4. Annexes

The Bank's Organic Act and Corporate Governance Charter are set out below.

The Statutes, the Rules of Procedure, the Audit Committee Bylaws, the Remuneration and Appointments Committee Bylaws and many other legislative and regulatory texts covering the National Bank, its activities and its reference framework are available on the Bank's website.

The Bank does its best to ensure that the documents presented on its website are continually updated to take account of recent changes.

Annex 1 Organic Act[1]

Article 1. – This Act regulates a matter referred to in Article 78 of the Constitution.

Chapter I – Nature and objectives

Art. 2. – The National Bank of Belgium (*Nationale Bank van België/Banque Nationale de Belgique/Belgische Nationalbank*), established by the Act of 5 May 1850, forms an integral part of the European System of Central Banks, hereinafter referred to as the ESCB, the Statute of which was established by the related Protocol annexed to the Treaty on the Functioning of the European Union.

Furthermore, the Bank is governed by this Act, its Statutes and, in addition, by the provisions relating to limited-liability companies with share capital (*sociétés anonymes/naamloze vennootschappen*).[2]

Art. 3. – The Bank's registered office is in Brussels.

The Bank may establish other places of business on the Belgian territory if the need so arises.

Art. 4. – The Bank's share capital, which amounts to ten million euros, is represented by four hundred thousand shares, of which two hundred thousand – registered and non-transferable – shares are subscribed by the Belgian State and two hundred thousand are in registered or dematerialised form. The share capital is fully paid up.

Except for those shares held by the State, the Bank's shares may be converted into registered or dematerialised form, free of charge, at their holder's choosing.

Chapter II – Tasks and transactions

Art. 5. – 1. In order to achieve the objectives of the ESCB and to carry out its tasks, the Bank may:

- carry out transactions on the financial markets, by buying and selling outright (spot and forward transactions) or under repurchase agreements or by lending or borrowing receivables and marketable securities denominated in Community or non-Community currencies, as well as precious metals;
- carry out credit operations with credit institutions and other money market or capital market participants, with lending based on adequate collateral.

2. The Bank shall comply with the general principles defined by the ECB for open market and credit operations, including those relating to announcement of the conditions under which such transactions are carried out.

Art. 6. – Within the limits and in accordance with the terms and conditions adopted by the ECB, the Bank may also carry out *inter alia* the following types of transactions:

1. the issuance and redemption of its own debt instruments;

2. the acceptance of deposits of securities and precious metals, the redemption of securities and the

1 Act of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium (Unofficial consolidated translation: January 2024).

2 The provisions on limited-liability companies do not apply to the National Bank of Belgium except:
1. in regard to matters which are not governed either by the provisions of Title VII of Part Three of the Treaty establishing the European Community and the Protocol on the Statute of the European System of Central Banks and of the European Central Bank or by the abovementioned Act of 22 February 1998 or the Statutes of the National Bank of Belgium; and
2. insofar as they are not in conflict with the provisions referred to in point (1) (*Article 141 §1 of the Act of 2 August 2002 on the supervision of the financial sector and on financial services*).

performance of acts on behalf of other parties in transactions in securities, other financial instruments and precious metals;

3. transactions in interest-rate instruments;

4. transactions in foreign currencies, gold or other precious metals;

5. transactions with a view to the investment and financial management of its holdings of foreign currencies and other external reserve components;

6. the obtention of credit from foreign sources and the provision of guarantees for that purpose;

7. transactions relating to European or international monetary cooperation.

Art. 7. – The Bank's claims arising from lending transactions shall take precedence over any securities the debtor may hold in an account with the Bank or in its securities clearing system as equity.

These preferred claims shall have the same ranking as the claims of secured creditors and shall take precedence over the rights set out in Article 8(3) of the Act of 2 January 1991 on the market in public debt securities and monetary policy instruments, Articles 12(4) and 13(4) of Royal Decree No 62 on the deposit of fungible financial instruments and the settlement of transactions involving such instruments, consolidated by the Royal Decree of 27 January 2004, and Article 471(4) of the Company Code.

In the absence of payment of the Bank's claims referred to in the first paragraph, the Bank may, after having sent the debtor a formal notice of default, proceed automatically, without a prior court order, with realisation of the securities that form the object of its preferred claim, notwithstanding the possible bankruptcy of the debtor or any other situation involving competing claims on the part of the latter's creditors. The Bank shall strive to realise the securities at the most advantageous price as quickly as possible, taking into account the volume of transactions. The proceeds from realisation shall be allocated to the Bank's claim (principal, interest and costs), with any balance remaining after settlement reverting to the debtor.

When the Bank accepts a pledge of receivables as collateral, as soon as the pledge agreement has been entered into, an entry shall be made in a register kept at the National Bank or with a third party designated by the Bank for this purpose.

Through recordation in the register, which is not subject to any specific formalities, the pledge in favour of the National Bank of Belgium is given a firm date and becomes enforceable against all parties, with the exception of the obligor of the pledged receivables.

The register may only be consulted by third parties that are considering accepting a right *in rem* (a security interest) in receivables that could be pledged to the National Bank of Belgium. Consultation of the register shall be governed by the terms stipulated by the National Bank of Belgium.

In the event of the opening of insolvency proceedings, as set out in Article 3(5) of the Act of 15 December 2004 on financial collateral and laying down various tax provisions in relation to agreements establishing security interests and loans involving financial instruments, against a credit institution that has pledged receivables to the National Bank of Belgium as collateral, the following provisions shall apply:

a) the National Bank of Belgium's registered right as pledgee shall take precedence over all other security interests subsequently arranged or granted to third parties in the same receivables, regardless of whether the aforementioned pledge has been notified to and recognised by the obligor of the pledged receivables; if the National Bank of Belgium informs the obligor of the pledged receivables of the pledge, the latter may then only discharge its obligations through payment to the National Bank of Belgium;

b) third parties acquiring a pledge competing with that of the National Bank of Belgium, as described in the preceding paragraph, are obliged, in any event, to transfer to the National Bank of Belgium, without delay, the amounts they receive from the obligor of the pledged receivables upon the commencement of insolvency proceedings. The National Bank of Belgium is entitled to request payment of these amounts, without prejudice to its right to claim damages;

c) notwithstanding any provision to the contrary, as set-off could extinguish all or part of the receivables pledged to the Bank or realised by it, it may not under any circumstances be raised against

the Bank or third-party purchasers in the event of realisation ;

d) Article 8 of the Act of 15 December 2004 on financial collateral and laying down various tax provisions in relation to agreements establishing security interests and loans involving financial instruments, shall apply by analogy to the acceptance of pledged receivables as collateral by the National Bank of Belgium, with the words "financial instruments" replaced by "receivables" ;

e) the combined provisions of Articles 5 and 40 of the Mortgage Act (*Loi hypothécaire*) do not apply.

Art. 8. – **§ 1.** The Bank shall ensure that clearing, settlement and payment systems operate properly and that they are effective and sound, in accordance with this Act, specific laws and regulations and, where relevant, applicable European rules.

For this purpose, it may carry out all transactions and grant facilities.

It shall provide for application of the regulations adopted by the ECB in order to ensure the effectiveness and soundness of clearing and payment systems within the European Union and with other countries.

§ 2. In respect of the matters for which it is responsible pursuant to this article, the Bank may adopt regulations to supplement the applicable legislative or regulatory provisions on technical points.

Without prejudice to any consultation procedure provided for by other laws or regulations, the Bank, may, in accordance with the public consultation procedure, clarify, in the course of a consultation, the content of any regulation it intends to adopt and publish such information on its website for comment by interested parties.

These regulations shall enter into force only after their approval by royal decree and their publication in the *Moniteur belge* / *Belgisch Staatsblad* (Belgian Official Gazette). By way of royal decree, these regulations may be amended or rules set if the Bank fails to do so.

§ 3. The Bank shall exercise the powers conferred on it by this article exclusively in the general interest. Except in the event of fraud or gross negligence, the Bank, the members of its management bodies and its staff may not be held civilly liable for their decisions, acts, omissions or conduct in the fulfilment of these tasks.

Art. 9. – Without prejudice to the powers of the institutions and bodies of the European Communities, the Bank shall implement the international monetary cooperation agreements by which Belgium is bound in accordance with the procedures laid down by agreements concluded between the Minister of Finance and the Bank. It shall provide and receive the means of payment and the loans required for the implementation of these agreements.

The State shall guarantee the Bank against any loss and the repayment of any credit granted by the Bank further to implementation of the agreements referred to in the preceding paragraph or as a result of its participation in international monetary cooperation agreements or transactions to which, subject to approval by the Council of Ministers, the Bank is a party.

Art. 9*bis*. – Within the framework set by Article 105(2) of the Treaty establishing the European Union and Articles 30 and 31 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the Bank shall hold and manage the official foreign currency reserves of the Belgian State. These holdings shall constitute assets allocated to the tasks and transactions described in this chapter and other tasks in the public interest entrusted to the Bank by the State. The Bank shall record these assets and the income and expenses relating thereto in its accounts in accordance with the rules referred to in Article 33.

Art. 10. – The Bank may, at the conditions laid down by, or by virtue of, law, and subject to their compatibility with the tasks falling within the ambit of the ESCB, be entrusted with the performance of tasks in the public interest.

Art. 11. – The Bank shall act as State Cashier at the conditions determined by law.

It shall be entrusted, to the exclusion of all other Belgian or foreign bodies, with the conversion into euros of the currencies of States not participating in the Monetary Union or of States that are not members of the European Union borrowed by the State.

The Bank shall be informed of all plans for the contracting of foreign currency loans by the State, the Communities and the Regions. At the request of the Bank, the Minister of Finance and the Bank shall consult whenever the latter considers that these loans are liable to prejudice the effectiveness of monetary or foreign exchange policy. The terms and conditions of this provision of information and consultation shall be laid down in an agreement concluded between the Minister of Finance and the Bank, which is subject to approval by the ECB.

Art. 12. – **§ 1.** The Bank shall contribute to the stability of the financial system. In this respect and in accordance with the provisions of Chapter IV.3, it shall ensure in particular the identification, assessment and monitoring of various factors and developments that could affect the stability of the financial system. It shall issue recommendations on measures to be implemented by the various competent authorities in order to contribute to the stability of the financial system as a whole, particularly through strengthening the robustness of the financial system, preventing the occurrence of systemic risks and limiting the effects of potential disruptions, and shall adopt measures falling within the scope of its authority with a view to achieving these objectives.

For all decisions and transactions carried out in the context of its contribution to the stability of the financial system, the Bank shall enjoy the same degree of independence as that determined by Article 130 of the Treaty on the Functioning of the European Union.

§ 2. The Bank may further be entrusted with the gathering of statistical information or with international cooperation in relation to any task referred to in Article 10.

Art. 12*bis*. – **§ 1.** The Bank shall supervise financial institutions in accordance with this Act and specific laws governing the supervision of such institutions and the European rules governing the Single Supervisory Mechanism.

§ 2. Within the areas of supervision for which it is responsible, the Bank may lay down regulations supplementing the legislative or regulatory provisions on technical points.

Without prejudice to any consultation provided for by other laws or regulations, the Bank may, in accordance with the open consultation procedure, explain, in an advisory note, the content of any regulation it is considering adopting and publish the same on its website for comment by interested parties.

These regulations shall enter into force only after their approval by royal decree and their publication in the *Moniteur belge* / *Belgisch Staatsblad* (Belgian Official Gazette). These regulations may be amended by royal decree or regulations may be enacted by royal decree should the Bank fail to do so.

§ 3. The Bank shall carry out its supervisory duties exclusively in the general interest. The Bank, the members of its management bodies and its personal may not be held civilly liable for decisions, acts, omissions or conduct take or carried out in the performance of the Bank's statutory supervisory duties, except in the event of fraud or gross negligence. Likewise, any special auditors or interim managers appointed by the Bank pursuant to the supervisory legislation applicable at sector level with which it is responsible for ensuring compliance may not be held civilly liable as a result of decisions, acts, omissions or conduct taken or performed in the context of the tasks entrusted to them by the Bank, except in the event of fraud or gross negligence.

The Bank shall cover the defence costs the persons referred to in the preceding paragraph accused of being civilly or criminally liable in connection with their duties. It shall also cover the costs of any conviction resulting from the civil liability of the aforementioned special auditors and interim managers, notwithstanding the limitation on civil liability referred to in the preceding paragraph. Where the conviction is the result of fraud with intent to deceive, the special auditor or interim manager found guilty of such fraud shall reimburse these costs to the Bank along with any amounts paid by the Bank to the injured parties in execution of the judgment.

§ 4. The Bank's operating expenses in relation to the supervision referred to in § 1 shall be borne by the institutions subject to its supervision, in accordance with the terms and conditions laid down by royal decree.

The Bank may entrust the recovery of unpaid contributions to the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

Art. 12*ter*. – **§ 1.** The Bank shall exercise the duties of a resolution authority and shall, in that capacity,

be authorised to apply the resolution tools and exercise the resolution powers set out in the Act of 25 April 2014 on the legal status and supervision of credit institutions.

§ 1/1. The Bank shall perform the duties of a resolution authority empowered to apply resolution tools and exercise resolution powers in accordance with the provisions laid down by or pursuant to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/ 2365, as well as Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.

§ 2. The operating expenses relating to the tasks referred to in the first paragraph shall be borne by the institutions subject to the legislation referred to in that paragraph, in accordance with the terms and conditions laid down by royal decree.

§ 2/1. The operating expenses relating to the tasks referred to in paragraph 1/1 shall be borne by the central counterparties authorised pursuant to Article 36/25 § 3, in accordance with the terms and conditions laid down by royal decree.

§ 3. The provisions of Article 12*bis* § 3 apply to the tasks referred to in this article. In particular, the existence of gross negligence shall be assessed with reference to the concrete circumstances of the case, specifically the urgency with which the persons concerned were confronted, practices on the financial markets, the complexity of the case, threats to savings, and the risk of harm to the national economy.

Art. 12*quater*. – **§ 1.** In addition to the exceptions provided for by Articles 14(5)(c) and (d), 17(3)(b), 18(2), and 20(3) of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, to safeguard the objectives of Article 23(1)(d), (e) and (h) of the aforementioned Regulation, exercise of the rights referred to in Articles 12 (transparent information, communication and modalities for the exercise of the rights of the data subject), 13 (information to be provided where personal data are collected from the data subject), 15 (right of access), 16 (right to rectification), 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing), 21 (right to object) and 34 (communication of a personal data breach to the data subject) of this Regulation shall be completely restricted, when it comes to the processing of personal data as referred to in Article 4(1) of the same Regulation by the Bank in its capacity as a controller performing tasks in the public interest, tasks relating to the prevention and detection of criminal offences, and monitoring, inspection or regulatory tasks in connection with the exercise of official authority:

1. with a view to carrying out the tasks listed in Article 12*bis* of this Act or any other task relating to the prudential supervision of financial institutions assigned to the Bank by any other provision of national or European law, when such data have not been obtained from the data subject;

2. in the context of the performance of its tasks as a resolution authority, as referred to in Article 12*ter* of this Act, or any other resolution powers assigned to the Bank by any other provision of national or European law, when such data have not been obtained from the data subject;

3. in the context of performance of the task assigned to the Bank by Article 8 of this Act to ensure that clearing, settlement and payment systems operate properly and that they are effective and sound, when such data have not been obtained from the data subject;

4. in the context of procedures for the imposition of administrative fines by the Bank pursuant to sections 2 and 3 of Chapter IV.1 of this Act and exercise of the power granted to the Bank in this regard to impose penalty payments pursuant to section 3*bis* of this same chapter, insofar as the personal data concerned are linked to the subject of the investigation or supervision.

The derogations referred to in § 1(1), (2) and (3) shall apply as long as the data subject has not, where appropriate, lawfully gained access to his/her/their administrative file held by the Bank and containing the relevant personal data.

§ 2. Article 5 of the aforementioned Regulation 2016/679 shall not apply to the processing of

personal data referred to in § 1 insofar as the provisions of that article correspond to the rights and obligations provided for by Articles 12 to 22 of the Regulation.

Art. 12*quinquies*. – Insofar as the Bank has the status of an administrative authority within the meaning of Article 22*quinquies* of the Act of 11 December 1998 on security classification, clearances, certificates and notices, it is authorised to process personal data concerning criminal convictions or punishable acts where necessary for performance of the tasks conferred on it pursuant to the aforementioned Act of 11 December 1998. Articles 12 to 22 and Article 34 of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, shall not apply to these types of processing or to other types of personal data processing by the Bank in this capacity when the processing is necessary for the performance of its tasks. Article 5 of this Regulation also shall not apply to these types of personal data processing insofar as the provisions of that article correspond to the rights and obligations provided for by Articles 12 to 22 of that Regulation.

Art. 13. – The Bank may carry out all transactions and provide all services that are ancillary to or stem from the tasks referred to in this Act.

Art. 14. – The Bank may entrust the performance of tasks not falling within the ambit of the ESCB with which it is entrusted or for which it takes the initiative to one or more legal entities specifically set up for this purpose and in which the Bank holds a substantial shareholding; one or more members of the Bank's Board of Directors shall participate in the management of such entities.

If a task is entrusted by law to the Bank, prior approval by royal decree, further to a proposal by the competent minister, shall be required.

Art. 15. – *Repealed*.

Art. 16. – The legal entities referred to in Article 14 that are controlled exclusively by the Bank shall be subject to oversight by the Court of Auditors [*Cour des Comptes – Rekenhof*].

Chapter III – Management bodies – Composition – Ineligibility

Art. 17. – The management bodies of the Bank are the Governor, the Board of Directors, the Council of Regency, the Sanctions Committee and the Resolution Board.

Art. 18. – 1. The Governor shall lead the Bank and preside over the Board of Directors and the Resolution Board.

2. In the event of an impediment, the Governor shall be substituted by the Vice-Governor, without prejudice to the application of Article 10.2 of the Statute of the ESCB.

Art. 19. – 1. In addition to the Governor, who chairs it, the Board of Directors shall be composed of a maximum of five directors, one of whom shall bear the title of Vice-Governor, conferred by the King. The Board of Directors shall include an equal number of French-speaking and Dutch-speaking members.

2. The Board shall be responsible for the administration and management of the Bank and shall determine its policy stance.

3. It shall exercise regulatory powers in the cases laid down by law. It shall lay down measures in circulars or recommendations with a view to clarifying the application of the legislative or regulatory provisions whose application the Bank supervises.

4. It shall decide on the investment of the capital, reserves and depreciation accounts after consultation with the Council of Regency and without prejudice to the rules adopted by the ECB.

5. It shall settle all matters not expressly reserved to another body by law, the Statutes or the Rules of Procedure.

6. It shall provide opinions to the various authorities exercising statutory or regulatory powers on all draft legislation or regulations relating to the supervisory tasks with which the Bank is or may be entrusted.

7. It may take decisions by way of a written procedure or a means of telecommunication allowing participatory discussion in accordance with the specific rules laid down in the Bank's Rules of Procedure.

Art. 20. – 1. The Council of Regency shall be composed of the Governor, the Directors and fourteen regents. It shall include an equal number of French- and Dutch-speaking regents.

At least one-third of the members of the Council of Regency must be of a different gender from the other members. In applying this provision, the minimum required number of members of a different gender shall be rounded to the nearest whole number.

2. The Council shall exchange views on general issues relating to the Bank, monetary policy and the economic situation of the country and the European Union, supervisory policy with regard to each sector subject to the Bank's supervision, Belgian, European and international developments in the field of supervision, as well as, in general, any developments concerning the financial system subject to the Bank's supervision, without however having any authority to act at operational level or deal with individual files. It shall familiarise itself each month with the institution's situation.

Further to a proposal by the Board of Directors, it shall lay down Rules of Procedure, containing basic rules on the functioning of the Bank's management bodies and the organisation of its departments, services and places of business.

3. The Council shall fix the individual salaries and pensions of the members of the Board of Directors. These salaries and pensions may not include a share of the profits and no remuneration whatsoever may be added thereto by the Bank, either directly or indirectly.

4. The Council shall approve the expenditure budget and the annual accounts submitted by the Board of Directors. It shall definitively approve the allocation of profits proposed by the Board.

5. A regent to chair the Council of Regency shall be appointed by royal decree. The chairperson of the Council of Regency shall be independent within the meaning of Article 526*ter* of the Company Code and be of a different linguistic group and a different gender than the Governor. When a new governor is appointed, the appointment of the incumbent chairperson or of a new chairperson shall be confirmed by royal decree.

The chairperson of the Council of Regency shall preside over meetings of this body, except when it is discussing general issues as referred to in the first sentence of point (2) of this article. These exchanges of views shall be chaired by the Governor.

6. The Council of Regency may take decisions by way of a written procedure or a means of telecommunication allowing participatory discussion in accordance with the specific rules laid down in the Bank's Rules of Procedure.

Art. 21. – **§ 1.** An audit committee shall be set up within the Council of Regency, comprised of three regents appointed by the Council. A majority of members of the audit committee shall be independent within the meaning of Article 526*ter* of the Company Code.

The audit committee shall exercise the advisory powers laid down by Article 21*bis* and supervise the preparation and implementation of the Bank's budget.

The Council of Regency appoints the chairperson of the audit committee who shall be independent within the meaning of Article 526*ter* of the Company Code. The chairperson of the Council of Regency may not serve as chairperson of the audit committee.

§ 2. A remuneration and nomination committee shall be set up within the Council of Regency, comprised of three regents appointed by the latter. A majority of members of the remuneration and nomination committee shall be independent within the meaning of Article 526*ter* of the Company Code.

The remuneration and nomination committee shall exercise the advisory powers in the field of remuneration and appointments attributed to it by the Council of Regency.

The Governor shall attend meetings of the remuneration and nomination committee in an advisory capacity.

Art. 21*bis*. – 1. Without prejudice to the legal responsibilities of the Bank's management bodies and performance of the tasks and transactions falling within the ambit of the ESCB and their review by the statutory auditor, the audit committee shall be entrusted with at least the following:

a) monitoring the financial reporting process;

b) monitoring the effectiveness of the internal control and risk management systems and of the Bank's internal audit;

c) monitoring the statutory audit of the annual accounts, including compliance with the questions and recommendations formulated by the statutory auditor;

d) reviewing and monitoring the independence of the statutory auditor, in particular the provision of additional services to the Bank.

2. Without prejudice to Article 27.1 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank and the nomination power of the works council, the proposal of the Board of Directors regarding the appointment of the statutory auditor shall be based on a proposal by the audit committee, which shall be provided to the works council. The audit committee shall also advise on the tender procedure for selection of the statutory auditor.

3. Without prejudice to any reports or warnings addressed by the statutory auditor to the management bodies of the Bank, the statutory auditor shall report to the audit committee on key matters arising from the statutory audit, in particular on material internal control weaknesses in relation to the financial reporting process.

4. The statutory auditor shall:

a) confirm annually in writing to the audit committee its independence from the Bank;

b) disclose annually to the audit committee any additional services provided to the Bank;

c) examine with the audit committee risks to the auditor's independence and the safeguards applied to mitigate these risks, as recorded in the audit documentation.

5. The Rules of Procedure shall contain provisions on the functioning of the audit committee.

Art. 21*ter*. – **§ 1.** The Bank hereby establishes a Resolution Board, responsible for performing the tasks described in this article.

