



Royal Decree designating the competent authority responsible for the authorization and supervision of central securities depositories¹

REPORT TO THE KING

Your Majesty,

The Decree which it is our honour to submit for Your Majesty's signature is intended to implement Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (hereafter the "CSD Regulation") which lays down uniform obligations regarding the regulation of operations in financial instruments.

This Decree is promulgated in execution of Article 40 of the Law of 25 April 2014 amending the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, the Law of 2 August 2002 on the supervision of the financial sector and on financial services, the Law of 22 March 1993 on the legal status and supervision of credit institutions, the Law of 9 July 1975 on the supervision of insurance companies, the Law of 16 February 2009 on reinsurance, the Law of 6 April 1995 on the legal status and supervision of investment firms, the Law of 21 December 2009 on the legal status of payment institutions and electronic money institutions, on the taking up and pursuit of the business of payment service provider and of issuer of electronic money and on access to payment systems, the Law of 28 April 1999 transposing Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems and the Law of 15 December 2004 on financial collateral and containing various tax provisions in respect of collateral security agreements and loans of financial instruments, which enables the King to take, by a decree deliberated on in the Council of Ministers, on the advice of the NBB and of the FSMA, any and all useful measures to ensure compliance with the obligations of the Belgian State under European legislation and, in particular, the obligations of the Belgian State under the CSD Regulation.

The said provision enables You in particular to designate one or more competent authorities to carry out the duties of authorization, supervision and oversight of central securities depositories, and to supervise compliance with the other provisions of the CSD Regulation.

As regards the division of powers between the authorities designated, the justification for conferring the aforesaid power upon You specifies that You will take account of the division of powers between the NBB and the FSMA set out in the reform known as "Twin Peaks", as laid down by the Royal Decree of 3 March 2011 implementing changes to the supervisory architecture for the financial sector (hereafter the "Royal Decree of 3 March 2011");

Concerning the supervision of clearing and settlement institutions, the report to the King that precedes the Royal Decree of 3 March 2011 explains the division of powers between the NBB and the FSMA as

¹ This document is a translation by the FSMA of the KB 11 juni 2015/AR 11 juin 2015.
For the original binding, Dutch or French version, please refer to
<http://www.fsma.be/nl/Supervision/fm/settle/wetteksten/wetgeving.aspx>

follows: *"The supervision of the settlement system and of its operator is carried out both from a prudential perspective and with a view to the protection of investors and the smooth operation of the markets. Drawing on several foreign examples, the draft Decree sets out clearly the two angles for the supervision of settlement institutions: the Bank is responsible for the prudential supervision of settlement institutions, while the CBFA retains responsibility for supervising compliance with the (post-trading) market rules and the conduct of business rules applicable to these institutions"* (Belgian Official Gazette, 9 March 2011, p. 15643).

Given this supervisory model, this Royal Decree designates the NBB as the competent authority responsible for all the provisions of Regulation (EU) No 909/2014, with the exception of those that confer specific powers on the authorities responsible for supervising trading venues.

Pursuant to Article 45, § 1, 1° of the Law of 2 August 2002 on the supervision of the financial sector and on financial services (hereafter "the Law of 2 August 2002"), the FSMA is tasked with ensuring compliance with the rules aimed at protecting the interests of investors when carrying out transactions in financial instruments, and the rules intended to guarantee the proper functioning, integrity and transparency of markets in financial instruments.

Moreover, the FSMA continues to exercise, in accordance with European law, its current powers (cf. Articles 23 and 45, § 1, 3°, of the Law of 2 August 2002) in respect of the prevention and management of conflicts of interest, the registration of services, the protection of assets of participants and clients, and access to settlement systems.

In accordance with the memorandum of understanding between the NBB and the FSMA, the latter will continue to participate in the supervisory agreements relating to market infrastructures for which it already participates in a supervisory agreement at the time of publication of this Decree. The NBB and the FSMA will consult each other regarding a new memorandum of understanding should other supervisory colleges come into existence in application of Regulation No 909/2014.

