LAW OF 22 MARCH 1993 ON THE LEGAL STATUS AND SUPERVISION OF CREDIT INSTITUTIONS

(Unofficial consolidated text: 10/2002)

This unofficial consolidated text of the law is simply a formal consolidation. In consequence, no attempt has been made to rectify references to legislation that has meanwhile been abrogated.

TITLE I

SCOPE - DEFINITIONS - GENERAL PROVISIONS

CHAPTER I

Scope

Article 1

The objective of this Law is to regulate the establishment, activity and supervision of credit institutions operating in Belgium, in order to protect savings and ensure the smooth operation of the credit system.

A “credit institution” shall mean a Belgian or foreign undertaking whose business is to receive deposits or other repayable funds from the public and to grant credit for its own account.

Article 2

The provisions of this Law shall not apply to:

1° the National Bank of Belgium, the European Central Bank, the “Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut” and “La Poste (Postchèque)/De Post (Postcheque)” (The Post Office (Post office giro institution));

2° companies carrying on capitalization activities governed by Royal Decree 43 of 15 December 1934 on the supervision of capitalization companies (“sociétés de capitalisation/kapitalisatieondernemingen”) or by the Law of 9 July 1975 on the supervision of insurance companies.
CHAPTER II

Definitions

Article 3

§ 1. For the purposes of this Law and its implementing decrees:

1° “Banking and Finance Commission” shall mean the institution established by Royal Decree 185 of 9 July 1935 on the supervision of banks and the rules governing the issue of securities;

1°bis “close links” shall mean:
(a) a situation in which there is a link through a participating interest, or
(b) a situation in which enterprises are affiliated enterprises, or
(c) a link of the same nature as that referred to in (a) and (b), between a natural person and a legal person;

2° “control”, “holding1”, “link through a participating interest”, “parent undertaking2”, “subsidiary” and affiliated enterprise shall mean control, holding, link through a participating interest, parent undertaking, subsidiary and affiliated enterprise as defined in the implementing decrees of Article 44, paragraph 3, of this Law;

3° “qualifying holding” shall mean a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights attaching to the securities issued by that company or which makes it possible to exercise a significant influence over the management policy of the undertaking in which a holding subsists; for the calculation of the voting rights, the voting rights attaching to the securities treated as shares pursuant to the Law of 2 March 1989 concerning the disclosure of large shareholdings in companies listed on the stock exchange and regulating takeover bids shall be taken into account;

4° “own funds” and “trading portfolio” shall mean own funds and trading portfolio as defined in the implementing decrees of Article 43 of this Law;

5° “financial institution” shall mean an undertaking other than a credit institution the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in 2° to 12° of § 2 of this Article;

6° “branch” shall mean a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions; any number of places of business set up in the same Member State by a credit institution with headquarters in another Member State shall be regarded as a single branch;

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1 Also referred to as “participating interest”.
2 Referred to in this Law as “parent company”.

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§ 2. The following activities shall be subject to mutual recognition as set out in Articles 34, 38 and 41 and Title III:

1. Acceptance of deposits and other repayable funds from the public.

2. Lending, including *inter alia* consumer credit, mortgage credit, factoring with or without recourse, and financing of commercial transactions (including forfaiting).

3. Financial leasing.

4. Money transmission services.

5. Issuing and administering means of payment (e.g. credit cards, travellers’ cheques and bankers’ drafts).


7. Trading for own account or for account of customers in:
   (a) money market instruments (cheques, bills, CDs, etc.);
   (b) foreign exchange;
   (c) financial futures and options;
   (d) exchange and interest rate instruments;
   (e) transferable securities.

8. Participation in share issues and the provision of services related to such issues.

9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.

10. Money broking.

11. Portfolio management.

12. Safekeeping and administration of securities.

13. Credit reference services.

14. Safe custody services.
CHAPTER III

Soliciting repayable funds from the public

Article 4

Only credit institutions established in Belgium and credit institutions established pursuant to the law of another EC Member State and eligible under Articles 66 ff. of this Law shall be authorized to solicit deposits or other funds repayable at sight, term or notice from the public in Belgium or accept such deposits or funds from the public in Belgium.