§ 2. The Resolution Board shall be composed of the following persons:

1. the Governor;

2. the Vice-Governor;

3. the director responsible for the department in charge of the prudential supervision of banks and stockbroking firms;

4. the director of the department in charge of prudential policy and financial stability;

5. the director designated by the Bank as the person responsible for the resolution of credit institutions;

6. *repealed*;

7. the chairperson of the management committee of the Federal Public Service Finance;

8. the official in charge of the Resolution Fund;

9. four members designated by way of a royal decree deliberated in the Council of Ministers; and

10. a magistrate designated by royal decree.

§ 2/1. The chairperson of the Financial Services and Markets Authority shall attend meetings of the Resolution Board in an advisory capacity.

§ 3. The persons referred to in § 2(9) shall be appointed based on their particular experience in banking and financial analysis.

The persons referred to in § 2(9) and (10) shall be appointed for a renewable term of four years. They shall remain in office until provision is made for their replacement. These persons can be removed from office by the authorities that appointed them only if they no longer meet the conditions necessary for the performance of their duties or for gross negligence.

§ 4. A royal decree deliberated in the Council of Ministers shall determine:

1. the organisation and functioning of the Resolution Board and the departments tasked with preparing its work;

2. the conditions under which the Resolution Board shares information with third parties, including other bodies and departments of the Bank; and

3. measures to prevent any conflicts of interest on the part of members of the Resolution Board and between the Resolution Board and other bodies and departments of the Bank.

§ 5. The Board of Directors shall be substituted by the Resolution Board for purposes of the application of Section 3 of Chapter IV.1 of this Act in the event of a violation of:

1. the provisions of Book II, Titles IV and VIII, and Book XI of the Act of 25 April 2014 on the legal status and supervision of credit institutions and the implementing measures for these provisions;

2. Article 279 of the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down various other provisions and the measures implementing these provisions;

3. the provisions laid down by or pursuant to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/ 2365, as well as Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132.

Art. 22. – 1. Except as regards the tasks and transactions falling within the ambit of the ESCB, the supervisory tasks referred to in Article 12*bis* and the tasks referred to in Article 12 and Chapter IV.3, the Minister of Finance, through the latter's representative, shall have the right to supervise the Bank's transactions and to object to the implementation of any measure that is contrary to the law, the Bank's Statutes or the interests of the State.

2. The representative of the Minister of Finance shall attend *ex officio* meetings of the Council of Regency, the audit committee and the remuneration and nomination committee in an advisory capacity. Except as regards tasks and transactions falling within the ambit of the ESCB, the supervisory tasks referred to in Article 12*bis* and the tasks referred to in Article 12 and Chapter IV.3, the representative shall supervise the Bank's transactions and suspend and call to the attention of the Minister of Finance any decision contrary to the law, the Bank's Statutes or the interests of the State.

If the Minister of Finance does not take a decision within eight days from the date of suspension, the decision may be implemented.

3. The salary of the representative of the Minister of Finance shall be fixed by the Minister of Finance in consultation with the management of the Bank and shall be borne by the latter.

The representative shall report to the Minister of Finance each year on the performance of these tasks.

Art. 23. – 1. The Governor shall be appointed by royal decree for a renewable term of five years. The Governor may be removed from office by royal decree only if (s)he no longer meets the conditions required for the performance of his or her duties or for gross negligence. With regard to this decision, the Governor shall have a right of appeal as provided for by Article 14.2 of the Statute of the ESCB.

2. The other members of the Board of Directors shall be appointed by royal decree, further to a proposal by the Council of Regency, for a renewable term of six years. They may be removed from office by royal decree only if they no longer meet the conditions required for the performance of their duties or for gross negligence.

3. The regents shall be appointed for a renewable three-year term by the general meeting.

Two regents shall be selected based on a proposal by the most representative labour organisations.

Three regents shall be selected based on a proposal by the most representative organisations of industry and commerce, agriculture and small businesses.

Nine regents shall be selected based on a proposal submitted by the Minister of Finance.

The methods used to propose candidates for these appointments shall be laid down in a royal decree deliberated in the Council of Ministers.

4. *Repealed*.

Art. 24. – The regents shall receive attendance fees and, if appropriate, a travel allowance. The amount of such remuneration shall be fixed by the Council of Regency.

Art. 25. – Members of both houses of the federal Parliament, the European Parliament, the parliaments of the Communities and the Regions, persons who hold the position of minister or secretary of state or serve as a member of the government of a Community or Region as well as staff members of a member of the federal government or of the government of a Community or Region may not hold the office of Governor, Vice-Governor, member of the Board of Directors, member of the Sanctions Committee, member of the Resolution Board or regent. The latter offices shall automatically cease when their holder takes the oath of office to exercise any of the abovementioned offices or effectively performs such functions.

Art. 26. – **§ 1.** The Governor, the Vice-Governor and the other members of the Board of Directors may not hold any office in a commercial company or a company that takes a commercial form or in any public body that carries on an industrial, commercial or financial activity. Subject to the approval of the Minister of Finance, they may however hold office in :

1. international financial institutions established under agreements to which Belgium is party ;

2. the Deposits and Financial Instruments Protection Fund (*Fonds de protection des dépôts et des instruments financiers – Beschermingsfonds voor deposito's en financiële instrumenten*), the Rediscounting and Guarantee Institute (*Institut de Réescompte et de Garantie – Herdiscontering- en Waarborginstituut*) and the National Export Credit Insurance Office (*Office National du Ducroire – Nationale Delcrederedienst*) ;

3. the legal entities referred to in Article 14.

For positions and offices in an institution subject to supervision by the Bank or an institution incorporated under Belgian or foreign law established in Belgium or a subsidiary of any such institution subject to supervision by the European Central Bank, the prohibitions referred to in the first paragraph shall continue to apply to the Governor, Vice-Governor and other members of the Board of Directors for one year after leaving office.

The Council of Regency shall determine the conditions relating to the relinquishment of office. It may, on the advice of the Board of Directors, waive the ban on holding other positions for a certain period after leaving office if it finds that the activity in question will have no significant influence on the independence of the person concerned.

§ 2. The regents may not be members of the administrative, management or supervisory bodies of an institution subject to supervision by the Bank or of an institution incorporated under Belgian or foreign law established in Belgium or a subsidiary of any such institution subject to supervision by the European Central Bank, nor may they exercise management functions in any such institution.

§ 3. Further to a proposal by the Board of Directors, the Council of Regency shall lay down the code of conduct to be respected by the members of the Board of Directors and staff, as well as measures to oversee compliance with this code. Persons responsible for supervising compliance with the code are bound by a duty of professional secrecy as provided for by Article 458 of the Criminal Code.

Art. 27. – The terms of office of members of the Board of Directors and the Council of Regency shall expire no later than when they reach the age of sixty-seven.

However, subject to authorisation by the Minister of Finance, they may serve out their current term. The term of office of members of the Board of Directors may subsequently be extended for a renewable period of one year. For the Governor, an authorisation to serve out the current term of office or to extend it shall be granted by way of a royal decree deliberated in the Council of Ministers.

Under no circumstances may the holders of the offices referred to above remain in office beyond the age of seventy.

Art. 28. – The Governor shall send the chairperson of the House of Representatives the annual report referred to in Article 284(3) of the Treaty on the Functioning of the European Union, as well as an annual report on the tasks of the Bank in the field of prudential supervision of financial institutions and its tasks relating to its contribution to the stability of the financial system as referred to in Chapter IV.3. The Governor may be heard by the competent committees

of the House of Representatives at the request of these committees or at the Governor's own initiative.

Communications made under this article may not, due to their content or the circumstances, jeopardise the stability of the financial system.

Chapter IV – Financial provisions and amendment of the Bank's statutes

Art. 29. – *Repealed*.

Art. 30. – Any capital gain realised by the Bank through arbitrage transactions of gold assets against other external reserve components shall be credited to a special unavailable reserve account. This capital gain shall be exempt from all forms of taxation. However, where certain external reserve components are arbitraged against gold, the difference between the purchase price of the gold and the average purchase price of the existing gold stock shall be deducted from the special reserve account.

The net income from the assets which form the counterpart to the capital gain referred to in the first paragraph shall be allocated to the State.

External reserve components acquired as a result of the transactions referred to in the first paragraph shall be covered by the State guarantee provided for by Article 9(2) of this Act.

The terms and conditions for application of the provisions set out in the preceding paragraphs shall be fixed by agreements to be concluded between the State and the Bank. These agreements shall be published in the *Moniteur belge / Belgisch Staatsblad*.

Art. 31. – The reserve fund is intended to be used for:

1. compensating for losses of share capital;

2. supplementing any shortfall in the annual profits up to a dividend of six per cent of the capital.

Upon expiry of the Bank's right of issuance,[1] the State shall have a priority claim to one-fifth of the reserve fund. The remaining four-fifths shall be distributed amongst all the shareholders.

Art. 32. – The annual profits shall be distributed as follows:

1. a first dividend of 6 % of the capital shall be allocated to the shareholders;

2. from the excess, an amount proposed by the Board of Directors and set by the Council of Regency shall be allocated, in a fully independent manner, to the reserve fund or to the available reserve;

3. from the new remainder, a second dividend, established by the Council of Regency, of at least 50 % of the net proceeds from the assets forming the counterpart to the reserve fund and the available reserve, shall be allocated to the shareholders;

4. the balance shall be allocated to the State and shall be exempt from company tax.

Art. 33. – The accounts and, if appropriate, the consolidated accounts of the Bank shall be drawn up:

in accordance with this Act and the mandatory rules established pursuant to Article 26.4 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank; and

otherwise in accordance with the rules laid down by the Council of Regency.

Articles 2 to 4, 6 to 9 and 16 of the Act of 17 July 1975 on business accounting and their implementing decrees shall apply to the Bank with the exception of the decrees implementing Articles 4(6) and 9 § 2.[2]

Art. 34. – The Bank and its establishments shall comply with the legislative provisions on the use of languages in administrative matters.

1 The right of issuance includes the right which the Bank may exercise pursuant to Article 106(1) of the Treaty establishing the European Community (Article 141 § 9 of the Act of 2 August 2002 on the supervision of the financial sector and on financial services).

2 Pursuant to Articles 11 and 12 of the Act of 17 July 2013 inserting Book III on "Freedom of establishment, freedom to provide services and general obligations of undertakings" in the Code of Economic Law and specific definitions and implementing legislation under Book III in Books I and XV of the Code of Economic Law, this provision should be read as follows: "*Articles III.82 to III.84, III.86 to III.89 and XV.75 of the Code of Economic Law and their implementing decrees shall apply to the Bank, with the exception of the decrees implementing Articles III.84(7) and III.89 § 2*".

Art. 35 – § 1. Except when called upon to give evidence before a court of law in criminal proceedings and for communications made in the context of parliamentary committees of inquiry, the Bank, the members and former members of its management bodies, its staff and the experts it engages are bound by a duty of professional secrecy and may not disclose to any person or authority whatsoever confidential information of which they become aware in the performance of their duties.

The persons referred to in the preceding paragraph shall be exempt from the obligation laid down in Article 29 of the Code of Criminal Procedure.

Violations of this article are punishable by the sanctions referred to in Article 458 of the Criminal Code. The provisions of Book 1 of the Criminal Code, including Chapter VII and Article 85, shall be applicable to violations of this article.

This article does not prevent the observance, by the Bank, the members of its organs and its staff, of specific legislative provisions on professional secrecy, be they more restrictive or not, notably when the Bank is entrusted with collecting statistical data or information on prudential supervision.

§ 2. Without prejudice to § 1, the Bank may disclose confidential information:

1. where the communication of such information is stipulated or authorised by or pursuant to this Act and the laws regulating the tasks entrusted to the Bank;

2. to report criminal offences to the judicial authorities;

3. in the context of administrative or judicial proceedings against acts or decisions of the Bank and in any other proceedings to which the Bank is a party;

4. in abridged or summary form, so that individual natural or legal persons cannot be identified.

The Bank may make public a decision to report criminal offences to the judicial authorities.

§ 3. Within the limits of European Union law and any restrictions expressly laid down by or pursuant to law, the Bank may use any confidential information in its possession in the performance of its statutory duties, in order to accomplish the tasks referred to in Articles 8, 12 § 1, 12*ter*, 36/2 and 36/3 and its tasks within the ESCB.

Art. 35/1. – § 1er. By way of derogation from Article 35 and within the limits of European Union law, the Bank may disclose confidential information:

1. *repealed*;

2. in the performance of the tasks referred to in Article 12*ter* § 1 and for the purpose of carrying out those tasks,

a) to the resolution authorities of the European Union and of other Member States of the European Economic Area as well as to the authorities of third countries entrusted with equivalent tasks to those referred to in Article 12*ter* § 1;

b) to the persons or authorities referred to in Article 36/14 § 1(1), (2), (3), (4), (5), (8), (11), (18) and (19);

c) to the Minister of Finance;

d) to any person, whether governed by Belgian or foreign law, whenever deemed necessary for the planning or execution of a resolution measure, in particular,

- the special administrators appointed pursuant to Article 281 § 2 of the Act of 25 April 2014 on the legal status and supervision of credit institutions;
- the body responsible for resolution financing arrangements;
- auditors, accountants, legal and professional advisors, appraisers and other experts engaged directly or indirectly by the Bank, a resolution authority, a competent ministry or a potential purchaser;
- a bridge institution within the meaning of Article 260 of the Act of 25 April 2014 on the legal status and supervision of credit institutions or an asset management vehicle within the meaning of Article 265 of the same Act;
- persons or authorities referred to in Article 36/14 § 1(6), (7), (9), (10), (12), (15) and (20);

- potential purchasers of securities or assets issued or held, as the case may be, by the institution subject to resolution proceedings.

e) without prejudice to points (a) to (d), to any person or authority with a function or duty under Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, when the disclosure of confidential information concerning a person referred to in Article 1(1)(a), (b), (c) or (d) of that Directive has been approved in advance by that person or by an authority carrying out identical tasks to those referred to in Articles 12 § 1 and 12*ter* as regards this person, when the information originates from that person or authority.

3. in the performance of the tasks referred to in Article 12*ter* § 1/1 and, for the purpose of carrying out those tasks, within the limits of the provisions laid down by or pursuant to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/ 2365, as well as Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/113 and in particular :

a) to the resolution authorities of the Member States of the European Union and of other Member States of the European Economic Area, as well as to the authorities of third countries entrusted with tasks equivalent to those referred to in Article 12*ter* § 1/1 ;

b) to the persons or authorities referred to in Article 36/14 § 1(1), (2), (3), (4), (5), (8), (11), (18) and (19) ;

c) to the Minister of Finance ;

d) to any person, whether governed by Belgian or foreign law, where this is necessary for the planning or execution of a resolution measure, in particular

- the special administrators appointed pursuant to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/ 2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 ;

- the body responsible for resolution financing arrangements ;

- auditors, accountants, legal and professional advisers, appraisers and other experts engaged directly or indirectly by the Bank, a resolution authority, a competent ministry or a potential purchaser ;

- a bridge central counterparty within the meaning of Article 42 of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/ 2365, and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 ;

- the persons or authorities referred to in Article 36/14 § 1(6), (7), (9), (10), (12), (15) and (20) ;

- potential purchasers contacted by the competent authorities or by the resolution authority.

§ 2. The Bank may disclose confidential information in accordance with § 1 only if the disclosed information will be used by the authorities, institutions or persons receiving it for the performance of their tasks and they are subject to a duty of professional secrecy, with regard to the disclosed information, equivalent to that referred to in Article 35. Furthermore, information communicated by an authority of another Member State may be disclosed to a third-country authority only with the express consent of the former authority and, as the case may be, only for the purposes to which that authority has consented. Likewise, information originating from a third-country authority may only be disclosed with the express consent of that authority and, as the case may be, only for the purposes to which that authority has consented.

The Bank may only disclose confidential information pursuant to § 1 to the authorities of third countries with which it has concluded a cooperation agreement providing for an exchange of information.

§ 3. Without prejudice to the more stringent provisions of the specific laws to which they are subject, Belgian persons, authorities and bodies shall be bound by the duty of professional secrecy referred to in Article 35 as regards confidential information they receive from the Bank pursuant to § 1 and shall ensure that their internal rules guarantee that any confidential information received from the Bank in accordance with § 1(2) by persons involved in the resolution process is treated as confidential.

Art. 35/2. – By way of derogation from Article 35 and within the limits of European Union law, the Bank may provide confidential information to the Belgian Data Protection Authority (*Gegevensbeschermingsautoriteit / Autorité de protection des données*) insofar as this information is necessary for the performance of this authority's official tasks.

Art. 35/3. – Article 35 shall apply to accredited auditors (*commissaires agréés*), statutory auditors and experts as regards information of which they become aware through performance of the tasks entrusted to them in establishments subject to supervision by the Bank or in whose supervision the Bank participates, pursuant to Articles 12*bis* and 36/2.

Further to their obligation to report to the supervisory authority, on their own initiative, decisions or facts that could constitute violations of the legislation governing the supervision of the sector, accredited auditors working for institutions subject to supervision by the Bank or in whose supervision the Bank participates, pursuant to Articles 12*bis* and 36/2, are obliged to report to the Bank concrete knowledge of unusual mechanisms, within the meaning of Article 36/4, of which they become aware in the performance of their duties.

The first paragraph [of this article] and Article 86 § 1(1) of the Act of 7 December 2016 on the organisation of the profession and public supervision of auditors shall not apply to the disclosure of information to the Bank that is provided for or authorised by the legislative or regulatory provisions governing the tasks of the Bank.

Art. 36. – The Council of Regency shall amend the Statutes in order to bring them into line with this Act and with the international obligations binding on Belgium.

Other amendments to the Statutes shall be adopted, further to a proposal by the Council of Regency, by a majority of three-quarters of the votes attached to the total number of shares present or represented at the general meeting of shareholders.

Amendments to the Statutes must be approved by royal decree.

Chapter IV/1 – Supervision of financial institutions

Section 1 – General provisions

Art. 36/1. – Definitions: For purposes of this chapter and Chapter IV.2, the following definitions shall apply:

1. "Act of 2 August 2002": the Act of 2 August 2002 on the supervision of the financial sector and on financial services;

2. "financial instrument": an instrument as defined in Article 2(1) of the Act of 2 August;

3. "credit institution": an institution referred to in Book II and in Titles I and II of Book III of the Act of 25 April 2014 on the legal status and supervision of credit institutions;

4. "electronic money institution": an institution referred to in Article 2(74) of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems;

5. "investment firm with the status of a stockbroking firm": an investment undertaking referred to in the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down various other provisions that is licensed as a stockbroking firm or authorised to provide investment services that would require a licence to operate as a stockbroking firm if they were provided by a Belgian investment firm;

6. "insurance or reinsurance company": a company referred to in Article 5(1) or (2) of the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies;

7. *repealed*;

8. "mutual guarantee society": a company referred to in Article 57 of the Omnibus Act of 10 February 1998 on the promotion of self-employment;

9. "payment institution": an undertaking referred to in Article 2(8) of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems;

10. "regulated market": a Belgian or foreign regulated market;

11. "Belgian regulated market": a multilateral system, run and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, in accordance with non-discretionary rules, in a way that results in a contract, in respect of the financial instruments admitted to trading under the system's rules and/or arrangements, and which is authorised and functions regularly and in accordance with the provisions of Chapter II of the Act of 2 August;

12. "foreign regulated market": a market for financial instruments that is organised by a market operator whose home State is a Member State of the European Economic Area other than Belgium and that has been recognised in this Member State as a regulated market pursuant to Title III of Directive 2014/65/EU;

13. "central counterparty": a central counterparty as defined in Article 2(1) of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

14. *repealed*;

15. "FSMA": the Financial Services and Markets Authority ("*Autorité des services et marchés financiers*" / "*Autoriteit voor Financiële Diensten en Markten*", in German "*Autorität Finanzielle Dienste und Märkte*");

16. "competent authority": the Bank, the FSMA or the authority indicated by each Member State pursuant to Article 67 of Directive 2014/65/EU, Article 22 of Regulation 648/2012, Article 11 or Article 2(21) of Regulation 909/2014, or Article 12 of Regulation 2022/858, unless otherwise specified in the aforementioned directive or regulations;

17. "Directive 2014/65/EU": Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

18. "CSRSFI": the Committee for Systemic Risks and System-Relevant Financial Institutions;

19. *repealed*;

20. "European Banking Authority": the European Banking Authority set up by Regulation 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision 716/2009/EC and repealing Commission Decision 2009/78/EC;

21. "European Insurance and Occupational Pensions Authority": the European Insurance and Occupational Pensions Authority set up by Regulation 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision 716/2009/EC and repealing Commission Decision 2009/79/EC;

21/1. "European Securities and Markets Authority": the European Securities and Markets Authority set up by Regulation 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision 716/2009/EC and repealing Commission Decision 2009/77/EC;

22. "Regulation 648/2012": Regulation (EU) No 648/2012 of the European Parliament and of the European Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

23. "financial counterparty": a counterparty as defined in Article 2(8) of Regulation 648/2012 or Article 3(3) of Regulation 2015/2365;

24. "non-financial counterparty": a counterparty as defined in Article 2(9) of Regulation 648/2012 or Article 3(4) of Regulation 2015/2365;

25. "central securities depository": a central securities depository as defined in Article 2(1)(1) of Regulation 909/2014;

26. "Regulation 909/2014": 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) 236/2012;

27. "Regulation 2015/2365": Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) 648/2012;

28. "Act of 7 April 2019": the Act of 7 April 2019 establishing a framework for the security of networks and information systems of general interest for public security;

29. "bankruptcy court": the bankruptcy court referred to in Article I.22(4) of the Code of Economic Law.

30. "Act of 18 September 2017": the Act of 18 September 2017 on the prevention of money laundering and terrorist financing and on restriction of the use of cash;

31. "SSM Regulation": Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;

32. "Directive 2015/849": Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission.

33. "Regulation 2021/23": Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014, (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132:

34. "Regulation 2022/858": Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU;

35. "entity operating a DLT settlement system or a DLT trading and settlement system": a central securities depository or an investment firm or the market operator of a DLT settlement system or a DLT trading and settlement system as referred to in Article 97(13) and (14) of the Act of … and laying down miscellaneous financial provisions.

Art. 36/2. – **§ 1.** In accordance with Article 12*bis*, the provisions of this chapter and the specific laws governing the supervision of financial institutions, the Bank is entrusted with the prudential supervision of credit institutions, investment firms with the status of stockbroking firms, insurance companies, reinsurance companies, mutual guarantee societies, central counterparties, settlement institutions, institutions equivalent to settlement institutions, payment institutions, electronic money institutions, central securities depositories, entities operating a DLT settlement system or a DLT trading and settlement system, institutions providing support to central securities depositories and custodian banks.

As regards the supervision of insurance companies, the Bank shall appoint, from amongst the members of its Board of Directors or staff, a representative who shall sit in an advisory capacity on the occupational accidents management committee and certain technical committees of Fedris.

By way of derogation from paragraph 1, supervision of the health insurance funds referred to in Articles 43*bis* § 5 and 70, §§ 6, 7 and 8 of the Act of 6 August 1990 on health insurance funds and national federations of health insurance funds, as well as their operations, falls under the authority of the Office for the Oversight of Health Insurance Funds and National Federations of Health Insurance Funds.

In carrying out its tasks, the Bank shall take into account, in its capacity as the authority responsible for prudential supervision, the convergence, in terms of

supervisory instruments and practices, of legislative, regulatory and administrative obligations imposed by the applicable European directives.