The "Twin Peaks" supervisory model also means that the FSMA's advice is sought by the prudential supervisory authority concerning those aspects that fall within the FSMA's competence, in order to allow the latter to exercise its powers. It is in light of this reasoning that the draft Decree provides that in application of Regulation (EU) No 909/2014, the National Bank of Belgium shall request the advice of the FSMA on those aspects that fall within the latter's competence.

This, Your Majesty, is the tenor of the Decree being submitted to You.

I remain Your Majesty's faithful servant,

J. Van Overtveldt
Minister of Finance

OPINION 57.564/2 of 27 MAY 2015 OF THE COUNCIL OF STATE, LEGISLATION SECTION, ON A DRAFT ROYAL DECREE "DESIGNATING THE COMPETENT AUTHORITIES RESPONSIBLE FOR THE AUTHORIZATION AND SUPERVISION OF CENTRAL SECURITIES DEPOSITORIES"

On 22 May 2015, the Council of State, Legislation Section, was invited by the Minister of Finance to issue an advisory opinion, within five working days, on a draft Royal Decree "designating the competent authorities responsible for the authorization and supervision of central securities depositories".

The draft was examined by the second chamber on 27 May 2015.

The chamber was made up of Pierre Liénardy, president of the chamber, Martine Baguet and Bernard Blero, councillors of State, Christian Behrendt and Marianne Dony, assessors, and Bernadette Vigneron, clerk.

The report was presented by Jean-Luc Paquet, first auditor.

Consistency between the French and the Dutch versions was verified under the supervision of Pierre Liénardy.

The advisory opinion, whose text is given below, was issued on 27 May 2015.

Pursuant to Article 84, §1, first paragraph, 3°, of the consolidated laws on the Council of State, the request for an advisory opinion must indicate specifically the reasons that justify the urgency of the matter.

The letter puts it in the following terms:

"The great urgency is due to the fact that in accordance with Article 11 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014, a competent authority must be designated for the authorization and supervision of central securities depositories. This Decree fulfils this obligation and designates the National Bank of Belgium (NBB) as the competent authority.

Institutions that wish to apply for recognition as a central securities depository have yet to be informed officially, however, and the NBB has to make the necessary administrative preparations and provide the relevant information. The delegation of power to the King based on Article 40, § 2, second paragraph of the Law of 25 April 2014 expires on 30 June 2015 and therefore the Decree must be issued as soon as possible in order that the authorization dossiers may be prepared on time".

1. The justification for the urgency presented in the request for an advisory opinion does not correspond to the one mentioned in the preamble to the draft Decree: the latter should therefore reproduce exactly the justification for the urgency as it appears in the request for an advisory opinion.

For according to Article 84, §1, second paragraph of the consolidated laws on the Council of State:

"[w]here, pursuant to the first paragraph, 3°, urgency is invoked for an advisory opinion on a draft regulatory decree, the motivation for the urgency presented in the request must be reproduced in the preamble to the decree".

2. The draft Decree implements the power provided for in Article 40, §1, 2° and 3° of the Law of 25 April 2014 'amending the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, the Law of 2 August 2002 on the supervision of the financial sector and on financial

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services, the Law of 22 March 1993 on the legal status and supervision of credit institutions, the Law of 9 July 1975 on the supervision of insurance companies, the Law of 16 February 2009 on reinsurance, the Law of 6 April 1995 on the legal status and supervision of investment firms, the Law of 21 December 2009 on the legal status of payment institutions and electronic money institutions, on the taking up and pursuit of the business of payment service provider and of issuer of electronic money and on access to payment systems, the Law of 28 April 1999 transposing Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems and the Law of 15 December 2004 on financial collateral and containing various tax provisions in respect of collateral security agreements and loans of financial instruments', namely, to designate "several competent authorities for the authorization, supervision and oversight of central securities depositories". Such a decree lacks the regulatory quality required by Article 3, §1, first paragraph, of the consolidated laws on the Council of State.

The Legislation Section of the Council of State is therefore not competent to give an advisory opinion on this draft.

B. Vigneron
Clerk

P. Liénardy
President

Royal Decree designating the competent authority responsible for the authorization and supervision of central securities depositories

PHILIPPE, King of the Belgians,

To all present and future citizens, greetings.

