additional contribution from the relevant supervised institutions¹¹. Finally, the NBB may charge affected insurance undertakings or credit institutions for exceptional costs incurred in the context of their supervision¹².

- 1.3 The NBB's operating costs relating to the supervision of financial institutions from other sectors¹³ are covered by a lump sum. This contribution does not depend on the NBB's actual operating costs and is calculated by the NBB in accordance with the criteria set out in the draft royal decree¹⁴.

2. General observation

The ECB welcomes the consultation submitted by the Belgian authorities¹⁵. In view of the arrangements set out in the draft royal decree, the ECB understands that the exercise of the new tasks transferred to the NBB will be adequately financed by contributions from supervised institutions and will not result in any losses for the NBB. Therefore, the ECB considers that the draft royal decree meets the requirements for a national central bank to be financially independent.

6 The methods used and the total amount to be borne by each of the two sectors are certified each year by the NBB's auditor; explanations are provided in the NBB's annual financial statements (Article 1, §2 of the draft royal decree).

7 Article 2, §1 to 5 (insurance sector) and Articles 7 to 9 (banking sector) of the draft royal decree.

8 Article 2, §2 2° (insurance sector) and Article 7 2° (banking sector) of the draft royal decree. Where several institutions belonging to one group are considered to be systemic, the additional contribution is paid by only one of them. See also Article 13, §3 with regard to clearing institutions, settlement institutions and assimilated entities.

9 Article 36/3 of the Law of 22 February 1998.

10 i.e. it is either actually reimbursed or set-off against the contribution due by the institution for the following year. See Article 3 (insurance sector) and 10 (banking sector) of the draft royal decree.

11 Article 4 (insurance sector) and 11 (banking sector) of the draft royal decree.

12 Article 5 (insurance sector) and 12 (banking sector) of the draft royal decree. See also Article 13, §5 with regard to clearing institutions, settlement institutions and assimilated entities.

13 Clearing institutions, settlement institutions, assimilated entities, payment institutions and mutual guarantee companies.

14 Article 13 to 15 of the draft royal decree.

15 Paragraph 3.3 of CON/2011/5.

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

Done at Frankfurt am Main, 10 May 2012.

[signed]

The President of the ECB

Mario DRAGHI