To this end, it is required to:

a) participate in the activities of the European Banking Authority, the European Insurance and Occupational Pensions Authority and, if necessary, the European Securities and Markets Authority;

b) comply with the guidelines, recommendations, standards and other measures agreed by the European Banking Authority, the European Insurance and Occupational Pensions Authority and, if necessary, the European Securities and Markets Authority and, if it fails to do so, provide an explanation.

In its capacity as the authority responsible for prudential supervision, when carrying out its public interest tasks, the Bank shall take due account of the potential impact of its decisions on the stability of the financial system in all other Member States concerned and, particularly, in times of crisis, having regard to the information available at the time.

§ 2. In accordance with Article 12*bis* and the provisions of this chapter and to the extent laid down by Article 85 of the Act of 18 September 2017, the Bank is also responsible for monitoring compliance by the financial institutions referred to in the first paragraph of § 1 above with the legislative and regulatory provisions or the provisions of European law designed to prevent the use of the financial system for purposes of money laundering and terrorist financing as well as the financing of the proliferation of weapons of mass destruction.

Art. 36/3. – **§ 1.** Without prejudice to Article 36/2 and in accordance with Articles 12 and 12*bis* and the specific laws governing the supervision of financial institutions, the Bank's tasks shall also include:

1. intervention in the detection of any threats to the stability of the financial system, in particular by ensuring follow-up and assessing strategic developments and the risk profile of systemic financial institutions;

2. the provision of advice to the federal government and the federal parliament on measures necessary or useful for the stability, the smooth running and the efficiency of the country's financial system;

3. the coordination of the management of financial crises;

4. contribution to the missions of European and international institutions, organisations and bodies in the areas mentioned in points (1) to (3) and cooperation in particular with the European Systemic Risk Board.

§ 2. The Bank shall determine, from amongst the financial institutions referred to in Article 36/2, with the exception of credit institutions, stockbroking firms, payment institutions and electronic money institutions and insurance and reinsurance companies, those that must be considered systemically important and shall inform each accordingly. From that point on, these institutions shall be required to submit to the Bank their proposed strategic decisions. Within two months from receipt of a complete file supporting a strategic decision, the Bank may oppose the decision if it feels it would go against sound and prudent management of the systemically important financial institution or is liable to have a significant effect on the stability of the financial system. It may exercise all powers conferred on it by this Act and the specific laws governing the supervision of the financial institution concerned.

Strategic decisions shall be understood to mean those that, provided a certain threshold is met, concern an investment, divestment, holding or relationship of strategic cooperation on the part of the systemically important financial institution, notably decisions to acquire or establish another institution, to set up a joint venture in another State, and to conclude cooperation agreements or agreements on investment or the acquisition of a branch of activity, a merger or split.

The Bank may specify the decisions to be considered strategic and of a certain significance for purposes of this article. In this case, it shall publish this information.

§ 3. When the Bank finds that a systemically important financial institution has an inadequate risk profile or that its policy is liable to have a negative impact on the stability of the financial system, it may impose specific measures on the institution in question, notably particular requirements in terms of solvency, liquidity, risk concentration and risk positions.

§ 4. To enable the Bank to exercise the powers laid down by the preceding paragraphs, each systemically important financial institution is required

to submit to the Bank a report on developments concerning its business, risk position and financial situation.

The Bank shall determine the content of the information to be provided as well as the frequency of and arrangements for this reporting.

§ 5. Noncompliance with the provisions of this article may give rise to the imposition of administrative fines, penalties and the criminal sanctions provided for by this Act and the specific laws applicable to the financial institution in question.

§ 6. The FSMA shall provide the Bank with the information in its possession which the latter requests for the purpose of performance of the tasks referred to in this article.

Art. 36/4. – In carrying out the tasks referred to in Articles 12*bis* and 36/2, the Bank shall have no powers in respect of tax matters. However, should it gain concrete knowledge of unusual mechanisms within an institution which it supervises or in whose supervision it participates, it shall report them to the judicial authorities.

An "unusual mechanism" is defined as a process or procedure that meets the following cumulative conditions:

1. the purpose or effect is to permit or encourage tax evasion by third parties;

2. it originates within the institution itself or clearly involves the active cooperation of the institution or is the result of gross negligence on the part of the institution;

3. it involves a set of acts or omissions;

4. the nature of the mechanism is such that the institution knows or should know that it derogates from the norms and standard practices governing banking, insurance and financial operations.

Art. 36/5. – **§ 1.** In the cases stipulated by the legislation governing the task in question, the Bank may give its prior consent in writing to an operation. The Bank may make its consent dependent on the conditions it deems appropriate.

§ 2. The consent referred to in § 1 shall be binding on the Bank, except:

1. where it appears that the operations to which it relates were incompletely or incorrectly described in the request for consent;

2. where the operations are not performed in the manner proposed to the Bank;

3. where the effects of the operations are modified by one or more subsequent operations, with the result that the operations to which the consent relates no longer conform to the definition given in the request for consent;

4. where the conditions on which the consent depends are not or are no longer fulfilled.

§ 3. Based on the Bank's advice, the terms and conditions for the application of this article shall be determined by royal decree.

Art. 36/6. – **§ 1.** The Bank shall set up a website and keep it up to date. The website shall contain all regulations, proceedings and decisions required to be published in the performance of the Bank's statutory duties pursuant to Article 12*bis*, as well as any other information the Bank deems appropriate to communicate in the interest of these same duties.

Without prejudice to the means of publication prescribed by the appropriate legislative or regulatory provisions, the Bank shall specify other possible means of publishing the regulations, decisions, opinions, reports and other proceedings it renders public.

§ 2. The Bank shall also provide the following information on its website:

1. in addition to the legislation on the legal status and supervision of credit institutions, the legislation on the legal status and supervision of stockbroking firms and the legislation on the legal status and supervision of insurance and reinsurance companies, along with any decrees, regulations and circulars issued under or pursuant to this legislation or regulations of European Union law relating to these matters, a transposition table for the provisions of European directives on the prudential supervision of credit institutions, the prudential supervision of stockbroking firms and the

supervision of insurance and reinsurance companies, indicating the selected options;

2. the supervisory objectives it exercises pursuant to the legislation referred to in point (1), in particular the functions and activities carried out to this end, the verification criteria and the methods it uses to carry out the assessment referred to in Article 142 of the Act of 25 April 2014 on the legal status and supervision of credit institutions, including the criteria for application of the principle of proportionality referred to in paragraph 4 of the aforementioned Article 142, Article 131 of the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down various other provisions, and Articles 318 to 321 of the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies;

3. aggregate statistical data on the main aspects relating to application of the legislation referred to in point (1);

4. any other information laid down by the decrees and regulations issued under this Act.

The information referred to in § 1 shall be published in accordance with the guidelines established, as the case may be, by the European Commission, the European Banking Authority or the European Insurance and Occupational Pensions Authority. The Bank shall ensure that the information posted on its website is updated regularly.

The Bank shall also publish any other information required by the European Union legislation applicable to the supervision of credit institutions, the supervision of stockbroking firms and the supervision of insurance and reinsurance companies.

The Bank may publish, under arrangements it shall determine and in compliance with European Union law, the results of stress tests carried out in accordance with European Union law.

Art. 36/7. – All notifications required to be made by registered letter or with an acknowledgment of receipt by the Bank or the Minister, in accordance with the laws and regulations whose application is supervised by the Bank, may be accomplished through service by bailiff or by any other procedure determined by royal decree.

Art. 36/7/1. – *Repealed.*

Section 2 – Sanctions Committee

Art. 36/8. – **§ 1.** The Sanctions Committee shall rule on imposition of the administrative fines provided for by the laws referred to in Articles 8, 12*bis*, 12*ter* and 161 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems.

§ 2. The Sanctions Committee shall be composed of six members appointed by royal decree:

1. a councillor of state or honorary councillor of state, appointed further to a proposal by the chief justice of the Council of State

2. a councillor at the Court of Cassation or honorary councillor at the Court of Cassation, appointed further to a proposal by the chief justice of the Court of Cassation;

3. two magistrates who are neither councillors at the Court of Cassation nor at the Brussels Court of Appeal;

4. two other members.

§ 3. The chairperson shall be elected by the members of the Sanctions Committee from amongst the persons mentioned in § 2(1), (2) and (3).

§ 4. For three years preceding their appointment, candidates for the Sanctions Committee may not have been members of the Bank's Board of Directors, Resolution Board or staff or of the Committee for Systemic Risks in Systemically Important Financial institutions (CSRSFI).

During their term of office, members may not carry out any duties whatsoever or hold any office in an institution subject to supervision by the Bank or in a professional association representing institutions subject to supervision by the Bank, nor may they provide services for a professional association representing institutions subject to supervision by the Bank.

§ 5. The term of office for members of the Sanctions Committee shall be six years and is renewable. In the

event of non-renewal, the members shall remain in office until the first meeting of the newly composed Sanctions Commission. Members may be removed from office by royal decree only if they no longer meet the conditions necessary to perform their duties or for gross negligence.

Should a seat on the Sanctions Committee fall vacant, for whatsoever reason, a replacement shall be appointed to serve out the remainder of the outgoing member's term of office.

§ 6. The Sanctions Committee may validly take decisions if two of its members and the chair are present and able to deliberate. If the chairperson is unable to attend, the committee may take decisions if three of its members are present and able to deliberate.

Members of the Sanctions Committee may not deliberate in cases where they have a personal interest that could influence their decision.

§ 7. In consultation with the Bank's management, the compensation of the chairperson and members of the Sanctions Committee shall be determined by royal decree, based on the matters on which they have deliberated.

§ 8. The Sanctions Committee shall lay down in by-laws rules of procedure and rules of conduct applicable to the handling of sanctions cases and submit the same for approval by royal decree.

Section 3 – Procedural rules on the imposition of administrative fines

Art. 36/9. – **§ 1.** Where, in carrying out its statutory tasks pursuant to Articles 8, 12*bis* and 12*ter*, the Bank determines that there are serious indications of the existence of a practice liable to give rise to the imposition of an administrative fine or where, following a complaint, it is made aware of such a practice, the Board of Directors shall decide to open an investigation and entrust it to the investigations officer. The officer shall investigate both sides of the matter.

The investigations officer shall be appointed by the Council of Regency from amongst the members of the Bank's staff. The officer shall enjoy complete independence in the performance of his or her official duties.

In order to carry out these duties, the investigations officer may exercise all powers of investigation vested in the Bank by the legislative and regulatory provisions governing the matter concerned. The officer shall be assisted in the conduct of each investigation by one or more members of the Bank's staff chosen by the officer from amongst the members of staff designated to this end by the Board of Directors.

§ 1/1. Notwithstanding the provisions of the third paragraph of § 1, the investigations officer has the power to call to appear and interview any person, in accordance with the rules set out below.

A convocation to an interview may be notified informally, sent by registered letter or served by bailiff.

Any person who receives a convocation to an interview as indicated above must appear.

When interviewing persons in any capacity whatsoever, the investigations officer shall observe at least the following rules:

1. at the start of the interview, the interviewee shall be informed of the following possibilities:

a) to request that all questions asked and answers given be transcribed exactly as stated;

b) to request that a particular type of taking of evidence or hearing be conducted;

c) that the statements given may be used as evidence in court;

2. interviewees may use documents in their possession, provided doing so would not cause the interview to be postponed; they may, during the interview or afterwards, request that these documents be appended to the transcript;

3. at the end of the interview, the transcript shall be given to the interviewee to read, unless the interviewee asks that it be read out; the interviewee shall be asked whether any of the statements need to be corrected or completed;

4. if interviewees wish to express themselves in a language other than the language of the proceedings, their statements shall be set down in this language or they shall be asked to transcribe the statements themselves;

5. interviewees shall be informed that they may obtain a copy of the transcript free of charge; as the case may be, a copy will be provided or sent immediately or within one month's time.

§ 2. At the end of the investigation, once the persons concerned have been heard or at least duly called to an interview, the investigations officer shall draw up a report and submit it to the Board of Directors.

Art. 36/10. – **§ 1.** Based on the investigations officer's report, the Board of Directors shall decide to close the case, propose a settlement or refer the matter to the Sanctions Committee.

§ 2. If the Board of Directors decides to close the case, it shall inform the persons concerned of this decision and may make its decision public.

§ 3. If the Board of Directors proposes a settlement and its proposal is accepted, the settlement shall be published on the Bank's website in anonymised form, except in cases where the settlement relates to violations of Articles 4, 5 and 7 to 11 of Regulation 648/2012 and publication would seriously jeopardise the financial markets or cause disproportionate harm to the relevant central counterparties or their members.

The settlement amount shall be recovered for the benefit of the Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

§ 4. If the Board of Directors decides to refer the case to the Sanctions Committee, it shall send a notification of grievance, together with the investigation report, to the persons concerned and the chairperson of the Sanctions Committee.

§ 5. If any of the grievances could constitute a criminal offence, the Board of Directors shall inform the public prosecution service. The Board of Directors may decide to make its decision to do so public.

If the public prosecution service decides to commence criminal proceedings based on the charges to which the notification of grievance relates, it shall immediately inform the Bank. The public prosecution service may provide the Bank, automatically or upon request, with a copy of any evidence relating to the charges that form the object of the proceedings.

Decisions taken by the Board of Directors pursuant to this article may not be appealed.

Art. 36/11. – **§ 1.** Persons to whom a notification of grievance has been addressed have two months within which to submit their written observations on the charges to the chairperson of the Sanctions Committee. In exceptional circumstances, the chairperson of the Sanctions Committee may extend this period.

§ 2. Persons concerned by a notification of grievance may obtain a copy of the case file from the Sanctions Committee and may be assisted or represented by a lawyer of their choosing.

They may request the recusal of a member of the Sanctions Committee if they have doubts as to the independence or impartiality of this member. The Sanctions Committee shall rule on any such request in a substantiated decision.

§ 3. Following an inter partes procedure and after the investigations officer has been heard, the Sanctions Committee may impose an administrative fine on the persons concerned. The Sanctions Committee shall issue a substantiated decision in this regard. No sanctions may be imposed without the persons concerned or their representative first having been heard or at least duly summoned. At the hearing, the Board of Directors shall be represented by the person of its choosing and may make its observations heard.

§ 4. Except where additional or different criteria are provided for by specific laws, the amount of the fine shall be determined based on the seriousness of the violations committed and any advantages or benefits that may have been obtained therefrom.

§ 5. The Sanctions Committee's decision shall be sent by registered letter to the persons concerned. The letter shall indicate the possibilities to appeal, the authorities responsible for hearing appeals, as well as the formalities and deadlines to be respected. If this information is not included, the limitations period to appeal shall not start to run.

§ 6. The Sanctions Committee shall post its decisions on the Bank's website, specifying the names of the persons concerned, for a period of at least five years, unless such publication is liable to jeopardise the stability of the financial system or an ongoing

criminal investigation or proceedings or would be disproportionately detrimental to the persons or the institutions concerned, in which case the decision shall be published on the Bank's website in anonymised form. If the decision is appealed, it shall be published in anonymised form pending the outcome of the appeal; the fact that the decision has been appealed shall be mentioned. The outcome of the appeal, including a decision to overturn the sanction, shall also be published.

Sanctions for violations of Articles 4, 5 and 7 to 11 of Regulation 648/2012 shall not be disclosed where such disclosure would seriously jeopardise the financial markets or cause disproportionate harm to the relevant central counterparties or their members.

The Board of Directors shall be notified of the Sanctions Committee's decisions before they are published.

Art. 36/12. – Administrative fines imposed by the Sanctions Committee that have become final, as well as settlements concluded before a criminal court has issued a final decision on the same facts, shall count towards the amount of any criminal fine imposed on the same person in relation to those facts.

Art. 36/12/1. – **§ 1.** Without prejudice to other measures laid down by this Act, the Bank may, where it ascertains a violation of the third paragraph of Article 36/9 § 1/1 of this Act, impose on the offender an administrative fine which shall not be less than € 2 500 or, for the same facts or set of facts, more than € 2 500 000.

§ 2. Any fines imposed pursuant to § 1 shall be recovered for the benefit of the Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

Section 3bis – Penalty payments imposed by the Bank

Art. 36/12/2. – **§ 1.** The Bank may order any person to comply with the third paragraph of Article 36/9 § 1/1 of this Act within the time limit specified by it.

If the person to which it has addressed an order pursuant to the preceding paragraph fails to comply with it by the specified deadline, the Bank may, provided this person has been given an opportunity to be heard, impose a penalty payment, which shall not exceed € 50 000 per calendar day or € 2 500 000 in total.

§ 2. Any penalty payments imposed pursuant to § 1 shall be recovered for the benefit of the Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

Art. 36/12/3. – Where a penalty payment is imposed by the Bank pursuant to this Act or other legislative or regulatory provisions, the Bank may publish its decision to impose the penalty on its website, specifying the name of the person concerned, until the person in question complies with the obligation to which the penalty relates.

Section 3ter – Duty of professional secrecy – purpose principle

Art. 36/12/4. – The Bank may use the information obtained by it through exercise of the powers referred to in Articles 36/2 and 36/3 solely for the purpose of performing its tasks, including the imposition of sanctions, or in the context of an administrative appeal or legal action against one of its decisions. With regard to the tasks mentioned in Article 36/2 § 1, this includes in particular the use of such information to monitor compliance with the conditions governing access to the activity of the institutions subject to its supervision pursuant to Article 36/2 and to facilitate supervision, on an individual or consolidated basis, of the conditions for the conduct of this activity, so as to impose corrective measures or sanctions, where applicable, in the framework of the extrajudicial mechanism for the settlement of investor complaints.

Section 4 – Exceptions to the duty of professional secrecy

Sub-section 1 – In relation to the prevention of money laundering and terrorist financing

Art. 36/13. – **§ 1.** By way of derogation from Article 35 and within the limits of European Union law and the provisions of specific laws, in particular the Act of 18 September 2017, the Bank may disclose to the following authorities and institutions confidential information received in the performance of the tasks referred to in Article 36/2 § 2:

1. the Belgian supervisory authorities referred to in Article 85 of the Act of 18 September 2017;

2. the supervisory authorities of other Member States of the European Economic Area and the supervisory authorities of third countries which exercise one or more supervisory powers pursuant to Directive 2015/849 or equivalent provisions of their national law;

3. the FSMA;

4. the Federal Public Service Economy, SMEs, Middle Classes and Energy, in its capacity as a supervisory authority within the meaning of Article 120/2(7) of the Act of 18 September 2017;

5. the competent authorities of the European Union and of other Member States of the European Economic Area and the competent authorities of third countries that perform tasks related to the supervision of compliance with the provisions of European or national law on the supervision of credit institutions and/or financial institutions as referred to in Article 2(1) and (2) of Directive 2015/849 or the equivalent provisions of national law, and the European Central Bank with regard to the tasks conferred on it by the SSM Regulation;

6. the Financial Intelligence Processing Unit (CTIF-CFI);

7. the General Treasury Administration of the Federal Public Service Finance, where such disclosure is provided for by the laws of the European Union or by a legislative or regulatory provision regarding financial sanctions (in particular binding provisions relating to financial embargos as laid down in Article 4(6) of the Act of 18 September 2017) or where the General Treasury Administration acts as a supervisory authority ensuring compliance with Council Regulation (EC) 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom;

8. within the limits of European Union law, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Banking Authority.

§ 2. The Bank may only disclose confidential information pursuant to § 1 subject to the following conditions:

1. the information is intended to help accomplish the tasks of the receiving authorities or institutions, including the disclosure of such information to third parties pursuant to a legal obligation applicable to these authorities or institutions; in other cases, the Bank may authorise, within the limits of European Union law, the recipients of the information to disclose it to third parties with the Bank's prior consent and, where applicable, only for the purposes for which the Bank has given its consent;

2. the information disclosed in this manner to foreign authorities and institutions is subject to a duty of professional secrecy equivalent to that referred to in Article 35;

3. if the exchange takes place with the authorities of a third country, a cooperation agreement has been concluded;

4. where the information concerned originates from an authority of another Member State of the European Economic Area, it may only be disclosed to an authority of a third country with the express consent of the communicating authority and, where applicable, only for the purposes for which this authority has given its consent.

§ 3. Without prejudice to more stringent provisions of the specific laws to which they are subject, the persons, authorities and institutions governed by Belgian law referred to in § 1 shall be bound by the duty of professional secrecy referred to in Article 35 as regards confidential information they receive from the Bank pursuant to § 1.

Sub-section 2 – In relation to prudential supervision

Art. 36/14. – **§ 1.** By way of derogation from Article 35, the Bank may also disclose confidential information in the performance of the tasks referred to in Article 36/2 § 1:

1. to the European Central Bank and other central banks and institutions with a similar mission in their capacity as monetary authorities, when such information is relevant for carrying out their respective statutory duties, notably the conduct of monetary policy and the related provision of liquidity, the oversight of payment, clearing and settlement systems, and the preservation of the stability of the financial system, and to other public authorities in charge of overseeing payment systems.

Whenever a crisis arises, including unfavourable developments on the financial markets, that is likely to threaten market liquidity and the stability of the financial system in a Member State in which entities of a group comprising credit institutions or investment firms have been authorised or in which branches of significant importance are established within the meaning of Article 3(65) of the Act of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, the Bank may pass on information to the national central banks in the European System of Central Banks when this information is relevant for carrying out their respective statutory duties, notably the conduct of monetary policy and the related provision of liquidity, the oversight of payment, clearing and settlement systems, and the preservation of the stability of the financial system.