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, in particular Article 11;

Having regard to the Law of 25 April 2014 amending the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, the Law of 2 August 2002 on the supervision of the financial sector and on financial services, the Law of 22 March 1993 on the status and the supervision of credit institutions, the Law of 9 July 1975 on the supervision of insurance companies, the Law of 16 February 2009 on reinsurance, the Law of 6 April 1995 on the status and the supervision of investment firms, the Law of 21 December 2009 on the status of payment institutions and electronic money institutions, on the taking up and pursuit of the business of payment service provider and issuer of electronic money and on access to payment systems, the Law of 28 April 1999 transposing Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems and the Law of 15 December 2004 on financial collateral and containing various tax provisions in respect of collateral security agreements and loans of financial instruments, in particular Article 40, § 1, 2° and 3°;

On the advice of the National Bank of Belgium dated 12 May 2015 and of the Financial Services and Markets Authority (FSMA) dated 13 May 2015;

Having regard to the opinion of the Inspector of Finance, issued on 24 April 2015;

Having regard to the approval of the Minister for the Budget, issued on 11 May 2015;

Having regard to Opinion No 57.564/2 of the Council of State, issued on 27 May 2015, in application of Article 84, § 1, first paragraph, 3°, of the laws on the Council of State, consolidated on 12 January 1973;

Given the urgency,

On the grounds:

— that Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 was published in the Official Journal of the European Union on 28 August 2014 and entered into force on 17 September 2014;

— that pursuant to Article 11 of Regulation (EU) No 909/2014, the competent authority responsible for the authorization and supervision of central securities depositories must be designated;

— that to avoid any legal uncertainty, the said competent authority must make the necessary administrative preparations and provide information to any entity wishing to apply for authorization as a central securities depository, and must be able to establish in a timely manner the international cooperation arrangements with foreign authorities that is provided for in Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014;

- that this Decree must be made known to the institutions that wish to apply for authorization as a central securities depository;
- that, to avoid any legal uncertainty, entities that wish to apply for authorization as a central securities depository must be informed, as soon as possible, of which authority is competent in this area, so that the application files may be prepared in a timely manner;
- that the delegation to the King of the power to designate the competent authority, provided for in Article 40, § 2, paragraph 2 of the Law of 25 April 2014, expires on 30 June 2015;
- that this Decree must urgently be promulgated, before 30 June 2015;

Having regard to Article 8 of the Law of 15 December 2013 on various provisions concerning administrative simplification, this decree is exempt from the requirement of an impact analysis of the regulations, given that these are self-regulatory provisions;

On the proposal of the Minister of Finance and on the advice of the ministers who have discussed it in Council,

We have decreed and now decree:

CHAPTER I — Designation of competent authorities

Article 1. § 1. Having regard to Article 11 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, hereafter "Regulation (EU) No 909/2014", the National Bank of Belgium is designated as the authority competent for carrying out the duties of authorizing and supervising the central securities depositories established in Belgium, except in respect of the provisions of Regulation (EU) No 909/2014 that confer specific powers on the authorities competent for the supervision of trading venues.

§ 2. Without prejudice to the powers of the National Bank of Belgium, the FSMA supervises the central securities depositories established in Belgium from the perspective of its powers referred to in Article 45, § 1, 1° of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, as well as from the perspective of the rules intended to ensure that participants and their clients are treated honestly, fairly and professionally within the meaning of Articles 23 and 45, § 1, 3°, of the aforementioned Law.

Given these areas of competence, the FSMA ensures that central securities depositories comply with Articles 26, paragraph 3, 29, 32 to 35, 38, 49 and 53 of Regulation (EU) No 909/2014.

§ 3. In application of Regulation (EU) No 909/2014, the National Bank of Belgium shall request the advice of the FSMA on those aspects that fall within the latter's competence.

§ 4. The FSMA and the National Bank of Belgium may sign a memorandum defining the modalities of their collaboration.

CHAPTER II — Entry into force

Article 2. This Decree shall enter into force on the day of its publication in the Belgian Official Gazette (Moniteur belge/Belgisch Staatsblad).

Article 3. The Minister responsible for Finance is charged with the implementation of this Decree.

11.06.2015

Given in Brussels on 11 June 2015.

PHILIPPE

On behalf of the King:
J. Van Overtveldt
Minister of Finance