In the event of a crisis situation as referred to above, the Bank may disclose, in all Member States concerned, any information that may be of interest for central government departments responsible for legislation governing the supervision of credit institutions, financial institutions, investment services and insurance companies;

2. within the limits of European Union law, to the competent authorities of the European Union and of other Member States of the European Economic Area that exercise one or more powers comparable to those referred to in Articles 36/2 and 36/3, including the European Central Bank as regards the tasks conferred on it by the SSM Regulation;

2/1. within the limits of European Union law, to the competent authorities of other Member States of the European Economic Area that exercise one or more supervisory powers with regard to the obliged entities listed in Article 2(1)(1) and (2) of Directive (EU) 2015/849, for the purpose of complying with that directive, for performance of the tasks conferred on them by that directive;

3. in compliance with European Union law, to the competent authorities of third countries that exercise one or more powers comparable to those referred to in Articles 36/2 and 36/3, including authorities with powers of the same nature as those of the authorities referred to in point 2/1*and* with which the Bank has concluded a cooperation agreement providing for the exchange of information;

4. to the FSMA;

5. to Belgian institutions or to institutions of other Member States of the European Economic Area that manage a system for the protection of deposits, investors or life insurance and to the body in charge of financing resolution facilities;

6. to central counterparties, institutions for the settlement of financial instruments or central securities depositories authorised to provide services for transactions in financial instruments conducted on a Belgian organised market, where the Bank deems that disclosure of the information concerned is necessary to ensure the orderly functioning of those central counterparties, settlement institutions and central securities depositories having regard to the breaches – even potential – committed by participants on the market in question;

7. within the limits of European Union law, to market operators to ensure the orderly operation, control and supervision of the markets they organise;

8. in the course of civil or commercial proceedings, to the authorities and legal representatives involved in bankruptcy or judicial reorganisation proceedings or similar collective proceedings concerning institutions subject to the Bank's supervision, with the exception of confidential information concerning the participation of third parties in rescue attempts prior to such proceedings;

9. to statutory auditors, company auditors and other persons entrusted with auditing the accounts of institutions subject to supervision by the Bank, the accounts of other Belgian financial institutions or the accounts of similar foreign institutions;

10. to receivers for the exercise of their duties as set out in the laws governing the tasks entrusted to the Bank;

11. to the Belgian Audit Oversight Board (*College van toezicht op de bedrijfsrevisoren / Collège de supervision des réviseurs d'entreprises*) and the authorities of Member States or third parties supervising the persons entrusted with the statutory audit of the annual accounts of institutions subject to supervision by the Bank;

12. within the limits of European Union law, to the Belgian Competition Authority;

13. *repealed*;

14. to the General Treasury Administration of the Federal Public Service Finance, where such disclosure is provided for by the laws of the European Union or by a legislative or regulatory provision regarding financial sanctions (in particular binding provisions relating to financial embargos as laid down in Article 4(6) of the Act of 18 September 2017) or where the General Treasury Administration acts as supervisory authority ensuring compliance with Council Regulation (EC) 2271/96 of 22 November 1996 protecting against the effects of the extra- territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom;

15. within the limits of European Union law, to independent actuaries of institutions exercising, by law, supervisory tasks over these institutions and to the bodies in charge of supervising these actuaries;

16. to Fedris;

17. within the limits of European Union law, to the Federal Public Service Economy, in its capacity as the authority responsible for monitoring compliance with the provisions referred to in Book VII, Titles 1 to 3, Title 5, Chapter 1, and Titles 6 and 7 of the Code of Economic Law, as well as to agents commissioned by the Minister who have authority, within the context of the tasks conferred on them by Article XV.2 of the Code of Economic Law, to investigate and report violations of the provisions of Article XV.89 of the aforementioned code;

18. to authorities subject to the laws of Member States of the European Union that are responsible for macroprudential oversight and to the European Systemic Risk Board established by Regulation (EU) 1092/2010 of the European Parliament and of the Council of 24 November 2010;

19. within the limits of European regulations and directives, to the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Banking Authority;

20. within the limits of European Union law, to the Government Coordination and Crisis Centre of the Federal Public Service Home Affairs, the Coordination Unit for Threat Analysis established by the Act of 10 July 2006 on threat analysis, the authority referred to in Article 7 § 1 of the Act of 7 April 2019, and the police services referred to in the Act of 7 December 1998 organising an integrated two-tier police service, should the application of Article 19 of the Act of 1 July 2011 on security and the protection of critical infrastructure so require;

20/1. within the limits of European Union law, to the police services and the authority referred to in Article 7 § 1 of the Act of 7 April 2019 establishing a framework for the security of network and information systems of general interest for public security (the NIS Act), for purposes of the implementation of Article 53 § 2 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems;

20/2. within the limits of European Union law, to the authority referred to in Article 5 § 1 of the Act of 20 July 2022 on the cybersecurity certification of information and communication technologies and designating a national cybersecurity certification authority or to the authorities designated by royal decree pursuant to Article 5 § 2 of this act;

21. to the Office for the Oversight of Health Insurance Funds and National Federations of Health Insurance Funds, for the exercise of its statutory duties as referred to in Article 303 § 3 of the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies, as regards the health insurance funds referred to in Articles 43*bis* § 5 and 70 §§ 6, 7 and 8 of the Act of 6 August 1990 of health insurance funds and national federations of health insurance funds and their operations;

22. within the limits of European Union law, to the resolution authorities referred to in Article 3 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, to the authorities of third countries entrusted with equivalent tasks to those referred to in Article 12*ter* § 1, with which the Bank has concluded a cooperation agreement providing for the exchange of information, as well as to the competent ministries of the Member States of the European Economic Area whenever deemed necessary for the planning or execution of a resolution measure;

22/1. within the limits of European Union law, to the resolution authorities referred to in Article 3 of Regulation 2021/23, to the authorities of third countries entrusted with tasks equivalent to those referred to in Article 12*ter* § 1/1, with which the Bank has concluded a cooperation agreement providing for the exchange of information, and to the competent ministries of the Member States of the European Economic Area when this proves necessary for the planning or execution of a resolution measure;

23. to any person performing a task provided for by or pursuant to the law, that takes part in or contributes to the performance of the Bank's supervisory tasks, if that person was designated by the Bank or with the Bank's approval for purposes of that task, such as:

a) the cover pool monitor referred to in Article 16 of Annex III to the Act of 25 April 2014 on the legal status and supervision of credit institutions;

b) the cover pool administrator referred to in Article 8 of Annex III to the Act of 25 April 2014 on the legal status and supervision of credit institutions; and

c) the special auditor and interim manager referred to in Article 236(1) of the aforementioned Act of 25 April 2014, Article 204(1) of the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down various other provisions, Article 517(1) of the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies, Article 117(1) of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and to the activity of issuing electronic money and access to payment systems, Article 215 § 1 of the aforementioned act, Article 48, first paragraph, of the Royal Decree of 30 April 1999 governing the legal status and supervision of mutual guarantee societies, and Article 36/30 § 1, second paragraph, and § 2 of this act;

24. within the limits of European Union law, to the authorities referred to in Article 7 of the Act of 7 April 2019 for purposes of implementing the provisions of the Act of 7 April and the Act of 1 July 2011 on security and the protection of critical infrastructure;

25. to the Federal Public Service Economy, SMEs, Middle Classes and Energy in performance of the tasks referred to in Article 85 § 1(5) of the Act of 18 September 2017 with regard to the entities referred to in Article 5 § 1(21) of the same act;

26. within the limits of European Union law, to the financial intelligence units referred to in Article 4(15) of the Act of 18 September 2017 on the prevention of money laundering and terrorist financing and on restriction of the use of cash.

27. in the event of a deterioration in the financial situation of a financial institution referred to in Article 36/2, to the public prosecution service;

28. within the limits of European Union law, to the European Commission where such information is necessary for the exercise of the latter's powers.

§ 2. The Bank may only disclose confidential information pursuant to § 1 at the following conditions:

1. the information is intended to help accomplish the tasks of the receiving authorities or institutions, including disclosure of such information to third parties pursuant to a legal obligation applicable to those authorities or institutions; in other cases, the Bank may authorise, within the limits of European Union law, the recipients of the information to disclose it to third parties, with the Bank's prior consent and, where applicable, only for the purposes for which the Bank has given its consent;

2. the information disclosed in this manner to foreign authorities and institutions is subject to a duty of professional secrecy equivalent to that referred to in Article 35; and

3. where the information concerned comes from an authority of another Member State of the European Economic Area, it may only be disclosed to the following authorities or institutions with the express consent of the communicating authority and, where applicable, only for the purposes for which the latter has given its consent:

a) authorities or institutions referred to in § 1(5), (6), (8) and (11);

b) third-country authorities or institutions referred to in § 1(3), (5), (8), (9), (11), (18) and (22);

c) third-country authorities or institutions carrying out tasks equivalent to those of the FSMA.

§ 3. Without prejudice to more stringent provisions of the specific laws to which they are subject, the persons, authorities and institutions governed by Belgian law referred to in § 1 shall be bound by the duty of professional secrecy referred to in Article 35 as regards confidential information they receive from the Bank pursuant to § 1.

Art. 36/15. – **§ 1.** By way of derogation from Article 35 and within the limits of European Union law, the Bank shall also be permitted to disclose confidential information:

1. to the International Monetary Fund and the World Bank, for purposes of assessments for the Financial Sector Assessment Program;

2. to the Bank for International Settlements, for purposes of quantitative impact analyses;

3. to the Financial Stability Board, for purposes of its supervisory functions.

§ 2. The Bank shall be permitted to disclose confidential information pursuant to § 1 only at the explicit request of the institution concerned and providing the following conditions are met:

1. the request is duly justified with regard to the specific tasks undertaken by the requesting institution, in accordance with its duties, and the information provided is therefore limited to what is strictly necessary for the performance of these tasks;

2. the request is sufficiently precise as to the nature, extent and format of the information requested, as well as the manner of its disclosure;

3. the information is disclosed exclusively to persons directly participating in the performance of the specific task;

4. the information is covered by a duty of professional secrecy on the part of the requesting institution equivalent to that provided for by Article 35.

§ 3. Confidential information may be disclosed pursuant to § 1 only in aggregate or anonymised form or, failing that, by way of in-person access at the Bank's premises.

§ 4. Insofar as the disclosure of information involves the processing of personal data, any processing of such data by the requesting institution shall comply with the requirements of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the General Data Protection Regulation).

Section 4/1 – Cooperation with foreign authorities and the exchange of information

Sub-section 1 – General duty to cooperate

Art. 36/16. – **§ 1.** Without prejudice to Articles 35, 35/2, 35/3, 36/13 and 36/14 and to the provisions of specific laws, the Bank shall, in matters that fall within its authority, cooperate with foreign competent authorities exercising any powers comparable to those referred to in Articles 36/2 and 36/3.

In particular, for purposes of Directive 2015/849, the Bank shall cooperate, in the context of the powers referred to in Article 36/2 § 1, with the foreign authorities referred to in Articles 130 and 131/1 of the Act of 18 September 2017.

Likewise, in accordance with European Union law, the Bank shall cooperate with the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority, as well as the European Central Bank as regards the tasks conferred on it by the SSM Regulation.

§ 2. Without prejudice to Belgium's obligations under European Union law, the Bank may, on the basis of reciprocity, conclude agreements with competent authorities, as referred to in the first paragraph of § 1 with a view to establishing the terms and conditions of that cooperation, including the method for any allocation of supervisory tasks, the designation of a competent authority as supervision coordinator and the method of supervision through on-site inspections or otherwise, determination of the applicable cooperation procedures as well as the terms and conditions governing the collection and exchange of information.

§ 3. Without prejudice to Articles 35, 35/2, 35/3, 36/13 and 36/14 and to the provisions of specific

laws, the Bank shall conclude cooperation agreements with the Office for the Oversight of Health Insurance Funds and National Federations of Health Insurance Funds with regard to the supplementary health insurance offered by the health insurance funds referred to in Articles 43*bis* § 5 and 70 § 6, 7 and 8 of the Act of 6 August 1990 on health insurance funds and national federations of health insurance funds. The cooperation agreements shall govern inter alia the exchange of information and uniform application of the applicable legislation.

Sub-section 2 – Specific cooperation obligations in relation to the tasks of prudential supervision arising from Directive 2014/65/EU

Art. 36/17. – **§ 1.** Without prejudice to the relevant provisions of Article 36/19, the following provisions shall apply in the context of the powers referred to in Articles 36/2 and 36/3 with regard to mutual cooperation between the Bank and the other competent authorities referred to in Article 4(1)(26) of Directive 2014/65/EU and Article 3(1)(36) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, for purposes of meeting the obligations arising from Directive 2014/65/EU:

1. The Bank shall cooperate with other competent authorities whenever necessary for the accomplishment of their duties, using the legal powers at its disposal. The Bank shall offer assistance to the competent authorities of other Member States. In particular, it shall exchange information and cooperate with other competent authorities in enquiries or supervisory activities including on-site inspections, even if the practices that form the object of an investigation or verification do not constitute a violation of any rules in Belgium. The Bank may also cooperate with other competent authorities in order to facilitate the collection of fines.

2. The Bank shall immediately provide any information required for the purposes referred to in (1). To this end, apart from appropriate organisational measures to facilitate the effectiveness of the cooperation referred to in (1), the Bank shall immediately take the necessary measures to collect the requested information. As regards the powers referred to in this paragraph, when the Bank receives a request for an on-site verification or an enquiry, it shall follow this up within the limits of its powers:

- by inspecting or investigating itself;
- by allowing the authority submitting the request or its auditors or experts to carry out the inspection or investigation directly.

3. The information exchanged in the context of this cooperation is covered by the duty of professional secrecy referred to in Article 35. When it passes on information in the framework of such cooperation, the Bank may specify that the information cannot be disclosed without its express consent or can only be disclosed for purposes for which it has given its consent. Likewise, when it receives information, the Bank must, in derogation from Article 36/14, respect any restrictions that could be stipulated by the foreign authority as to the possibility of passing on the information thus received.

4. Where the Bank has good reason to believe that acts violating the provisions of Directive 2014/65/EU or Regulation 600/2014 are being or have been committed on the territory of another Member State, it shall inform the competent authority of that Member State, the European Securities and Markets Authority and the FSMA of the acts in question in as detailed a manner as possible. If the Bank has been informed by an authority of another Member State that such acts have been committed in Belgium, it shall inform the FSMA accordingly, take appropriate measures and communicate the results to the authority that informed it, the European Securities and Markets Authority and the FSMA, specifying insofar as possible any significant factors that have emerged in the meantime.

§ 2. In acting in accordance with § 1, the Bank may refuse to follow up on a request for information, investigation, on-site verification or monitoring if:

- following up on such a request could threaten Belgium's sovereignty, security or public order or
- legal proceedings have already been initiated for the same charges against the same persons in Belgium or
- a final decision has already been rendered in Belgium on the same charges, against the same persons.

In these cases, the Bank shall inform the competent authority and the European Securities and Markets Authority of the situation, providing them, if necessary, with as much detailed information as possible about the proceedings or judgment in question.

§ 3. *Repealed*.

§ 4. §§ 1 and 2 shall also apply, at the conditions determined in the cooperation agreements, in the context of cooperation with the authorities of third countries.

§ 5. The FSMA shall act as the single point of contact responsible for receiving requests for the exchange of information or cooperation pursuant to § 1.

The Minister shall notify the European Commission, the European Securities and Markets Authority and the other Member States of the European Economic Area accordingly.

Art. 36/18. – *Repealed*.

Section 5 – Investigative powers, criminal provisions and remedies

Art. 36/19. – Without prejudice to the investigative powers conferred on it by the legislative and regulatory provisions governing its tasks, the Bank may, in order to verify whether an operation or activity is covered by the laws and regulations whose application it is responsible for supervising, request all necessary information from the parties carrying out the operation or activity in question and from all third parties allowing the operation or activity to take place.

Likewise, the Bank shall have the power to investigate, in the framework of a cooperation agreement concluded with a foreign authority and with respect to the specific points indicated in a written request from that authority, whether an operation or activity carried out in Belgium is covered by the laws and regulations whose application that foreign authority is responsible for supervising.

The person or institution concerned shall provide the requested information by the deadline and in the form specified by the Bank.

The Bank may verify or have verified against the books and documents of interested parties the accuracy of the information provided to it.

If the person or institution in question has not provided the information requested upon expiry of the deadline set by the Bank, the Bank may, provided the person or institution concerned has been given an opportunity to be heard and without prejudice to other measures provided for by law, impose a fine of at least € 250 and no more than € 50 000 per calendar day or € 2 500 000 in total.

The penalties and fines imposed pursuant to this article shall be recovered for the benefit of the Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

Art. 36/20. – **§ 1.** The following shall be punishable by a prison term of one month to one year and a fine of between € 250 and € 2 500 000 or by one of these sanctions alone:

- those who hinder the Bank's investigations pursuant to the present chapter or who knowingly provide it with inaccurate or incomplete information;
- those who intentionally, by statements or otherwise, infer or suggest that the operation or operations they are carrying out or intend to carry out are conducted under the conditions stipulated by laws and regulations whose application is supervised by the Bank, whereas these laws and regulations either do not apply to them or have not been respected by them.

§ 2. The provisions of Book I of the Criminal Code shall apply to the violations referred to in § 1, including Chapter VII and Article 85 without exception.

Art. 36/21. – **§ 1.** An appeal to the Market Court may be lodged against any decision by the Bank imposing an administrative fine.

§ 2. Without prejudice to the special provisions laid down by or pursuant to the law, an appeal must be filed within 30 days in order to be valid.

The period to appeal shall start to run upon service of the contested decision.

§ 3. The appeals referred to in § 1 shall be lodged by way of a signed petition filed with the registry of the Brussels Court of Appeal in as many copies as there are parties. Otherwise, the appeal shall be deemed inadmissible by operation of law.

In order to be admissible, the petition must contain:

1. a mention of the date, month and year;

2. where the appellant is a natural person, the appellant's full name and address; where the appellant is a legal entity, its name, corporate form, registered office address and the body that is representing it;

3. a mention of the contested decision that forms the object of the appeal;

4. a statement of the grounds for appeal;

5. an indication of the place, date and time of appearance fixed by the registry of the court of appeal;

6. a list of exhibits and substantiating documents filed along with the petition with the court's registry.

The petition shall be served by the registry of the Brussels Court of Appeal on all parties named in the proceedings by the appellant.

The Market Court may at any time officially summon to appear all other persons whose situation could be affected by the contested decision.

The Market Court shall set a timetable for the exchange of written submissions by the parties and the filing of these submissions with the registry. It shall also set a hearing date.

The parties may file their submissions with the registry of the Brussels Court of Appeal and consult the registry's file in situ.

The Market Court shall determine the time period within which submissions are to be filed and notify the parties accordingly.

§ 4. Within five days from inclusion of the appeal on the court's docket, the registry of the Brussels Court of Appeal shall request the Bank to submit its case file. The case file must be submitted within five days from receipt of this request.

§ 5. An appeal as referred to in § 1 shall serve to suspend the Bank's decision.

Art. 36/22. – Pursuant to an expedited procedure determined by royal decree, an appeal may be lodged with the Council of State:

1. by an applicant for a licence, against licensing decisions taken by the Bank pursuant to Article 12 of the Act of 25 April 2014 on the legal status and supervision of credit institutions. Such an appeal may also be lodged where the Bank fails to take a decision within the time limits set out in the first paragraph of the aforementioned Article 12; in the latter case, the appeal shall be handled as if the application had been rejected;

2. by a credit institution, against decisions taken by the Bank pursuant to the fourth paragraph of Article 86 and Article 88/1 of the aforementioned Act of 25 April 2014, insofar as the latter article renders the fourth paragraph of Article 86 applicable;

3. by a credit institution or stockbroking firm, against decisions taken by the Bank pursuant to Articles 234 § 2(1) to (12) and 236 § 1(1) to (6) of the aforementioned Act of 25 April 2014 and against equivalent decisions taken pursuant to Articles 328, 329 and 340 of this act. The appeal shall serve to suspend the decision and its publication save where the Bank, due to a serious threat to savers or investors, has declared its decision enforceable notwithstanding any possible appeal;

3*bis*. by a credit institution, against decisions of the Resolution Board pursuant to Article 232 of the aforementioned Act of 25 April 2014;

4. by an applicant for a licence, against licensing decisions taken by the Bank pursuant to Article 9 of the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down various other provisions. Such an appeal may also be lodged by the applicant where the Bank does not take a decision within the time limit set out in the first paragraph of Article 9 of the aforementioned Act of 20 July 2022. In the latter case, the appeal shall be handled as if the application had been rejected;

5. by a stockbroking firm, against decisions taken by the Bank pursuant to Article 98 § 1, fourth paragraph, and Article 101 of the aforementioned Act of 20 July 2022, insofar as the latter article renders the fourth paragraph of Article 98 § 1 applicable;

6. by a stockbroking firm, against decisions taken by the Bank pursuant to Article 202 § 2, first paragraph, (1) to (13) and the second paragraph, insofar as it renders Article 234 §§ 2(1), (2), (6), (8), (9) and (10) of the Act of 25 April 2014 applicable to large stockbroking firms, and Article 204 § 1(1) to (7) of the aforementioned Act of 20 July 2022 and against equivalent decisions taken pursuant to Articles 222 and 234 of this act. The appeal shall serve to suspend the decision and its publication unless, due to a serious risk of harm to investors, the Bank declared its decision enforceable notwithstanding any possible appeal;

6/1. by a stockbroking firm against decisions of the Resolution Board taken pursuant to Article 279 of the aforementioned Act of 20 July 2022, insofar as this article renders Article 232 of the Act of 25 April 2014 on the legal status and supervision of credit institutions applicable to stockbroking firms;

7. by an applicant for a licence, against decisions taken by the Bank pursuant to Articles 28 and 584 of the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies;

8. *repealed*;

9. by an insurance or reinsurance company, against decisions to raise rates taken by the Bank pursuant to Article 504 of the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies;

10. by an insurance or reinsurance company, against decisions taken by the Bank pursuant to Articles 508 § 2(1) to (10) and 517 § 1(1), (2), (4), (6) and (7) of the aforementioned Act of 13 March 2016;

11. by an insurance or reinsurance company, against decisions to withdraw a licence taken by the Bank pursuant to Articles 517 § 1(8), 541 and 598 § 2 of the aforementioned Act of 13 March 2016;

12. by an insurance or reinsurance company, against opposition decisions taken by the Bank pursuant to Articles 108 § 3 and 115 § 2 of the aforementioned Act of 13 March 2016, or where the Bank does not take a decision within the periods laid down in the second paragraph of Article 108 § 3 and the second paragraph of Article 115 § 2 of the same act;

12*bis*. by an insurance company, against decisions taken by the Bank pursuant to Article 569 of the aforementioned Act of 13 March 2016;

13. by an applicant for a licence or by a licensed institution, against a decision by the Bank to refuse, suspend or revoke the licence pursuant to Articles 3, 12 and 13 of the Act of 2 January 1991 on the public debt securities market and monetary policy instruments and its implementing decrees. The appeal shall serve to suspend the decision unless the Bank has, for serious cause, declared its decision enforceable notwithstanding any possible appeal;

14. *repealed*;

15. by a reinsurance company, against opposition decisions taken by the Bank pursuant to Articles 114 and 121 of the aforementioned Act insofar as they refer, respectively, to Articles 108 § 3 and 115 § 2 of the same act or where the Bank has not taken a decision within the time limits laid down in the second paragraph of Articles 108 § 3 and Article 121(2) of the same act;

16. *repealed*;

17. *repealed*;

18. by a reinsurance company, against decisions taken by the Bank pursuant to Articles 600 and 601 insofar as they refer, respectively, to Articles 580 and 598 of the aforementioned act;

19. by an applicant for a licence, against licensing decisions taken by the Bank pursuant to Article 12 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems. An appeal may also be lodged where the Bank does not take a decision within the time limits laid down in the first paragraph of the aforementioned Article 12. In the latter case, the appeal shall be handled as if the application had been rejected;

19*bis*. by an applicant for the registrations referred to in Articles 82 § 2 and 91 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the

activity of issuing electronic money and access to payment systems, against decisions taken by the Bank in this respect. An appeal may also be lodged by the applicant where the Bank does not take a decision within the time limits laid down in the first paragraph of the aforementioned Article 82 § 2 and the first paragraph of the aforementioned Article 91, respectively. In the latter case, the appeal shall be handled as if the application had been rejected;

20. by the licensed and registered payment institutions referred to, respectively, in Articles 12 and 91 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems, against decisions taken by the Bank pursuant to Article 61 of the aforementioned act;

21. by a payment institution, against decisions taken by the Bank pursuant to Articles 116 § 2 and 117 §§ 1 and 2 and similar decisions taken pursuant to Article 142 § 1 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems. The appeal shall serve to suspend the decision and its publication, save where the Bank, due to a serious threat to the users of payment services, has declared its decision enforceable notwithstanding any possible appeal;

22. by the institution concerned, against decisions taken by the Bank pursuant to Article 517 § 6 of the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies and Article 204 § 8 of the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down various other provisions;

23. by an applicant for a licence, against decisions taken by the Bank pursuant to Article 36/25 § 3;

24. *repealed*;

25. *repealed*;

26. *repealed*;

26/1. by an applicant for a licence, against decisions taken by the Bank pursuant to Articles 17 and 55 of Regulation 909/2014. An appeal may also be lodged where the Bank has not taken a decision within the time limits laid down in the aforementioned Article 17(8). In the latter case, the appeal shall be handled as if the application had been rejected;

26/2. by an applicant for a licence, against decisions taken by the Bank pursuant to Article 36/26/1 § 5 or § 6. Such an appeal may also be lodged where the Bank has not taken a decision within the time limits laid down pursuant to the aforementioned article. In the latter case, the appeal shall be handled as if the application had been rejected;

26/3. by a central securities depository, against decisions taken by the Bank pursuant to Article 23(4) of Regulation 909/2014 and by an institution providing support to a central securities depository or by a custodian bank, against similar decisions taken by the Bank pursuant to Article 36/26/1 § 5 or § 6;

26/4. by a central securities depository, against decisions taken by the Bank pursuant to Articles 20 and 57 of Regulation 909/2014, and by an institution providing support to a central securities depository or by a custodian bank, against similar decisions taken by the Bank pursuant to Article 36/26/1 § 5 or § 6. The appeal shall serve to suspend the decision and its publication, save where the Bank, due to a serious threat to clients or the financial markets, has declared its decision enforceable notwithstanding any possible appeal;

26/5. by a central securities depository, against decisions taken by the Bank pursuant to Article 36/30/1 § 2(3) to (6) and by an institution providing support to a central securities depository or by a custodian bank, against similar decisions taken by the Bank pursuant to Article 36/26/1 § 5 or § 6. The appeal shall serve to suspend the decision and its publication, save where the Bank, due to a serious threat to clients or the financial markets, has declared its decision enforceable notwithstanding any possible appeal.

27. *repealed*;

28. *repealed*;

29. *repealed*;

30. *repealed*;

31. *repealed*;

32. by an applicant for a licence, against licensing decisions taken by the Bank pursuant to Article 169 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems. An appeal may also be lodged where the Bank does not take a decision within the time limits laid down in the first paragraph of the aforementioned Article 169. In the latter case, the appeal shall be handled as if the application had been rejected;

32*bis*. by an applicant for the registration referred to in Article 200 § 2 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems, against decisions taken by the Bank in this respect. A similar appeal may be lodged by the applicant where the Bank fails to take a decision within the time limits laid down in the first paragraph of the aforementioned Article 200 § 2. In the latter case, the appeal shall be handled as if the application had been rejected;

33. by a payment institution, against decisions taken by the Bank pursuant to Article 186 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems, insofar as it renders Article 61 of the same act applicable;

34. by an electronic money institution, against decisions taken by the Bank pursuant to Article 214, insofar as it renders Article 116 § 2 applicable, and Article 215 § 1, and against similar decisions taken pursuant to Article 227 of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems, insofar as they render Article 142 § 1 applicable. The appeal shall serve to suspend the decision and its publication, save where the Bank, due to a serious threat to the holders of electronic money, has declared its decision enforceable notwithstanding any possible appeal;

34*bis*. by a regulated entity referred to in Article 5 § 1(4) to (10) of the Act of 18 September 2017 on the prevention of money laundering and terrorist financing and on restriction of the use of cash, against decisions taken by the Bank pursuant to Articles 94 and 95 of that act;

34*ter*. by a payment scheme operator, against the prohibition imposed by the Bank pursuant to Article 19 § 1 of the Act of 24 March 2017 on the oversight of payment transaction processors;

35. by any person on whom a penalty has been imposed by the Bank pursuant to Articles 36/3 § 5, 36/19 (fifth paragraph), 36/30 § 1 (paragraph 2(2)) and 36/30/1 § 2(2) of this act, Article 93 § 2(2) of the Act of 18 September 2017 on the prevention of money laundering and terrorist financing and on restriction of the use of cash, the third paragraph of Article 603 § 2 of the Act of 13 March on the legal status and supervision of insurance and reinsurance companies, Articles 147 § 2 (third paragraph), 161 § 1(2) and 229 § 2 (third paragraph) of the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money and access to payment systems, Article 16 § 2 of the Act of 24 March 2017 on the oversight of payment transaction processors, Article 346 § 2 of the Act of 25 April 2014 on the legal status and supervision of credit institutions and Article 236 § 2 of the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down various other provisions.

Art. 36/23. – For the purpose of requesting the application of criminal law, the Bank shall be entitled to intervene, at any stage of the proceedings, before the criminal court before which an offence punishable by this Act or by a law entrusting the Bank with the supervision of compliance with its provisions has been brought, without the Bank being required to demonstrate any damage. Such intervention shall be in accordance with the rules applicable to civil parties.

Section 6 – Anti-crisis measures

Art. 36/24. – **§ 1.** On the Bank's advice, in the event of a sudden crisis affecting the financial markets or a serious threat of a systemic crisis, for the purpose of mitigating the extent or consequences of this crisis, it shall be possible by royal decree to:

1. draw up regulations supplementing or derogating from the Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies, the Act of 2 January 1991 on the public debt securities market and monetary policy instruments, the Act of 25 April 2014 on the legal status and supervision of credit institutions, the Act of 20 July 2022 on the legal status and supervision of stockbroking firms and laying down various other provisions, the Act of 25 October 2016 on the regulation of investment services and on the legal status and supervision of companies for portfolio management and investment advice, the Act of 2 August 2002 on the supervision of the financial sector and on financial services, Book VIII, Title III, Chapter II, Section III of the Company Code, and Royal Decree 62 on the deposit of fungible financial instruments and the settlement of transactions in these instruments, consolidated by the Royal Decree of 27 January 2004;

2. put in place a system for the grant of a State guarantee for commitments entered into by institutions supervised pursuant to the aforementioned laws or grant a State guarantee to certain claims held by these institutions;

3. put in place, if necessary by means of regulations laid down in accordance with point (1), a system for the grant of a State guarantee for the reimbursement of partners who are natural persons of their share of the capital of cooperative companies, licensed in accordance with the Royal Decree of 8 January 1962 on the licensing requirements for national groups of cooperative companies and cooperative companies that are supervised institutions pursuant to the aforementioned laws or at least half of whose capital is invested in such institutions;

4. put in place a system for the grant by the State of cover for losses incurred on certain assets or financial instruments by institutions supervised pursuant to the aforementioned laws;

5. put in place a system for the grant of a State guarantee for commitments entered into by entities whose activity consists of acquiring and managing certain assets held by institutions supervised pursuant to the aforementioned laws.

The royal decrees adopted under the terms of § 1(1) shall cease to have effect if they have not been confirmed by law within twelve months from their date of entry into force. The confirmation shall have retroactive effect as from the date of entry into force of the royal decrees. Royal decrees adopted pursuant to § 1(2) to (6) shall be deliberated in the Council of Ministers.

§ 2. As regards the application of § 1(2) to (5), institutions supervised pursuant to the laws referred to in § 1(1) are financial companies included on the list referred to in the second paragraph of Article 14 of the Act of 25 April 2014 on the legal status and supervision of credit institutions, mixed financial companies, credit institutions, investment firms and insurance companies, as well as their direct or indirect subsidiaries.

§ 3. The total principal amount of the guarantees referred to in § 1(2) and (5) and of the cover referred to in § 1(4) shall not exceed € 25 billion per supervised institution or group of affiliated supervised institutions within the meaning of Article 11 of the Company Code.

In determining the groups referred to in the preceding paragraph, any links between institutions resulting from State control over them shall not be taken into account.

Should the limit set out in the first paragraph be exceeded due to exchange rate fluctuations, this shall not affect the validity of the guarantees or funding commitments granted.

Chapter IV/2 – Provisions on the authorisation, supervision and oversight of central counterparties and financial and non-financial counterparties and on the authorisation and supervision of settlement institutions, institutions equivalent to settlement institutions, central securities depositories, institutions providing support to central securities depositories and custodian banks

Art. 36/25. – **§ 1.** Institutions authorised or licensed to act as central counterparties in their home Member State, or recognised as such in accordance with Regulation 648/2012, may provide services as central counterparties in and from Belgium.

§ 2. Pursuant to Article 22 of Regulation 648/2012, the Bank is the authority responsible for carrying out the duties resulting from this regulation as regards the licensing, supervision and oversight of central counterparties, without prejudice to the powers conferred on the FSMA by Article 22 of the Act of 2 August 2002.

§ 3. In accordance with the provisions of Regulation 648/2012, the Bank shall license institutions established in Belgium that intend to offer services as central counterparties. The Bank shall take a decision on an application for a licence based on the advice of the FSMA in accordance with Article 22 of the Act of 2 August 2002.

The Bank shall monitor compliance with the conditions for licensing by central counterparties and shall review and evaluate central counterparties in accordance with Article 21 of Regulation 648/2012.

§ 3*bis*. The Bank shall decide on interoperability agreements governed by Title V of Regulation 648/2012. Furthermore the Bank shall monitor compliance by central counterparties with the rules relating to interoperability agreements.

§ 4. The Bank is responsible for the prudential supervision of central counterparties.

The Bank shall monitor compliance by central counterparties with the provisions of Chapters 1 and 3 of Title IV of Regulation 648/2012, with the exception of Article 33 of Regulation 648/2012, which falls under the authority of the FSMA.

Pursuant to Chapter 2 of Title IV of Regulation 648/2012, the Bank shall monitor the admission criteria and their application pursuant to Article 37 of Regulation 648/2012 in order to ensure that they are sufficient to contain the risk to which central counterparties are exposed, without prejudice to the powers conferred on the FSMA by Article 22 § 5 of the Act of 2 August 2002.

Central counterparties shall be prohibited from setting up unusual mechanisms within the meaning of the second paragraph of Article 36/4, the norms and standard practices referred to in (4) of that article being the norms and standard practices for transactions carried out in the framework of the services referred to in Articles 14 and 15 of Regulation 648/2012.

§ 5. The Bank shall provide the FSMA with all relevant and useful information on the operational requirements defined in Chapter 1 of Title IV of Regulation 648/2012 in order to allow the FSMA to exercise the powers conferred on it by Articles 31(1) and 31(2) of Regulation 648/2012.

The Bank shall consult with the FSMA when assessing the professional integrity of natural persons nominated to serve on the management body of a central counterparty, the board of directors, or, if there is no board of directors, natural persons who will be responsible for the effective running of the institution, when these persons are proposed for the first time for a position of this kind in a financial institution subject to the Bank's supervision pursuant to Article 36/2.

Any natural or legal person that has decided to acquire, directly or indirectly, a qualifying holding in a central counterparty or to increase, directly or indirectly, its qualifying holding in a central counterparty must notify the Bank in advance in accordance with Regulation 648/2012. The Bank shall assess this notification in accordance with the provisions of Regulation 648/2012, after consultation with the FSMA when the potential purchaser is a regulated company subject to supervision by the FSMA.

The Bank shall publish the list referred to in Article 32(4) of Regulation 648/2012.

§ 6. The provisions of this article and of its implementing decrees shall be without prejudice to the powers of the Bank laid down in Article 8 of this Act.

§ 7. Pursuant to the second subparagraph of Article 22(1) of Regulation 648/2012, the Bank shall coordinate cooperation and the exchange of information with the European Commission, the European Securities and Markets Authority (ESMA), other Member States' competent authorities, the European Banking Authority (EBA) and the relevant members of the European System of Central Banks (ESCB), in accordance with Articles 23, 24, 83 and 84 of Regulation 648/2012.

Art. 36/25*bis*. – **§ 1.** The Bank shall have the power to ensure compliance with the provisions laid down by or pursuant to Regulation 648/2012 by financial and non-financial counterparties that are subject to its supervision pursuant to Article 36/2 of this Act.

The Bank is in particular responsible for monitoring compliance by the counterparties referred to in the first paragraph with Title II of Regulation 648/2012 concerning the clearing obligation, reporting obligation and risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty and with Article 37(3) of Regulation 648/2012 in respect of the financial resources and the operational capacity required to perform clearing member activity in accordance with Regulation 648/2012.

§ 2. The Bank shall have the power to ensure compliance with Articles 4 and 15 of Regulation 2015/2365 by financial and non-financial counterparties that are subject to its supervision pursuant to Article 36/2.

Art. 36/25*ter*. – **§ 1.** To fulfil the tasks referred to in Article 36/25*bis*, the Bank shall exercise the powers conferred on it by the provisions of Chapters IV.1 and IV.2.

§ 2. Non-compliance with the provisions laid down by or pursuant to Regulation 648/2012 or of Regulation 2015/2365 by a central counterparty, a financial counterparty or a non-financial counterparty subject to supervision by the Bank pursuant to Article 36/2 of this Act may give rise to the application of penalties and other enforcement measures as well as the sanctions laid down in this Act and in the specific laws applicable to the institutions subject to the Bank's supervision.

Art. 36/26/1. – **§ 1.** Pursuant to Article 11 of Regulation 909/2014, the Bank shall be designated as the competent authority for the authorisation and supervision of central securities depositories established in Belgium, without prejudice to the specific powers conferred by this regulation on the authorities responsible for the supervision of trading platforms.

In its capacity as the designated competent authority, the Bank shall have the power to monitor compliance with the provisions of Regulation 909/2014, including those of Title II, unless the regulation provides otherwise and without prejudice to the powers conferred on the FSMA by Article 23*bis* of the Act of 2 August 2002.

Without prejudice to the powers of the Bank, the FSMA shall supervise central securities depositories established in Belgium, in terms of their compliance with the rules referred to in Article 45 § 1(1) of the Act of 2 August 2002 and the rules for ensuring honest, fair and professional treatment of participants and their customers. In this respect, the FSMA shall monitor compliance by central securities depositories with Articles 26(3), 29, 32 to 35, 38, 49 and 53 of Regulation 909/2014.

In applying Regulation 909/2014, the Bank shall consult the FSMA for matters falling within the scope of its powers, in accordance with Article 23*bis* of the Act of 2 August 2002. If the Bank does not follow the opinion of the FSMA, it shall mention this fact and state the reasons for derogating from it in the explanation accompanying its decision. The FSMA's opinion shall be appended to the Bank's decision, unless it relates to matters referred to in the fourth paragraph of Article 23*bis* § 3 of the Act of 2 August 2002.

The FSMA and the Bank may conclude a protocol setting out the terms of their cooperation, in particular as regards the cooperation arrangements established by the Bank in accordance with Article 24 of Regulation 909/2014.

§ 1/1. The Bank shall be empowered to carry out the tasks referred to in Regulation 2022/858 with regard to the authorisation and supervision of entities operating a DLT settlement system or a DLT trading and settlement system. The Bank shall exercise this power in accordance with the statutory division of powers between the Bank and FSMA.

§ 2. In accordance with Regulation 909/2014, the Bank may provide services as a central securities depository.

§ 3. The Bank shall be responsible for the supervision of authorised central securities depositories pursuant to § 1. Without prejudice to the provisions of Regulation 909/2014, a royal decree may, based on the Bank's advice, set out :

1. rules as well as corrective measures for the prudential supervision of central securities depositories as referred to in § 1 that are not credit institutions established in Belgium ;

2. on a consolidated and individual basis, the minimum requirements for the organisation, operation, financial position, and internal control and risk management applicable to the central securities depositories referred to in § 1 that are not credit institutions established in Belgium.

§ 4. Central securities depositories may, in accordance with Article 30 of Regulation 909/2014, entrust an institution providing support to central securities depositories with the provision of support services or the performance of important operational functions to ensure the performance of their services and activities, including the operational management of ancillary banking services.

§ 5. Institutions providing support to central securities depositories as referred to in § 4 are required to obtain an authorisation from the Bank, based on the FSMA's advice. The Bank shall be responsible for supervising such institutions. Based on the advice of the Bank and the FSMA, the following in particular shall be laid down by royal decree :

1. on a consolidated and individual basis, the conditions and procedure for the authorisation of such institutions by the Bank, including the scope of the FSMA's opinion and the requirements persons responsible for effective management and those with a substantial shareholding must meet ;

2. rules on the prudential supervision, including remedial measures, exercised by the Bank over the institutions referred to in § 4 that are not credit institutions established in Belgium ;

3. the minimum requirements in terms of organisation, functioning, financial position and internal control and risk management applicable to the institutions referred to in § 4 that are not credit institutions established in Belgium.

The Bank may authorise an institution providing support to central securities depositories to provide services other than those referred to in § 4 and shall determine the conditions for any such authorisation.

Further to an opinion issued by the Bank and the FSMA and in accordance with Belgium's international obligations, the rules referred to in §§ 4 and 5 may be made fully or partially applicable by royal decree to institutions established abroad whose business consists, in whole or in part, of ensuring the provision of support services or essential operational tasks to ensure performance of the services and activities provided by central securities depositories established in Belgium.

Paragraphs 4 and 5 shall not apply to the provision of support services or the performance of essential operational tasks to ensure performance of the services and activities of central securities depositories where these services or functions are provided or performed by one or more Eurosystem central banks.

§ 5/1. Central securities depositories and institutions providing support to central securities depositories shall be prohibited from setting up unusual mechanisms within the meaning of the second paragraph of Article 36/4, the norms and standard practices referred to in (4) of that article being the norms and standard practices for transactions carried out in the framework of the services referred to in the Annex to Regulation 909/2014.

§ 6. For purposes of the present provision, custodian banks shall be understood to mean credit institutions established in Belgium whose business consists exclusively of providing custody, account maintenance and financial instrument settlement services, as well as associated non-banking services, apart from the activities referred to in the first paragraph of Article 1 § 3 of the Act of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, when these activities are ancillary or related to the abovementioned services.

The custodian banks referred to in the first paragraph are required to obtain a licence from the Bank, based on the FSMA's advice. The Bank is responsible for the prudential supervision of these institutions. Based on

the advice of the Bank and the FSMA, a royal decree shall lay down in particular, on a consolidated and non-consolidated basis, the conditions and procedures for the grant of such an authorisation and for maintaining the authorisation of such institutions by the Bank, including the scope of the FSMA's opinion and the conditions persons responsible for effective management and those with a substantial shareholding must meet.

The Bank may authorise custodian banks to provide services other than those referred to in the first paragraph and shall determine the conditions for such an authorisation.

§ 7. The provisions of this article shall be without prejudice to the powers of the Bank as laid down in Article 8. Based on the Bank's advice, a royal decree may determine :

1. standards for the supervision of securities settlement systems ;

2. the obligation for the operator of a securities settlement system or institution providing support to disclose information requested by the Bank ;

3.. coercive measures where the operator of a securities settlement system or institution providing support no longer satisfies the standards laid down or where the obligation to disclose has not been observed.

§ 8. The Bank shall coordinate cooperation and the exchange of information with other Member States' competent authorities, the relevant [national] authorities, the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA).

§ 9. Without prejudice to Articles 273 and 378 of the Act of 25 April 2014 on the legal status and supervision of credit institutions, before any decision is taken on the opening of bankruptcy proceedings with respect to a central securities depository or an institution providing support to central securities depositories, the president of the bankruptcy court shall request an opinion from the Bank. The court's registry shall transmit this request immediately and inform the public prosecution service.

The request to the Bank shall be in writing. It shall be accompanied by all documents necessary to inform the Bank.

The Bank shall render an opinion within fifteen days from receipt of a request. If, in the Bank's opinion, a procedure relating to a central securities depository or an institution providing support to central securities depositories could have major systemic implications or requires prior coordination with foreign authorities, the Bank may extend this time period, provided, however, that the total period does not exceed thirty days. If the Bank considers an extension necessary, it shall inform the court accordingly. The period granted to the Bank to render an opinion shall serve to suspend the period within which the bankruptcy court must rule. If the Bank does not render an opinion within the specified period, the court may rule on the request.

The opinion of the Bank shall be in writing. It may be transmitted by any means to the court's registry, which shall forward it to the president of the bankruptcy court and the public prosecution service. The opinion shall be added to the case file.

Art. 36/27. – **§ 1.** When a settlement institution or an equivalent institution, as referred to in Article 36/26, or a central securities depository or an institution providing support to central securities depositories, as referred to in Article 36/26/1, is not operating in accordance with the provisions of this Act and its implementing decrees, when its management or financial position is of such a nature as to call into question the performance of its obligations or does not provide sufficient guarantees for its solvency, liquidity or profitability, or when its management structures, administrative or accounting organisation or internal audit reveal serious shortcomings such that the stability of the Belgian or international financial system is likely to be affected, it shall be possible by way of a royal decree deliberated in the Council of Ministers, either at the Bank's request or on the Bank's advice, to lay down any instrument of disposal, in favour of the State or any other person, Belgian or foreign, of public or private law, notably any instrument of disposal, sale or contribution with regard to :

1. assets, liabilities or one or more branches of activity and, more generally, all or part of the rights and obligations of the institution concerned, including procedures to transfer client assets consisting of financial instruments governed by consolidated Royal Decree 62 on the deposit of fungible financial instruments and the settlement of transactions in these instruments, as well as underlying securities held with

depositories in the name of the institution concerned, and procedures to transfer resources, notably information technology resources, necessary for processing transactions involving these assets and the rights and obligations related to such processing;

2. securities or shares, representative or not of the institution's capital, with or without voting rights, issued by the institution concerned.

§ 2. The royal decree adopted pursuant to § 1 shall fix the compensation to be paid to the owners of the assets or to the holders of the rights that form the object of the instrument of disposal. If the transferee designated by the royal decree is a person other than the State, the price payable by the transferee under the terms of the contract concluded with the State shall pass to the owners or right holders as compensation, in accordance with the distribution formula determined by the same decree.

A portion of the compensation may be variable as long as this share is determinable.

§ 3. The institution concerned shall be notified of the royal decree adopted pursuant to § 1. Furthermore, the measures provided for in this decree shall be published in the *Moniteur belge* / *Belgisch Staatsblad*.

As soon as it has received the notification referred to in § 1, the institution shall lose the right to dispose of the assets referred to in the instrument of disposal provided for by the royal decree.

§ 4. The acts referred to in § 1 may not be declared or considered unenforceable pursuant to Articles XX.111, XX.112 or XX.114 of the Code of Economic Law.

Notwithstanding any contractual provisions to the contrary, the measures determined by royal decree pursuant to § 1 may not have the effect of modifying the terms of a contract concluded between the institution and one or more third parties, of terminating such a contract or of giving any of the parties concerned the right to terminate it unilaterally.

With regard to the measures decreed by royal decree pursuant to pursuant to § 1, any approval or pre-emption clause provided for by contract or in the institution's articles, any third-party purchase option and any provisions of the articles of association or contractual provisions preventing a change in the supervision of the institution concerned shall be deemed null and void.

Any other provisions necessary to ensure proper execution of the measures adopted pursuant to § 1 may be adopted by royal decree.

§ 5. The civil liability of persons, acting in the name of the State or at its request, involved in the measures referred to in this article, arising as a result of or in relation to their decisions, acts or conduct in the context of these measures, shall be limited to cases of fraud or gross negligence. The existence of gross negligence shall be assessed in view of the concrete circumstances of the case, in particular the urgency with which these persons were faced, practices on the financial markets, the complexity of the matter, threats to the protection of savings and the risk of harm to the national economy due to the failure of the institution concerned.

§ 6. Any disputes that may arise as a result of the measures referred to in this article, as well as the liability referred to in § 5, shall be submitted to the exclusive jurisdiction of the Belgian courts, which shall apply solely Belgian law.

§ 7. For purposes of applying Collective Bargaining Agreement No 32*bis* concluded on 7 June 1985 within the National Labour Council, concerning the safeguarding of employee rights in the event of a change of employer resulting from a transfer of undertaking and governing the transferred rights of employees further to an assumption of assets following bankruptcy, acts committed pursuant to § 1(1) shall be considered as having been committed by the settlement institution or equivalent institution or by the central securities depository or institution providing support to central securities depositories.

§ 8. Without prejudice to any general principles of law on which it could rely, the board of directors of the institution concerned may derogate from the restrictions provided for by law on its managerial powers when a specific circumstance as described in § 1 is liable to affect the stability of the Belgian or international financial system. The board of directors shall draw up a special report justifying the use of this provision and setting out the decisions taken; this report shall be submitted to the general meeting within two months' time.

Art. 36/28. – **§ 1.** For purposes of this article, the following definitions shall apply:

1. royal decree: the royal decree deliberated in the Council of Ministers pursuant to Article 36/27 § 1;

2. instrument of disposal: the transfer or other instrument of disposal provided for in the royal decree;

3. the court: the Brussels Court of First Instance;

4. the owners: the natural persons or legal entities that, on the date of the royal decree, are the owners of the assets or shares or holders of the rights that form the object of the instrument of disposal;

5. third-party transferee: the natural person or legal entity other than the Belgian State that, according to the royal decree, is called on to acquire the assets, shares or rights forming the object of the instrument of disposal;

6. compensation: the indemnification provided for by the royal decree for the owners further to the instrument of disposal.

§ 2. The royal decree shall enter into force on the publication date in the *Moniteur belge / Belgisch Staatsblad* of the judgment referred to in § 8.

§ 3. The Belgian State shall file a petition with the court's registry stating that the instrument of disposal is in conformity with the law and that the compensation is considered fair, taking into account in particular the criteria referred to in the fourth indent of § 7.

In order to be valid, the petition must contain the following information:

1. the identity of the settlement institution or equivalent institution, the identity of the central securities depository or the institution providing support to central securities depositories;

2. if applicable, the identity of the third-party transferee;

3. a justification for the transfer having regard to the criteria laid down in Article 36/27 § 1;

4. the compensation, the basis on which it has been determined, notably as regards the variable portion and, if necessary, the key for distribution of the capital amongst the owners;

5. if applicable, any authorisations required from the public authorities and any other conditions precedent to which the instrument of disposal is subject;

6. if applicable, the price agreed with the third-party transferee for the assets or shares that form the object of the instrument of disposal and the mechanisms to revise or adjust this price;

7. an indication of the day, month and year;

8. the signature of the person representing the Belgian State or of the State's lawyer.

A copy of the royal decree shall be appended to the petition.

The provisions of Part IV, Book II, Title V*bis* of the Judicial Code, including Articles 1034*bis* to 1034*sexies*, shall not apply to the petition.

§ 4. The procedure commenced by the petition referred to in § 3 excludes all other simultaneous or future appeals or actions against the royal decree or the instrument of disposal, with the exception of the request referred to in § 1. The filing of the petition renders void any other procedure against the royal decree or the instrument of disposal that may have been previously introduced and is pending before another court or administrative body.

§ 5. Within seventy-two hours from the filing of the petition referred to in § 3, the president of the court shall fix, by court order, the date and time for the hearing referred to in § 7, which must take place within seven days following the filing of the petition. This order shall reproduce the entire wording specified in the second indent of § 3.

The order shall be served by the court's registry on the Belgian State, the institution concerned as well as the third-party transferee, as the case may be. It shall be published at the same time in the *Moniteur belge / Belgisch Staatsblad*. This publication shall constitute service on any possible owners other than the institution concerned.

Within twenty-four hours from service of the abovementioned order, the institution concerned shall also publish it on its website.

§ 6. Until pronouncement of the judgment referred to in § 8, the persons referred to in the second indent of § 5 may consult the petition referred to in § 3 as well as its appendices, free of charge, at the registry office.

§ 7. During the hearing set by the president of the court and at any later hearings the court may deem useful to arrange, the court shall hear the Belgian State, the institution concerned and, as the case may be, the third-party transferee as well as owners that intervene voluntarily in the proceedings.

By way of derogation from the provisions of Part IV, Book II, Title III, Chapter II of the Judicial Code, no person other than those referred to in the preceding paragraph may intervene in the proceedings.

After having heard the observations of the parties, the court shall verify whether the instrument of disposal is in conformity with the law and the compensation is fair.

The court shall take into account the situation of the institution concerned at the time of the instrument of disposal, in particular its financial situation such as it was or would have been had the public assistance from which it benefited, either directly or indirectly, not been granted. For purposes of this paragraph, emergency advances of funds and guarantees granted by a public law legal entity shall be treated as public assistance.

The court shall render its decision in a single judgment which shall be handed down within twenty days following the hearing fixed by the president of the court.

§ 8. The judgment in which the court rules that the instrument of disposal is in conformity with the law and that the compensation is deemed fair shall convey title to the assets or shares that form the object of the instrument of disposal, albeit subject to the conditions precedent referred to in § 3(5).

§ 9. The judgment referred to in § 8 may not be appealed or form the object of an application to have it set aside, by either a party to the proceedings or a third party.

It shall be served by way of an official letter from the court on the Belgian State, the institution concerned as well as the third-party transferee, as the case may be, and shall be published at the same time by extract in the *Moniteur belge* / *Belgisch Staatsblad*.

This publication shall constitute service on any possible owners other than the institution concerned and renders the instrument of disposal enforceable against third parties, without any further formalities being required.

Within twenty-four hours from service of the judgment, the institution concerned shall publish it on its website.

§ 10. Following service of the judgment referred to in § 8, the Belgian State or, as the case may be, the third-party transferee shall deposit the compensation with the *Caisse des dépôts et consignations* / *Deposito- en Consignatiekas* (Deposit and Consignment Office), without any formalities being required in this respect.

The Belgian State shall take steps to have a notice confirming fulfilment of the conditions precedent referred to in § 3(5) published in the *Moniteur belge* / *Belgisch Staatsblad*.

Upon publication of the abovementioned notice, the Deposit and Consignment Office is required to hand over to the owners, in accordance with the terms and conditions laid down in a royal decree, the consigned compensation, without prejudice to any possible garnishment or attachment orders duly filed against the consigned sum.

§ 11. The owners may lodge a request with the court for review of the compensation, within a period

of two months from publication in the Moniteur belge / *Belgisch Staatsblad* of the judgment referred to in § 8. This request shall have no effect on the transfer of title to the assets or shares that form the object of the instrument of disposal.

For the remaining aspects, a request for judicial review is provided for by the Judicial Code. The fourth indent of § 7 shall apply.

Art. 36/29. – With regard to central counterparties, settlement institutions, central securities depositories, entities operating a DLT settlement system or a DLT

trading and settlement system, institutions providing support to central securities depositories, and custodian banks, including their subsidiaries established on the territory of the European Union, the Bank may exercise the following investigative powers in performing its supervisory tasks, as referred to in Articles 36/25, 36/26 and 36/26/1 or their implementing decrees, or responding to requests for cooperation from competent authorities within the meaning of Article 36/14 § 1(2) and (3):

it may have forwarded to it all information and documents, in any form whatsoever;

it may undertake on-site investigations and appraisals, familiarise itself with and copy, on site, any document, file or recording and access any IT system;

it may ask the statutory auditors or persons responsible for auditing the financial statements of the institutions concerned to send it special reports, at the institution's expense, on subjects of its choosing;

if the institutions are established in Belgium, it may require them to forward to it all useful information and documentation regarding companies established abroad that form part of the same group.

Art. 36/30. – **§ 1.** The Bank may order any central counterparty, as well as any central securities depository, any entity operating a DLT settlement system or a DLT trading and settlement system, any institution providing support to central securities depositories or any custodian bank, to comply with the provisions laid down by or pursuant to Articles 36/25, 36/26 and 36/26/1, as well as with any provisions laid down by or pursuant to Regulation 648/2012, Regulation 909/2014, Regulation 2015/2365 or Regulation 2022/858, within a period specified by the Bank.

Without prejudice to other measures provided for by law, if an institution to which the Bank has addressed an order pursuant to § 1 fails to comply by the specified deadline, and provided the institution in question has been given an opportunity to be heard, the Bank may:

1. make public the violation concerned;

2. impose a penalty payment, which may not exceed € 50 000 per calendar day of delay or € 2 500 000 in total;

3. appoint a special auditor for the institution concerned, provided it has its registered office in Belgium, whose authorisation shall be required for the acts and decisions determined by the Bank.

In urgent cases, the Bank may take the measures referred to in points (1) and (3) above without first issuing an order as referred to in § 1, provided the institution concerned has been given an opportunity to be heard.

§ 2. Without prejudice to other measures laid down by law, the Bank may, where, pursuant to Articles 36/9 to 36/11, it establishes a violation of the provisions laid down by or pursuant to Articles 36/25, 36/26 and 36/26/1, or of any provisions laid down by or pursuant to Regulation 648/2012, Regulation 909/2014, Regulation 2015/2365 or Regulation 2022/858, impose an administrative fine on any central securities depository, any entity operating a DLT settlement system or a DLT trading and settlement system, any institution providing support to central securities depositories or any custodian bank, which may not exceed, for the same act or set of acts, € 2 500 000. Where the violation resulted in a financial gain for the offender, this maximum amount shall be raised to twice the amount of the financial gain or, in the event of a recurring offence, three times this amount.

By way of derogation from the preceding paragraph, the following maximum amounts shall apply in the event of violation by a central counterparty of Article 4 or 15 of Regulation 2015/2365 or of the provisions adopted on the basis or in implementation of these articles:

a) for natural persons, € 5 000 000; and,

b) for legal persons, € 5 000 000 for a violation of Article 4 and € 15 000 000 for a violation of

Article 15 or ten per cent of the legal person's total annual turnover for the preceding financial year if the amount obtained by applying this percentage is higher.

Where the violation resulted in a profit for the offender or enabled the offender to avoid a loss, this maximum may be raised to three times the amount of the profit or loss.

§ 3. The penalties and fines imposed pursuant to §§ 1 or 2 shall be recovered for the benefit of the

Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

§ 4. The amount of the penalties and fines imposed pursuant to §§ 1 and 2 shall be set by the Bank based on all relevant circumstances, in particular if applicable:

a) the seriousness and duration of the violations;

b) the degree of liability of the person concerned;

c) the financial capacity/resources of the person concerned, as evidenced by total turnover for a legal person or the annual income of a natural person;

d) any benefits or profit that may have been gained from the violations;

e) any harm suffered by third parties as a result of the violations, insofar as it can be determined;

f) the degree of cooperation with the competent authorities demonstrated by the natural or legal person in question;

g) any previous violations committed by the person concerned;

h) any potential negative impact of the violations on the stability of the financial system.

Art. 36/30/1. – **§ 1.** When the Bank establishes a violation as referred to in Article 63 of Regulation 909/2014, it may impose on any central securities depository, any entity operating a DLT settlement system or a DLT trading and settlement system or the person responsible for the violation, the sanctions and other administrative measures defined by or pursuant to Article 63 of Regulation 909/2014. When determining the type of sanction or other administrative measure and the level thereof, the Bank shall in particular take into account the relevant circumstances referred to in Article 64 of Regulation 909/2014. In particular, where, in accordance with Articles 36/9 to 36/11, the Bank establishes a violation referred to in or pursuant to Article 63 of Regulation 909/2014, it may impose on any central securities depository, any entity operating a DLT settlement system or a DLT trading and settlement system or the person responsible for the violation an administrative fine, the maximum amount of which shall be set in accordance with Article 63(2)(e), (f) and (g) of Regulation 909/2014. Decisions imposing a sanction or other administrative measure shall be published in accordance with Article 62 of Regulation 909/2014.

§ 2. If the central securities depository or entity operating a DLT settlement system or a DLT trading and settlement system to which the Bank has addressed an order to comply with provisions laid down by or pursuant to Regulation 909/2014, Articles 4 and 15 of Regulation 2015/2365 or Regulation 2022/858 fails to do so by the specified deadline, and provided the institution concerned has been given an opportunity to be heard, the Bank may:

1. make public the violation in question;

2. impose a penalty payment which may not exceed € 50 000 per calendar day of delay or € 2 500 000 in total;

3. appoint a special auditor for the institution concerned, provided it has its registered office in Belgium, whose authorisation shall be required for the acts and decisions determined by the Bank;

4. suspend or prohibit for a specified duration the exercise, either directly or indirectly, of all or some of the business activities of the institution concerned.

Members of the administrative and management bodies and persons responsible for management who engage in conduct or take decisions in violation of the abovementioned suspension or prohibition shall be jointly and severally liable for the resulting damage to the institution or to third parties.

If the Bank has published the suspension or prohibition in the *Moniteur belge* / *Belgisch Staatsblad*, any actions and decisions taken in violation thereof shall be considered null and void;

5. impose stricter requirements in terms of solvency, liquidity, risk concentration and other limitations;

6. order the replacement of some or all members of the legal administrative body of the institution concerned within a time period it shall determine and, failing replacement within this time period, substitute for the administrative or management bodies of the institution concerned one or more interim directors or managers who, alone or collectively, as the case

may be, shall exercise the powers of the members they replace. The Bank shall publish its decision in the *Moniteur belge / Belgisch Staatsblad*.

The remuneration of the interim director(s) or manager(s) shall be set by the Bank and borne by the institution concerned.

The Bank may at any time replace the interim director(s) or manager(s), either at its own initiative or at the request of a majority of the shareholders or members when the latter can justify that management by these persons no longer provides the necessary guarantees.

In urgent cases, the Bank may take the measures referred to in § 2(1), (3) and (4) to (6) without a prior order pursuant to § 1, provided the institution concerned has been given an opportunity to be heard.

§ 2/1. Without prejudice to any other measures provided for by law, where, in accordance with Articles 36/9 to 36/11, the Bank establishes a violation of provisions laid down by or pursuant to Articles 4 and 15 of Regulation 2015/2365, it may impose an administrative fine on any central securities depository. The following maximum amounts shall apply:

a) for natural persons, € 5 000 000; and

b) for legal persons, € 5 000 000 for a violation of Article 4 and € 15 000 000 for a violation of Article 15 or ten per cent of the legal person's total annual turnover for the preceding financial year, if the amount obtained by applying this percentage is higher.

Where the offence resulted in a profit for the offender or enabled the offender to avoid a loss, this maximum may be raised to three times the amount of the profit or loss.

§ 3. The fines and penalty payments imposed pursuant to this article shall be recovered for the benefit of the Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

§ 4. The amount of the penalties and fines imposed pursuant to §§ 2 and 3 shall be set by the Bank based on all relevant circumstances, in particular where applicable:

a) the seriousness and duration of the violations;

b) the degree of liability of the person concerned;

c) the financial capacity/resources of the person concerned, as evidenced by total turnover for a legal person or the annual income of a natural person;

d) any benefits or profit that may have been gained from the violations;

e) any harm suffered by third parties as a result of the violations, insofar as it can be determined;

f) the degree of cooperation with the competent authorities demonstrated by the natural or legal person in question;

g) any previous violations committed by the person concerned;

h) any potential negative impact of the violations on the stability of the financial system.

Art. 36/30/2. – **§ 1.** For the purpose of performing its duties as a resolution authority, as referred to in Article 12*ter* § 1/1 or in provisions laid down by or pursuant to that article, or responding to cooperation requests from resolution authorities within the meaning of Article 36/14 § 1(22/1), the Bank shall have the following powers with regard to central counterparties, including their branches established within the territory of the European Union:

1. it may request any information and documents, in any form whatsoever;

2. it may carry out on-site inspections and expert appraisals, take note of and copy on site any documents, files or records, and access any computer system;

3. it may ask the auditors or persons responsible for auditing the financial statements of the entity concerned to submit to it, at the latter's expense, special reports on the subjects it determines;

4. it may require such entities, where they are established in Belgium, to provide it with any useful information and documents relating to institutions established abroad that form part of the same group.

§ 2. Where the Bank establishes a violation of the provisions laid down by or pursuant to Regulation 2021/23, it may order the central counterparty or the person responsible for the violation to remedy the situation within a period it determines and, where appropriate, to refrain from repeating the conduct constituting the violation.

Without prejudice to any other measures provided for by or pursuant to Regulation 2021/23, where the Bank has addressed an order pursuant to § 1 and the central counterparty or the person responsible for the violation fails to remedy the situation by expiry of the indicated time limit, the Bank may, provided the central counterparty or the person concerned has been given an opportunity to be heard:

1. make public the violation in question and disclose the identity of the central counterparty or person responsible for the violation as well as the nature thereof;

2. impose a penalty payment of up to € 2 500 000 per violation and € 50 000 per day of delay;

3. temporarily ban the members of the central counterparty's management bodies or any other natural person held liable from exercising functions within a central counterparty.

In urgent cases, the Bank may take the measures referred to in § 2, points (1) and (3), without first issuing an order pursuant to § 1, provided the central counterparty or other natural person held liable has been given an opportunity to be heard.

§ 3. Without prejudice to other measures provided for by or pursuant to Regulation 2021/23, where, in accordance with Articles 36/9 to 36/11, the Bank establishes a violation of the provisions laid down by or pursuant to Regulation 2021/23, it may impose an administrative fine on any central counterparty, subject to the following maximum amounts:

a) for natural persons, € 5 000 000; and

b) for legal persons, ten per cent of the total annual turnover for the preceding financial year. Where the legal person is a branch of a parent company, the turnover to be taken into account is that shown in the consolidated accounts of the ultimate parent company for the preceding financial year.

Where the violation resulted in a profit for the offender, this maximum may be raised to twice the amount of the gain so obtained.

§ 4. Penalties and fines imposed pursuant to §§ 2 and 3 shall be recovered for the benefit of the Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

§ 5. Where the penalty payments referred to in § 2 and the administrative fines referred to in § 3 are imposed for non-compliance with obligations laid down by or pursuant to Regulation 2021/23, the Bank shall publish the imposition of these penalties and fines in accordance with Article 83 of Regulation 2021/23.

§ 6. The amount of the periodic penalty payments and fines imposed pursuant to §§ 2 and 3 shall be determined by the Bank taking into account all relevant circumstances, in particular where applicable:

a) the seriousness and duration of the violations;

b) the degree of liability of the person concerned;

c) the financial capacity/resources of the person concerned, as evidenced by total turnover for a legal person or the annual income of a natural person;

d) any benefits or profit that may have been gained from the violations;

e) any harm suffered by third parties as a result of the violations, insofar as it can be determined;

f) the degree of cooperation with the competent authorities demonstrated by the natural or legal person in question;

g) any previous violations committed by the person concerned;

h) any potential negative impact of the violations on the stability of the financial system.

Art. 36/31. – **§ 1.** The following shall be punishable by a prison term of one month to one year and a fine of € 50 to € 10 000 or by one of these penalties alone:

1. those that, in Belgium, carry out clearing or settlement activities in respect of financial instruments,

without being authorised to do so pursuant to Articles 36/25, 36/26 and 36/26/1 or when this authorisation has been withdrawn;

2. those that violate the provisions laid down pursuant to Articles 36/25, 36/26 and 36/26/1 and indicated in the relevant royal decrees;

3. those that hamper the investigations and appraisals of the FSMA pursuant to the present chapter or that knowingly provide it with incorrect or incomplete information.

4. when central counterparties referred to in Article 36/25 § 4, central securities depositories or institutions providing support to central securities depositories as referred to in Article 36/26/1 knowingly set up unusual mechanisms within the meaning of these provisions.

§ 2. The provisions of Book I of the Criminal Code shall, without the exception of Chapter VII and Article 85, be applicable to the violations referred to in § 1.

Chapter IV/3 – Tasks of the Bank in the context of its contribution to the stability of the financial system

Section 1 – General provisions

Art. 36/32. – **§ 1.** This chapter defines certain tasks of the Bank and the legal instruments available to it in the context of its duty to contribute to the stability of the financial system, as referred to in Article 12 § 1.

§ 2. For purposes of this chapter, the following definitions shall apply:

1. "stability of the financial system": a situation in which the probability of discontinuity or disruption in the financial system is low or, should such disruptions occur, the consequences for the economy would be limited;

2. "national authorities": the Belgian authorities, regardless of whether they fall under the federal State or the Regions, which, by virtue of their respective powers, may implement the recommendations issued by the Bank pursuant to this chapter;

3. "SSM Regulation": Regulation (EU) 1024/2013 of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;

4. "European supervisory authorities": the European Banking Authority established by Regulation (EU) 1093/2010, the European Insurance and Occupational Pensions Supervisors established by Regulation (EU) 1094/2010 and the European Financial Markets Authority established by Regulation (EU) 1095/2010.

Section 2 – Detection and monitoring of factors that could affect the stability of the financial system

Art. 36/33. – **§ 1.** The Bank shall be responsible for detecting, evaluating and monitoring various factors and developments that could affect the stability of the financial system, particularly in terms of affecting the resilience of the financial system or an accumulation of systemic risks. In this context, the Bank shall have access to any information that could be useful for the performance of this task.

§ 2. In particular, for the purposes referred to in § 1, the Bank shall be authorised to:

1. use the information in its possession pursuant to its other statutory tasks, as resulting from or specified by or under other legislation, including that governing the status and supervision of the financial institutions referred to in Article 36/2 or the supervision on a consolidated basis of these institutions;

2. use the prerogatives regarding access to information available to it by virtue of its other statutory tasks, as resulting from or specified by or under other legislation, including that governing the status and supervision of the financial institutions referred to in Article 36/2 or the supervision on a consolidated basis of these institutions;

3. request information relevant to the performance of this task from any private sector entity which is not subject to its supervision or, where appropriate, the authorities responsible for these entities.

§ 3. Notwithstanding the duty of professional secrecy to which they may be subject, public sector entities, regardless of their level of autonomy, shall cooperate

with the Bank in order to provide it with any information and any expertise that could be relevant for the performance of its tasks as referred to in this article. To this end, this information shall be made available to the Bank on the entity's own initiative or at the request of the Bank. Any confidential information communicated by the Bank to the recipient entity shall be covered, with respect to the latter, by the rules of professional secrecy provided for in Article 35 § 1 and may be used solely for the proper accomplishment of the cooperation referred to in this paragraph.

§ 4. For purposes of this article, the Bank may also conclude cooperation agreements with the Regions, the European Central Bank, the European Systemic Risk Board (ESRB), the European Supervisory Authorities and relevant foreign authorities in the field of macroprudential oversight and disclose confidential information to these institutions.

Section 3 – Adoption of legal instruments in order to contribute to the stability of the financial system

Art. 36/34. – **§ 1.** Without prejudice to European directives and regulations, in particular with regard to the prerogatives of the European Central Bank in the field of banking supervision, including in the macro – prudential area, the Bank may, for macroprudential policy purposes, in order to contribute to the stability of the financial system, exercise any prerogatives, including regulatory prerogatives, provided for by or under this Act or the legislation governing the status and supervision of the financial institutions referred to in Article 36/2 or the supervision on a consolidated basis of these institutions.

In addition to the prerogatives referred to in § 1, the Bank may, in order to contribute to the stability of the financial system and without prejudice to the powers assigned to the European Central Bank, make use of the following tools with respect to financial institutions subject to its supervision :

1. the imposition of capital or liquidity requirements which complement or are more stringent than those provided by or under prudential legislation, for all institutions or per category of institutions subject to its supervision

2. in the context of capital requirements, the imposition of specific requirements according to the nature of the exposures or the value of collateral received, or according to the industry or the geographical area of the debtor, which complement or are more stringent than those provided by or under prudential legislation, for all institutions or per category of institutions subject to its supervision ;

3. the power to impose quantitative limits on exposures to a single counterparty or a group of related counterparties, or on an industry or geographical area, which complement or are more stringent than those provided by or under prudential legislation, for all institutions or per category of institutions subject to its supervision ;

4. the imposition of limits on the total level of business of institutions subject to its supervision as compared to their capital (leverage ratio), that complement or are more stringent than those provided by or under prudential legislation, for all institutions or per category of institutions subject to its supervision ;

5. the imposition of conditions for the assessment of collateral for loans granted for verification of compliance with solvency requirements provided by or under prudential legislation ;

6. the imposition of a total or partial retention of distributable profits ;

7. the imposition of rules for valuing assets which differ from those provided for under accounting regulations, with a view to monitoring compliance with the requirements provided by or under prudential legislation ;

8. the power to impose the disclosure of information and the terms for such disclosure, complementing those provided by or under prudential legislation, for all institutions or per category of institution subject to its supervision ;

9. the power to communicate on measures adopted pursuant to this article and the objectives of such measures, in accordance with the procedures established by the Bank ;

10. *repealed*.

§ 2. Where the measures adopted pursuant to the second paragraph of § 1 are general in scope and therefore regulatory, their adoption shall require compliance

with the approval procedure by royal decree laid down by the third paragraph of Article 12*bis* § 2.

§ 3. For purposes of this article, the Bank shall take into account the recommendations adopted by the European Systemic Risk Board (ESRB) and, if necessary, render them applicable by means of regulations adopted pursuant to Article 12*bis* § 2, in accordance with the procedures established by the Bank. The Bank shall also take into account the positions or decisions of the European Commission and the European Central Bank, in particular when the latter requires credit institutions to comply with additional capital requirements or other measures to reduce systemic risk

Before implementing the measures referred to in § 1, the Bank shall inform the European Systemic Risk Board (ESRB), the European Central Bank and, where relevant, the European Supervisory Authorities and the European Commission of the concrete measures it intends to take. Except in duly substantiated cases of urgency and unless Community law provides for specific deadlines for the implementation of legal instruments, the Bank shall wait, for a period not exceeding one month, for the aforementioned institutions to respond before effectively implementing the planned measures.

The Bank shall also take into account the objections raised by the European Central Bank or, if applicable, other European authorities, where they require credit institutions or the groups to which they belong to comply with additional capital requirements or to take other measures in order to reduce systemic risk.

Section 4 – Recommendations issued in order to contribute to the stability of the financial system

Art. 36/35. – The Bank shall determine, by way of recommendations, the measures to be adopted and implemented by the relevant national authorities, the European Central Bank or other European authorities, each for the matters for which they are responsible, in order to contribute to the stability of the financial system as a whole, in particular by strengthening the resilience of the financial system, preventing systemic risks and limiting the impact of any disruptions.

The Bank shall follow up on its recommendations by verifying their effective implementation, in particular by the relevant national authorities, and by assessing the impact of the measures taken to that end.

Moreover, the Bank shall ensure consistency between these tasks and the tasks relating to the prudential supervision of credit institutions, including in the macroprudential area, which, pursuant to Community law, have been conferred *inter alia* on the European Central Bank.

Art. 36/36. – The sole purpose of the Bank's recommendations shall be to contribute to the stability of the financial system. They shall take into account the recommendations adopted by the European Systemic Risk Board (ESRB) and the positions or decisions of European institutions, including the European Commission and the European Central Bank. The recommendations shall be duly substantiated and shall be forwarded on a confidential basis to the national authorities responsible for their implementation, as well as to the European Systemic Risk Board (ESRB) and the European Central Bank.

If it deems necessary, the Bank may also make proposals to the European Central Bank or other European authorities where the instruments to be implemented fall within their authority.

The Bank shall respond within the period laid down by Community law to notifications made by the European Central Bank pursuant to Article 5(4) of the SSM Regulation, informing it of its intention to increase the capital requirements for credit institutions or to adopt other measures to reduce systemic risks. Any objections to such a measure shall be duly justified to the European Central Bank.

Art. 36/37. – Notwithstanding Articles 35 and 36/36 and without prejudice to paragraph 2, the Bank shall publish its recommendations and determine the arrangements for this publication.

Communications made pursuant to this article may not, due to their content or the circumstances, pose a risk to the stability of the financial system.

Art. 36/38. – **§ 1.** In order to implement the recommendations of the Bank that fall within their authority, national authorities may use any instruments, decision-making powers, regulatory powers and prerogatives provided by or under the legislation and/or decrees governing their legal status and tasks.

§ 2. In particular, the King, by way of a royal decree deliberated in the Council of Ministers and further to the Bank's opinion, may require credit providers to comply with coefficients:

1. for coverage, which determine up to which percentage of the value of collateral a loan may be granted (loan-to-value ratio);

2. for the maximum total indebtedness compared to the borrower's disposable income.

The Bank's opinion is not required where the measure adopted by the King pursuant to this paragraph is, in all respects, consistent with a recommendation issued by the Bank pursuant to Article 36/35.

Art. 36/39. – Without prejudice to specific procedures provided for by Community law, the federal authorities shall inform the Bank of the concrete measures they intend to take in order to comply with its recommendations. The Bank shall inform without delay the European Systemic Risk Board (ESRB), the European Central Bank and, if applicable, the European Supervisory Authorities and the European Commission. Except in duly substantiated cases of urgency and unless Community law provides for specific deadlines for the implementation of legal instruments, the relevant authorities shall wait, for a period not exceeding one month from the date of notifying the Bank, for the aforementioned institutions to respond before effectively implementing the planned measures.

Art. 36/40. – Where the federal authorities concerned fail to comply with the recommendations of the Bank, they shall indicate to the Bank, by way of a reasoned opinion, their reasons for departing from its recommendations. This reasoned opinion shall accompany the notification referred to in Article 36/39.

Art. 36/41. – Where the federal authorities fail to adopt measures in order to implement the recommendations issued by the Bank pursuant to this chapter within the time limit specified or, in the absence of a time limit, within two months from notification of the recommendations or are affected by any of the circumstances referred to in Article 36/40, the King shall be empowered by royal decree deliberated in the Council of Ministers, to take the measures referred to in Article 36/38 § 1. In this case, the procedure provided for in Article 36/39 shall apply.

Section 5 – Objectives, special provisions and sanctions

Art. 36/42. – In adopting acts and measures pursuant to this chapter, the Bank and the national authorities shall contribute to the stability of the financial system as a whole, in particular by strengthening the resilience of the financial system and preventing the occurrence of systemic risks.

Art. 36/43. – The Act of 11 April 1994 on open government shall not apply to the Bank in the context of its tasks as referred to in this chapter or to the national authorities, in the context of the implementation of the Bank's recommendations in accordance with this chapter.

Art. 36/44. – The Bank and the national authorities as well as the members of their respective bodies and staff shall not be liable for acts or conduct in connection with measures and acts adopted pursuant to this chapter, except in the case of fraud or gross negligence.

Art. 36/45. – **§ 1.** No petition to suspend or set aside the Bank's recommendations issued pursuant to this chapter may be submitted to the Council of State.

§ 2. To the exclusion of any other possibility of recourse, an application to set aside may be submitted to the Council of State against acts of a regulatory or individual nature adopted by the Bank pursuant to Article 36/34 or by the national authorities pursuant to Articles 36/38 and 36/41, pursuant to an expedited procedure determined by the King. This appeal shall not have suspensive effect.

Art. 36/46. – A fine ranging from € 50 to € 10 000 may be imposed on any person:

1. who is required to provide information that is available or easily accessible, pursuant to this chapter or to its implementing measures, but does not comply with this requirement;

2. who hinders the inquiries and findings of the Bank pursuant to Article 36/33;

3. who fails to comply with the measures imposed by this chapter.

The provisions of Book I of the Criminal Code, without the exception of Chapter VII and Article 85, shall apply to the violations that are punishable pursuant to this chapter.

Chapter IV/4 – Specific tasks of the Bank with respect to the prevention and management of crises and risks in the financial sector

Art. 36/47. – For purposes of the Act of 7 April 2019 establishing a framework for the security of network and information systems of general interest for public security, the Bank is designated as the sector authority and inspection service for financial services providers, with the exception of trading platform operators within the meaning of Article 3(6) of the Act of 21 November 2017 on market infrastructures for financial instruments and transposing Directive 2014/65/EU.

Articles 36/19 and 36/20 shall apply.

The Sanctions Committee shall rule on the imposition of administrative fines laid as down by Article 52 of the abovementioned Act of 7 April 2019. Articles 36/8 to 36/12/3 and Article 36/21 shall apply.

The Bank shall share all relevant information on incident reports it receives pursuant to the Act of 7 April 2019 with the ECB as soon as possible.

Art. 36/48. – The Bank shall carry out the tasks assigned to it as the financial sector authority pursuant to the Act of 1 July 2011 on security and the protection of critical infrastructures.

Art. 36/48/1. – At the Bank's request and depending on the purpose of the cybersecurity certification scheme concerned, the Bank may be entrusted in whole or in part, by way of a royal decree deliberated in the Council of Ministers, provided it has the expertise required for such purposes, with the tasks referred to in Chapters 5 and 6, with the exception of Articles 21 and 22, of the Act of 20 July 2022 on the cybersecurity certification of information and communication technologies and designating a national cybersecurity certification authority. In this case, the opinion of and prior consultation with the authority referred to in Article 5 § 1 of the aforementioned act and the Bank shall be required. The Bank may carry out these supervisory duties only in respect of entities it is responsible for supervising pursuant to Articles 8 and 12*bis* and the specific legislation governing the supervision of financial institutions.

Art. 36/49. – The Bank shall be designated as an administrative authority within the meaning of article 22*quinquies* of the Act of 11 December 1998 on security classification, clearances, certificates and notices. The Bank shall have authority over the financial sector entities it identifies as being critical infrastructure pursuant to the Act of 1 July 2011 on the security and protection of critical infrastructure.

Art. 36/50. – **§ 1.** The Bank shall exercise the powers conferred on it by the present chapter exclusively in the general interest. Save in the event of fraud or gross negligence, the Bank, the members of its management bodies and its staff may not be held civilly liable for decisions, acts, omissions or conduct in the fulfilment of this duty.

§ 2. The Bank shall be permitted to recover the operating costs relating to the powers referred to in § 1 from the entities over which it exercises these powers, in accordance with the terms and conditions laid down by royal decree. The Bank shall be permitted to task the Federal Public Service Finance's General Administration of Tax Collection and Recovery with the recovery of unpaid taxes.

Chapter V – Transitional and repealing provisions – entry into force

Art. 37. – The gain made from the transfer of assets in gold with regard to the issuance by the State of numismatic or commemorative coins shall be allocated to the State up to the unused balance of 2.75 % of the weight of gold in the Bank's assets on 1 January 1987, which can be used by the State, in particular for the issuance of coins, pursuant to Article 20*bis* (2) of the Act of 24 August 1939 on the National Bank of Belgium.

Art. 38. – *p.m.*

Annex 2 Corporate Governance Charter [1]

1. Introduction

The National Bank of Belgium, established by the Act of 5 May 1850 to take on tasks in the public interest, has always had a special governance structure, deviating from ordinary law. Designed from the start to enable the Bank to perform its tasks in the public interest, this special system of governance has evolved in line with the role and objectives assigned to the Bank as the country's central bank.

Today, as the central bank of the Kingdom of Belgium, the Bank – together with the European Central Bank (ECB) and the central banks of the other European Union Member States – is one of the components of the European System of Central Banks (ESCB), set up by the Treaty on the Functioning of the European Union (the Treaty).

By that token, it is governed first of all by the relevant provisions of the Treaty (Title VIII of Part Three) and by the Protocol on the Statute of the ESCB and of the ECB which is annexed to the Treaty, and then by the Act of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium (Organic Act), and its own Statutes, approved by Royal Decree.

The provisions relating to public limited liability companies are applicable only additionally, i.e. in respect of subjects not governed by the Treaty, the Protocol annexed to it, the Organic Act and the Bank's Statutes, and provided the provisions on public limited liability companies do not clash with those higher level rules.

As a central bank, it shares the main objective which the Treaty assigns to the ESCB, namely maintaining price stability. It contributes towards the performance of the basic tasks of the ESCB which consist in defining and implementing the monetary policy of the European Union, conducting foreign exchange operations in accordance with Article 219 of the Treaty, holding and managing the official foreign exchange reserves of the Member States, and promoting the smooth operation of payment systems.

In addition, it is entrusted with microprudential supervision (governing credit institutions and investment firms with the status of stockbroking firm, insurance and reinsurance companies, central counterparties, settlement institutions, institutions equivalent to settlement institutions, payment institutions, electronic money institutions, central securities depositories, institutions providing support to central securities depositories, custodian banks and surety companies) as well as macroprudential policy in Belgium. The Bank has also been designated as national resolution authority. All these tasks are carried out under a European framework, in particular, the single supervisory mechanism (SSM) as regards prudential supervision of banks and the single resolution mechanism (SRM) for responsibilities in the field of resolution. Subject to compatibility with the tasks which come under the ESCB, the Bank is furthermore entrusted with carrying out other tasks in the public interest, on conditions laid down by law. The pre-eminence of its tasks in the public interest, present from the start and now anchored in the Treaty on the Functioning of the European Union, is reflected in a system of governance whose very objectives are different from those of the governance of a company incorporated under ordinary law.

1 Latest amendments: September 2022.

First, in accordance with the Treaty, it has to ensure that the rules which govern it are compatible with those of the Treaty itself, and with the Statute of the ESCB, including the requirement concerning the independence of the Bank and of the members of its decision-making bodies in the exercise of their powers and the performance of their tasks, assigned to them by the Treaty and the Statute of the ESCB, in respect of the institutions and bodies of the European Union, governments and all other bodies.

Next, in its governance, the Bank has to reserve a dominant position for the expression of the interests of Belgian society as a whole. That explains, in particular, the arrangements for appointing members of its organs, the specific composition and role of the Council of Regency, the limited powers of the General Meeting of Shareholders, the special arrangements for the exercise of supervision, including the powers of the representative of the Minister of Finance, and the way in which the Bank reports on the performance of its tasks. That also explains the provisions governing the financial aspects of its activities, intended to give it a sound financial basis and to allocate to the State, as a sovereign State, any surplus seigniorage revenue, after covering costs, including the constitution of required reserves and return on capital.

The Bank's special tasks and its specific, unique role in Belgium caused the legislator to give this institution its own particular legal framework and a special form of governance.

This explains why a number of provisions in the Belgian corporate governance code obviously do not apply to the Bank.

Nevertheless, the Bank considers that the system of governance imposed on it partly by its own Organic Act and Statutes, and partly by EU rules, is just as exacting as the recommendations of the Belgian corporate governance code, or even more so in various respects, such as oversight.

It believes that, even though the Belgian corporate governance code is inappropriate to the Bank, it is its duty, in view of its dual status as a central bank and a listed company, to accept an obligation to provide extensive information and report on its activities to the public in general. That is the spirit in which it has drawn up this corporate governance charter.

2. Organisation, governance and supervision of the Bank

2.1 Comparison of the allocation of powers at the Bank and in limited liability companies governed by ordinary law

The table below shows the atypical character of the Bank's organisation.

2.2 Presentation of the Bank's organs and other institutions

The Bank's organs are the Governor, the Board of Directors, the Council of Regency, the Sanctions Committee and the Resolution College (cf. Article 17 of the Organic Act).

Other institutions of the Bank are the General Meeting, the representative of the Minister of Finance, the auditor and the Works Council.

The Bank's organs and their respective powers are fundamentally different from those of conventional public limited liability companies (see table).

2.3 Organs of the Bank

2.3.1 Governor

Powers

The Governor exercises the powers conferred on him by the Statute of the ESCB, the Organic Act, and the Bank's Statutes and Rules of Procedure.

He directs the Bank and its staff with the assistance of the Directors. He presides over the Board of Directors, arranging the implementation of its decisions, and over the meetings of the Council of Regency when it exchanges views as provided for in Article 20, point 2, first paragraph of the Organic Act. He also presides over the Resolution College and chairs the General Meeting. He attends the meetings of the Remuneration and Appointments Committee in an advisory capacity. He exercises direct authority over the members of staff, whatever their grade and their function.

At the General Meeting, he presents the annual accounts and the Annual Report which have been approved by the Council of Regency. He submits to the

Allocation of powers at the Bank and in public limited liability companies governed by ordinary law

The Bank		Public limited liability companies governed by ordinary law	
King	Appointment of the Governor Appointment of the Directors (on the proposal of the Council of Regency)	Appointment of the directors	General Meeting
General Meeting	Election of the Regents (from a dual list of candidates) Appointment of the auditor (on the proposal of the Works Council and with the approval of the EU Council of Ministers, on the recommendation of the ECB Governing Council) Hearing of the Annual Report Amendment of the Statutes except for Council of Regency prerogatives	Appointment of the auditors Hearing of the annual report, auditors' report and discharge of the auditors Amendment of the articles of association	
Council of Regency	Amendment of the Statutes to bring them into line with the Organic Act and international obligations which are binding on Belgium Discussion and approval of the annual accounts Approval of the Annual Report Appropriation of the profits Discharge of the Board of Directors Setting the remuneration of the members of the Board of Directors Approval of the budget	Discussion and approval of the annual accounts Appropriation of the profits Discharge of the directors Setting the remuneration of the Board of Directors Approval of the budget	Board of Directors
Board of Directors	Definition of company policy ▪ as central bank ▪ as microprudential authority ▪ as macroprudential authority Administration and management Drawing up of the annual accounts Preparation of the Annual Report	Definition of company policy Administration and management Drawing up of the annual accounts Drawing up of the annual report Optional delegation of day-to-day management (day-to-day managers)	
Sanctions Committee	Pronounces on the imposition by the Bank of the administrative fines laid down by the laws applicable to the institutions that it supervises		
Resolution College	Resolution authority authorised to apply the resolution instruments and to exercise the resolution powers		
Representative of the Minister of Finance	Monitoring of the Bank's operations (right to oppose any measure which is contrary to the law, the Statutes or the interests of the State), except for those which come under the ESCB		

Chairmen of the Chamber of Representatives and the Senate the Annual Report referred to in Article 284.3 of the Treaty on the Functioning of the European Union, as well as a yearly report on the activities of the Bank in the field of prudential supervision. He may be heard by the competent committees of the Chamber of Representatives and of the Senate, at the request of those committees or on his own initiative.

He represents the Bank in legal proceedings

He submits proposals to the Board of Directors on the allocation of the Departments and Services among the Board's members, and on the representation of the Bank in national and international organisations and institutions.

He also has a seat on the ECB Governing Council, which decides inter alia on the monetary policy for the euro area.

Appointment

The Governor is appointed by the King for a renewable term of five years. He may be removed from office by the King only if he has been guilty of serious misconduct or if he no longer fulfils the conditions required for the performance of his duties. An appeal may be lodged with the Court of Justice against such a decision, on the initiative of the Governor or of the ECB Governing Council.

Thus, the EU and Belgian legislation ensures the personal independence of the Governor, both by the length of his term of office and by the restrictions on his removal from office.

2.3.2 Board of Directors

Powers

The Governor and the Directors jointly exercise their powers as members of the Board of Directors.

The Board of Directors is a collegiate body, responsible for the administration and management of the Bank in accordance with the Organic Act, the Statutes and the Rules of Procedure, and is in charge of the direction of its policy.

The Governor and the Directors each have authority over one or more of the Bank's departments and services. They ensure that the latter implement, within the framework of their respective duties, the decisions taken by the organs.

The Board of Directors appoints and dismisses the members of staff and determines their salaries.

It has the right to make settlements and compromises. It exercises regulatory power in the cases laid down by law.

In Circulars or Recommendations, it lays down all measures with a view to clarifying the application of the legal or regulatory provisions whose application the Bank supervises. It provides opinions to the various authorities that exercise legal or regulatory power on all draft legislative or regulatory acts relating to the supervisory tasks with which the Bank is or may be charged.

It pronounces on all matters which are not expressly reserved for another organ by law, the Bank's Statutes or Rules of Procedure.

It draws up the budget and prepares the Annual Report and the annual accounts, which it submits to the Council of Regency for approval.

It decides on the investment of the capital, the reserves and the amortisation accounts after consultation with the Council of Regency and without prejudice to the regulations adopted by the ECB.

It proposes the Bank's Rules of Procedure for the approval of the Council of Regency.

The Bank's Board of Directors therefore exercises the powers of administration, management and strategic direction of the enterprise which are delegated to the administrative board in public limited liability companies governed by ordinary law, as well as the actual management powers.

It is not accountable for its activities to the General Meeting, which has no power to give it a discharge; instead, it is accountable to the Council of Regency to which it submits the Annual Report and the annual accounts. The approval of the annual accounts by the Council of Regency constitutes a discharge for the members of the Board of Directors.

Composition

The Board of Directors is composed of the Governor and a maximum of five Directors. It includes an equal number of French and Dutch speakers. The members of the Board of Directors must be Belgians.

The Directors are appointed by the King, on the proposal of the Council of Regency. The method of nominating the Directors was specifically designed by law in 1948 to emphasise the character of the Bank's activities as tasks performed in the public interest.

The Directors are appointed for a renewable term of six years.

The King confers the title of Vice-Governor on one of the Directors. The Vice-Governor replaces the Governor if the latter is unable to perform his duties, without prejudice to Article 10.2. of the Statute of the ESCB.

In order to avoid any conflict of interests, the Organic Act stipulates that, except in a limited number of specified instances, the members of the Board of Directors may not perform duties in commercial companies or companies which are commercial in form, or in public institutions engaged in industrial, commercial or financial activities. They are also prohibited from taking on certain political posts (as members of a parliament, government or ministerial cabinet).

The members of the Board of Directors may be removed from office by the King only if they have been guilty of serious misconduct or if they no longer fulfil the conditions required for the performance of their duties.

Thus, the Organic Act ensures the personal independence of the members of the Board of Directors, both by the length of their term of office and by the restrictions on their removal from office.

Functioning

The functioning of the Board of Directors is governed by the Organic Act, the Statutes and the Rules of Procedure.

The Board of Directors meets whenever circumstances dictate, and at least once a week. It may take decisions by written procedure or via telecommunication tools allowing interactive deliberation, according to the terms laid down in the Bank's rules of procedure. The number of meetings in which all members attend exclusively via such a tool should be approximately 25 % of the total number of meetings per year. Preference should be given to physical meetings.

If a member of the Board of Directors has, directly or indirectly, an interest relating to proprietary rights which conflicts with a decision or transaction within the sphere of competence of the Board of Directors, he informs the other members before the Board deliberates. He does not attend discussions concerning that transaction or decision and does not take part in the voting. His declaration and the reasons underlying the conflicting interest are entered in the minutes of the meeting. The Board of Directors describes in the minutes the nature of the decision or transaction, justifies the decision taken and specifies the implications in terms of proprietary rights of that decision for the Bank. Those minutes are included in the Annual Report for the year in question.

The Director concerned also informs the auditor of his conflicting interest. The auditor's report must contain a separate description of the implications in terms of proprietary rights for the Bank resulting from Board of Directors decisions involving a conflicting interest within the meaning of the previous paragraph.

2.3.3 Council of Regency

Powers

The Council of Regency exchanges views on general issues relating to the Bank, monetary policy and the economic situation of the country and the European Union, supervisory policy with regard to each of the sectors subject to the Bank's supervision, Belgian, European and international developments in the field of supervision, as well as, in general, any development concerning the financial system subject to the Bank's supervision; without however having any competence to intervene at operational level or take note of individual dossiers. Every month it takes note of the institution's situation.

It has power to lay down the accounting rules for all aspects of the annual accounts which are not covered by the provisions of the Bank's Organic Act and are not mandatory for the compilation of the consolidated balance sheet of the Eurosystem. It approves the

expenditure budget and the annual accounts. It has the power, as an independent body, to set the Bank's reserve and dividend policy. It determines the final distribution of the profits proposed by the Board of Directors and ensures that the financial interests of the Bank, its shareholders and the State, as a sovereign State, are taken into account in a balanced manner.

It approves the Annual Report.

It amends the Statutes of the Bank in order to bring them into line with the Organic Act and the international obligations which are binding on Belgium.

On a proposal from the Board of Directors, it lays down the Rules of Procedure, containing the basic rules for the operation of the Bank's organs and the organisation of its departments, services and outside offices, and the code of conduct which must be respected by the members of the Board of Directors and the staff.

It appoints and dismisses the Secretary and the Treasurer.

The Council of Regency has the power to set remuneration policy and fix the salaries of the members of the Board of Directors, including the Governor, and of the Council of Regency. More detailed information about the remuneration policy and salaries is provided on an annual basis in the remuneration report which forms part of the Governance Statement included in the Annual Report.

The Council of Regency therefore exercises certain powers which, in companies governed by ordinary law, are reserved for the Board of Directors, and others reserved for the General Meeting of Shareholders. This is a very special organ which introduces an element of duality into the Bank's governance structure. Composed predominantly of non-executive members, the Council of Regency plays a key role in the appointment of Directors, remuneration and supervision, and does so on a more continuous basis than the special committees of ordinary companies, in view of the frequency of its meetings.

In regard to the budget, the Council of Regency is assisted by the Audit Committee, which has the power to examine the Bank's budget before it is submitted for approval to the Council of Regency.

The Audit Committee is established within the Council of Regency and is composed of three Regents appointed by the Council of Regency. The chair of the Audit Committee is appointed by the Council of Regency. The Audit Committee exercises the advisory powers referred to in Article 21*bis* of the Organic Act (specified in the Audit Committee Regulations) and supervises the preparation and implementation of the Bank's budget. The Audit Committee Regulations further define the powers, composition and functioning of that committee.

In the performance of its duties in relation to remuneration and appointments, the Council of Regency is assisted by the Remuneration and Appointments Committee, which comprises three Regents appointed by the Council of Regency. The Governor attends the meetings of this committee in an advisory capacity. The Remuneration and Appointments Committee Regulations define the powers, composition and functioning of that committee.

Composition

The Council of Regency is composed of the Governor, the Directors and fourteen Regents. It includes an equal number of French- and Dutch-speaking Regents.

At least one third of the members of the Council of Regency are of a different gender than the other members.

The Regents are elected by the General Meeting for a renewable term of three years, on the basis of dual lists of candidates. Two Regents are chosen on the proposal of the most representative labour organisations, three on the proposal of the most representative organisations from industry and commerce, from agriculture and from small and medium-sized enterprises and traders, and nine on the proposal of the Minister of Finance.

The method of appointing the Regents has been organised in a special way. In the preparations for the Act of 28 July 1948 which amended the Organic Act and reorganised the Bank, the legislator expressed its desire that the method of appointing the Directors and Regents should ensure both the Bank's total independence vis-à-vis individual interests and the technical competence of the candidates. The procedure for proposing the Regents was designed to ensure that

the various Belgian socio-economic interests were fairly represented.

In order to avoid any conflict of interests, the Organic Act stipulates that the Regents may not be members of the administrative, management or supervisory bodies of an institution subject to the supervision of the Bank, a Belgian institution or institution established in Belgium subject to the supervision of the ECB or a subsidiary of one of these institutions subject to the supervision of the ECB, nor may they perform management duties in such an institution or take on certain political posts (as members of a parliament, government or ministerial cabinet).

The Regents may be dismissed by the General Meeting of Shareholders deciding by a majority of three-quarters of the votes of the shareholders present, holding at least three-fifths of the shares.

One of the Regents is appointed President of the Council of Regency by the King. The President of the Council of Regency is independent within the meaning of Article 7:78, first paragraph of the Companies and Associations Code, comes from a different linguistic group than the Governor and is of a different gender than the Governor. The President of the Council of Regency presides over the meetings of the Council of Regency except when it exchanges views on the general issues referred to in Article 20, point 2 of the Organic Act. These exchanges of views are presided over by the Governor.

Functioning

The functioning of the Council of Regency is governed by the Organic Act, the Statutes and the Rules of Procedure.

The Council of Regency meets at least twenty times a year and passes its decisions by a majority of the votes. It may take decisions by written procedure or via telecommunication tools allowing interactive deliberation, according to the terms laid down in the Bank's rules of procedure. The number of meetings in which all members attend exclusively via such a tool should be approximately 25 % of the total number of meetings per year. Preference should be given to physical meetings.

If a member of the Council of Regency has, directly or indirectly, an interest relating to proprietary rights which conflicts with a decision within the sphere of competence of the Council of Regency, he informs the other members before the Council deliberates. He must not attend discussions concerning that decision, or take part in the voting. In particular, the Governor and the Directors are not permitted to attend the discussions and take part in the voting concerning the approval of the annual accounts.

2.3.4 Sanctions Committee

Powers

The Sanctions Committee pronounces on the imposition by the Bank of administrative fines laid down by the laws applicable to the institutions that it supervises. The rules of procedure for the imposition of administrative fines are set out in the Organic Act.

Composition

The Sanctions Committee is composed of six members appointed by the King:

1. a State counsellor or honorary State counsellor, appointed on a proposal from the First President of the Council of State;

2. a counsellor at the Court of Cassation or honorary counsellor at the Court of Cassation, appointed on a proposal from the First President of the Court of Cassation;

3. two magistrates who are neither counsellors at the Court of Cassation, nor at the Brussels Court of Appeal;

4. two other members.

The chairman is elected by the members of the Sanctions Committee from among the persons mentioned in (1), (2) and (3).

For the three years preceding their appointment, the members of the Sanctions Committee may not have been on either the Board of Directors of the Bank or the Resolution College of the Bank, or a member of the Bank's staff.

During the course of their mandate, members may not carry out any duties whatsoever or any mandate whatsoever in an institution subject to the supervision

of the Bank or in a professional association representing institutions subject to the supervision of the Bank, nor may they provide services for a professional association representing institutions subject to the supervision of the Bank.

They are also prohibited from taking on certain political posts (as members of a parliament, government or ministerial cabinet).

The mandate of the members of the Sanctions Committee is six years and renewable. Members may be removed from office by the King only if they no longer fulfil the conditions for the performance of their duties or if they have been guilty of serious misconduct.

Functioning

The functioning of the Sanctions Committee is governed by the Organic Act, the Statutes and the Rules of Procedure which it has adopted.

The Sanctions Committee meets whenever the chairman deems necessary. Its decisions are passed by a majority of the votes.

Members of the Sanctions Committee may not deliberate in a case in which they have a personal interest that may influence their opinion.

2.3.5 Resolution College

Powers

The Resolution College is the body competent to perform the tasks of the resolution authority authorised to apply the resolution instruments and to exercise the resolution powers in accordance with the legislation on the status and supervision of credit institutions.

Composition

The Resolution College is composed of the following persons:

1. the Governor;

2. the Vice-Governor;

3. the Director of the Department in charge of the prudential supervision of banks and stockbroking firms;

4. the Director of the Department in charge of prudential policy and financial stability;

5. the Director designated by the Bank as the person responsible for resolution of credit institutions;

6. the President of the Management Committee of the Federal Public Service Finance;

7. the official in charge of the Resolution Fund;

8. four members designated by the King by Royal Decree deliberated in the Council of Ministers; and appointed in view of their particular expertise in banking and financial analysis; and

9. a magistrate designated by the King.

The Chairman of the Financial Services and Markets Authority attends Resolution College meetings in an advisory capacity.

The persons referred to in (8) and (9) are appointed for a renewable term of four years. These persons can be relieved of their duties by the authorities which have appointed them only if they no longer fulfil the conditions necessary for their role or in the event of serious misconduct.

Members of the Resolution College may not take on certain political posts (as members of a parliament, government or ministerial cabinet).

Functioning

The functioning of the Resolution College is governed by the Organic Act, the Royal Decree of 22 February 2015 and the Rules of Procedure which it has adopted.

Unless it is unable to do so, the Resolution College meets at least four times a year and whenever circumstances dictate or whenever three of its members request a meeting. Its decisions are passed by a majority of the votes. In urgent cases determined by its chairman, the Resolution College may take decisions by written procedure or by using a voice telecommunications system.

In the event of a conflict of interests, the member concerned refrains from taking part in the deliberations and the voting on the agenda items in question.

2.4 Other institutions of the Bank

2.4.1 General Meeting

Powers

The Ordinary General Meeting hears the Annual Report on the past year and elects the Regents for the offices which have become vacant, in accordance with the stipulations of the Organic Act. It appoints the external auditor. It amends the Statutes in cases where that power is not reserved for the Council of Regency.

The General Meeting deliberates concerning the matters mentioned in the convening notice and those submitted to it by the Council of Regency.

The Organic Act does not confer organ status on the General Meeting, whose powers are limited.

Composition

The General Meeting is composed of the shareholders who have fulfilled the legal formalities for admission to the general meeting of a listed company.

The General Meeting represents the totality of the shareholders.

Functioning

The General Meeting is chaired by the Governor. The Ordinary General Meeting is held on the third Monday in May or, if that is a public holiday, on the next bank working day. An Extraordinary General Meeting may be convened whenever the Council of Regency deems fit. A meeting must be convened if the number of Regents falls below the absolute majority or if it is requested by shareholders representing one tenth of the capital stock.

Before the meeting is opened, the shareholders sign the attendance register.

The function of scrutineers shall be performed by the two shareholders present who own the largest number of shares, who do not form part of the administration and who accept this duty.

Each share confers entitlement to one vote.

All resolutions are passed by an absolute majority of the votes. If the votes are equally divided, the proposal is rejected. Voting will take place either electronically, by roll call, by a show of hands, or by ballot papers. Elections or dismissals take place by secret ballot.

Decisions passed in accordance with the rules are binding on all the shareholders.

Minutes are drawn up in respect of each meeting. They are signed by the tellers, the chairman and the other members of the bureau. They are published on the Bank's website. Exemplified copies and extracts to be issued to third parties are signed by the Secretary.

2.4.2 Representative of the Minister of Finance

Except as regards the tasks and operations within the domain of the ESCB, the tasks of prudential supervision and the tasks of the Bank in contributing to the stability of the financial system, the representative of the Minister of Finance supervises the Bank's operations, and suspends and brings to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State. If the Minister of Finance has not given a decision within one week of the suspension, the decision may be implemented.

The representative of the Minister of Finance attends, ex officio, in an advisory capacity, the meetings of the Council of Regency, the Audit Committee and the Remuneration and Appointments Committee.

He attends the General Meetings when he deems fit.

He reports to the Minister of Finance each year on the performance of his duties.

Via his representative, the Minister of Finance thus exercises, on behalf of the sovereign State, supervision over the Bank's activities in regard to tasks in the national interest.

The salary of the representative of the Minister of Finance is set by the said Minister in consultation with the management of the Bank, and is paid by the Bank.

2.4.3 Auditor

The auditor performs the auditing functions prescribed by Article 27.1 of the Protocol on the Statute of the ESCB and of the ECB, and reports to the Council of Regency on those activities. He certifies the annual accounts. He also performs certification functions for the attention of the ECB auditor.

He reports to the Works Council once a year on the annual accounts and the Annual Report. He certifies the accuracy and completeness of the information supplied by the Board of Directors. He analyses and explains, particularly for the members of the Works Council appointed by the employees, the economic and financial information submitted to this Council, in terms of its significance in relation to the financial structure and the assessment of the Bank's financial position.

The auditor is appointed on the basis of a procedure in accordance with the public procurement legislation to which the Bank is subject. He is then appointed by the General Meeting of the Bank on the proposal of the Works Council. He must be approved by the EU Council of Ministers, on the recommendation of the ECB.

2.4.4 Works Council

Pursuant to the Act of 20 September 1948 on the organisation of the economy, the Bank has a Works Council, a joint consultation body composed of representatives of the employer and representatives of the staff, elected every four years.

The main function of the Works Council is to give its opinion and formulate any suggestions or objections in regard to all measures which could change the working arrangements, working conditions and efficiency of the enterprise.

Specific economic and financial information is made available by the Board of Directors, in accordance with the law.

2.5 Mechanisms for controlling the activities

A series of control mechanisms ranging from operational to external controls govern the Bank's activities and operations, ensuring that they proceed smoothly with due regard for the set objectives and in accordance with the dual concern for security and the economical use of resources.

The control requirements applicable to the Bank on account of its tasks as the country's central bank and its membership of the ESCB differ from, and extend beyond, those laid down in the Belgian corporate governance code recommended for public limited liability companies governed by ordinary law.

From the point of view of the general management of the enterprise, the Board of Directors is responsible for establishing an internal control system and for ensuring its adequacy.

This internal control system is based on the concept of three lines of defence.

The departments and autonomous services take on *primary responsibility* for the actual operation of the internal control system. That involves:

- identifying, assessing and attenuating the risks of their entities;
- establishing adequate internal control and management systems in order to control the risks of their entities within the risk tolerance limits set by the Board of Directors;
- ensuring that their entities respect the objectives, policies and internal control.

Secondary responsibility for the actual operation of the internal control system rests with the members of the Board of Directors designated for this purpose:

- as regards financial risks, the Director-Treasurer is responsible for the Middle Office, which is in charge of identifying, assessing, managing and reporting on the risks resulting from the Bank's portfolio management activities. The Middle Office reports monthly and quarterly to the Board of Directors via the Director-Treasurer.
- as regards non-financial risks, the member of the Board of Directors designated for this purpose is responsible for Operational Risk Management (ORM), Business Continuity Management (BCM), the compliance function, information security, secondary aspects of physical security and of activities concerning banknotes.

The Internal Audit Service takes on *tertiary responsibility* for the actual operation of the internal control system.

The Internal Audit Service is tasked with giving the Board of Directors additional assurance, based on the highest degree of organisational independence and objectivity, concerning the effectiveness of the Bank's governance, risk management and internal control, including the attainment of the risk management and control objectives by the first and second lines of defence.

In order to guarantee its independence vis-à-vis the Departments and Services, the Internal Audit Service comes directly under the Governor and does not carry any direct operational responsibility. It reports to the Board of Directors and the Audit Committee.

The head of the Internal Audit Service is a member of the Internal Auditors Committee (IAC) of the ESCB. The Internal Audit Service conforms to the methodology, objectives, responsibilities and reporting procedure laid down within the ESCB, including those in the Eurosystem/ESCB Audit Charter approved by the ECB Governing Council. An Internal Audit Charter, approved by the Board of Directors and the Council of Regency on the proposal of the Audit Committee, describes the role of the audit function, its responsibilities and the powers conferred on it for the performance of its tasks.

Certain control functions are performed by specific administrative entities (e.g. the management of access to computer systems), while structural conflicts of interest are resolved by segregating the activities concerned (system of Chinese walls): thus, for example, the operation and oversight of the payment systems are entrusted to two different departments.

The Audit Committee supervises the preparation and implementation of the budget and takes note of the activities of the Internal Audit Service. Every year, its chair informs the Council of Regency and answers its questions.

The Audit Committee is responsible, in an advisory capacity, for the monitoring of the effectiveness of the internal control and risk management systems and the monitoring of the Bank's internal audit.

To that end, the Audit Committee periodically examines, in accordance with a plan which it draws up, the internal control and risk management systems set up by the various Departments and Services. It ensures that the main risks, including the risks relating to compliance with the current legislation and rules, are correctly identified, managed and drawn to its own attention and to that of the Board of Directors. The Audit Committee also examines the notes contained in the Annual Report concerning internal control and risk management.

The Audit Committee examines the effectiveness of the internal audit. It examines the internal audit charter and verifies whether the Internal Audit Service has the resources and expertise appropriate to the nature, size and complexity of the Bank. Where appropriate, it makes recommendations on this subject to the Board of Directors. Before the internal audit's programme of work is approved by the Board of Directors, the Audit Committee examines that programme, taking account of the complementarity with the work of the statutory auditor. The Audit Committee receives the periodic internal audit reports. It examines the extent to which the Departments and Services take account of the internal audit's findings and recommendations. At the request of the Board of Directors, the Audit Committee gives its opinion concerning the profile of the internal audit officer.

The Audit Committee also assesses the relevance and consistency of the accounting rules drawn up by the Council of Regency.

The Council of Regency approves the annual accounts, the annual budget, the accounting rules and the rules on the Bank's internal organisation. It consults the Audit Committee before approving the annual accounts, and may ask this committee to examine specific questions on that subject and report back to it.

The Bank is also subject to various external controls.

The first form of control is provided by the auditor, who verifies and certifies the Bank's accounts.

Except as regards the tasks and operations within the domain of the ESCB, the tasks of prudential supervision and the tasks of the Bank in contributing to the stability of the financial system, the representative of the Minister of Finance supervises the Bank's operations on the behalf of the Minister. The latter in

fact has the right to monitor those operations and to oppose the implementation of any measure which would be contrary to the law, the Statutes or the interests of the State.

In addition, the Governor may be heard by the competent committees of the Chamber of Representatives and of the Senate, at the request of those committees or on his own initiative.

Finally, pursuant to the Statute of the ESCB and of the ECB, the Bank acts in accordance with the directions and instructions of the ECB. The Governing Council takes the necessary measures to ensure compliance with those directions and instructions, and requires all necessary information to be supplied to it.

2.6 Rules of conduct

A code of conduct imposes strict rules of behaviour on the members of the Board of Directors and on the Bank's employees.

The members of the Board of Directors maintain the highest standards of professional ethics.

The members of the Bank's organs and staff are subject to strict professional secrecy pursuant to Article 35 of the Organic Act. They are also subject to the legal rules on insider trading and market manipulation.

The members of the Council of Regency – namely, the Directors and the Regents – have a legal obligation to submit an annual list of their mandates, duties and occupations to the Court of Auditors. In addition, they are bound to make an annual wealth declaration, unless there have been no appointments, terminations or renewals in the past year with regard to the mandates, duties and occupations that they have to declare.

The Bank's code of conduct lays down rules for members of the Board of Directors and of its staff on the holding of and transactions in the Bank's shares and shares or parts issued by certain enterprises subject to supervision by the Bank or the ECB, and rules on urgent withdrawals concerning certain enterprises subject to supervision by the Bank or the ECB. The Chairman of the Sanctions Committee and the competent Director exercise supervision over compliance with these provisions, respectively by the members of the Board of Directors and by the members of staff.

The Regents do not effect any transactions, for their own account or on behalf of a third party, in shares of the Bank or financial instruments relating to those shares during the annual closed period of thirty calendar days before publication of the annual accounts. Outside of those fixed closed periods, they exercise prudence in trading in the Bank's shares and refrain at all times from any speculative transaction in those shares. They also respect the closed periods fixed ad hoc by the Board of Directors.

2.7 The Secretary and the Treasurer

The Secretary draws up the minutes and the records of the meetings of the Board of Directors and of the Council of Regency. He draws up the minutes of the General Meeting of Shareholders and has them signed by the chairman of the General Meeting, the scrutineers and the other members of the bureau. He certifies copies conforming to the original. He deals with changes to the Bank's Rules of Procedure.

Under the Bank's internal control system based on the concept of three lines of defence, the Treasurer carries secondary responsibility for the management of all financial risks.

3. Shareholders

3.1 Capital and shares

The Bank's share capital totals ten million euro. It is represented by four hundred thousand shares of no face value. Two hundred thousand registered, non-transferable shares are held by the Belgian State. The two hundred thousand other registered, bearer or dematerialised shares are held by the public and listed on Euronext Brussels.

The share capital is fully paid up.

Except for those belonging to the State, the shares can be converted to registered or dematerialised shares, free of charge, at the owner's request.

Ownership of the registered shares is established by entry in the Bank's shareholders register. The registered shareholder receives a certificate which does not constitute a transferable instrument. Dematerialised shares are represented by an account entry in the name of their owner or holder with an authorised

intermediary or with the settlement institution, S.A. Euroclear Belgium.

3.2 Shareholder structure

Since 1948, and pursuant to the Organic Act, the Belgian State has held two hundred thousand of the Bank's shares, or 50% of the total voting rights.

The Bank has no knowledge of other holdings of 5% or more of the voting rights.

3.3 Dividends

The setting of the dividends is organised by the Organic Act. A first dividend of 6% of the capital is guaranteed by all reserves. The second dividend corresponds to 50% of the net proceeds from the portfolio which the Bank holds as a counterpart to its total reserves. The second dividend is guaranteed by the available reserve, unless the level of the reserves were to fall too low as a result.

In view of the special nature of the Bank and its tasks in the public interest, including the primary objective of maintaining price stability, the dividend is largely dissociated from profit or loss. In this way, the shareholder is protected against the volatility of the Bank's results, which are influenced by the monetary policy of the Eurosystem and exogenous factors such as demand for banknotes or exchange rate movements.

4. Communication with shareholders and the public

4.1 Principles

As the country's central bank, the Bank performs special tasks in the public interest, on which it has to render account to the democratic institutions and to the public in general, and not only to its shareholders and employees.

4.2 Reports

Every year, the Bank publishes a Report providing the public with extensive information on recent economic and financial developments in Belgium and abroad. The summary presented by the Governor on behalf of the Council of Regency focuses on key events in the past year and delivers the Bank's main messages concerning economic policy.

Each year, the Bank also publishes a report on its activities in the field of prudential supervision, as well as a Corporate Report presenting for the shareholders' and the public's attention the Annual Report and the annual accounts for the preceding year and explaining the organisation and governance of the Bank.

These Reports are made available in printed form to the shareholders and the public. They are also published on the Bank's website, which offers all the Annual Reports issued since 1998.

The Bank is not subject to the rules governing the drawing up and issuing of periodical information.

4.3 Relations with parliament

Pursuant to the Organic Act and the Statutes, the Governor may be heard by the competent committees of the Chamber of Representatives and of the Senate, at their request or on his own initiative. He shall send to the Chairmen of the Chamber of Representatives and the Senate the Annual Report on the activities of the Bank in the field of prudential supervision.

4.4 General Meetings

The Bank's Ordinary General Meeting provides an opportunity for shareholders and the Bank's management to meet. Every year at the meeting, the Board of Directors presents the Annual Report and the annual accounts for the past financial year.

4.5 Website

On its website, the Bank offers the public and the shareholders a large quantity of regularly updated information on its activities and operations, available at all times.

The Rules of Procedure, Audit Committee Regulations and Remuneration and Appointments Committee Regulations are available on the Bank's website.

5. Representation of the Bank and signing of acts

5.1 Representation of the Bank

The Governor represents the Bank in legal proceedings.

The Governor and the Board of Directors may expressly or tacitly grant special authority to represent the Bank.

5.2 Signing of acts

All acts which are binding upon the Bank may be signed either by the Governor, or, in the absence of the latter, by the Vice-Governor, either by a majority of the members of the Board of Directors or by a Director together with the Secretary, without any need to substantiate their authority to third parties. They may also be signed by one or two persons mandated either by the Governor or by a majority of the members of the Board of Directors or by a Director together with the Secretary.

Moreover, routine administrative acts may be signed either by the Vice-Governor or a Director, or by the Secretary or the Treasurer or by one or two members of the staff mandated by the Board of Directors.

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