Paragraph 1 shall not apply to:

1° the National Bank of Belgium, the European Central Bank and the “Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut”;

2° “La Poste (Postchèque)/De Post (Postcheque)” (The Post Office (Post office giro institution)) and the “Caisse des Dépôts et Consignations/Deposito-en Consignatiekas”;

3° stockbroking firms governed by Article 47 of the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms, on intermediaries and investment advisers, with regard to the deposits referred to in that Article;

4° companies referred to in Article 2, 2°, with regard to the capitalization transactions referred to in that Article;

5° persons, companies and institutions which publicly offer securities evidencing the receipt of repayable funds governed by Title II of Royal Decree 185 of 9 July 1935, or which are exempted from the provisions of that Title in accordance with European law;

6° national associations of sickness benefit schemes governed by the Law of 6 August 1990 on sickness benefit schemes and national associations of sickness benefit schemes, with regard to the premarital savings schemes referred to in Article 7, § 4, of the above-mentioned Law;

7° persons and companies publicly offering treasury notes in accordance with the Law of 22 July 1991.

Transfers of trade bills, by means of endorsement or otherwise, shall be treated in the same way as the transactions referred to in paragraph 1.
This Article shall apply to persons or companies operating on Belgian territory without credit institution status who solicit and collect repayable funds from the public from within Belgian territory but collect such funds outside Belgium.

[Future article]

Article 4

Only credit institutions established in Belgium and credit institutions established pursuant to the law of another EC Member State and eligible under Articles 66 ff. of this Law shall be authorized to solicit deposits or other funds repayable at sight, term or notice from the public in Belgium or accept such deposits or funds from the public in Belgium.

Paragraph 1 shall not apply to:

1° the National Bank of Belgium, the European Central Bank and the “Institut de Rèescompte et de Garantie/Herdiscontering- en Waarborginstituut”;

2° “La Poste (Postchèque)/De Post (Postcheque)” (The Post Office (Post office giro institution)) and the “Caisse des Dépôts et Consignations/Deposito- en Consignatiekas”;

3° stockbroking firms governed by Article 47 of the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms, on intermediaries and investment advisers, with regard to the deposits referred to in that Article;

4° companies referred to in Article 2, 2°, with regard to the capitalization transactions referred to in that Article;

5° persons, companies and institutions which publicly offer securities evidencing the receipt of repayable funds governed by Title II of Royal Decree 185 of 9 July 1935, or which are exempted from the provisions of that Title in accordance with European law;

6° national associations of sickness benefit schemes governed by the Law of 6 August 1990 on sickness benefit schemes and national associations of sickness benefit schemes, with regard to the premarital savings schemes referred to in Article 7, § 4, of the above-mentioned Law;

7° persons and companies publicly offering treasury notes in accordance with the Law of 22 July 1991;

8° small companies, as regards such profits allocated to their workers in the framework of an investment savings plan as received by these companies in the form of loans granted by these workers in accordance with the Law of 22 May 2001 on employee share ownership plans.

Transfers of trade bills, by means of endorsement or otherwise, shall be treated in the same way as the transactions referred to in paragraph 1.
This Article shall apply to persons or companies operating on Belgian territory without credit institution status who solicit and collect repayable funds from the public from within Belgian territory but collect such funds outside Belgium.

Article 5

For the purposes of Articles 1, 4 and 6 of this Law, the King may establish criteria to determine the public character of the activities referred to in these Articles.

CHAPTER IV

Names of credit institutions

Article 6

In Belgium the following institutions alone shall be authorized to use the terms “credit institution”, “bank”, “banking”, “savings bank” or “securities bank” publicly, particularly in their company names, activities clauses, securities, documents or advertising:

1° credit institutions established in Belgium;

2° credit institutions governed by the law of another EC Member State operating in Belgium in accordance with Article 66;

3° representative offices referred to in Article 85.

However,

1° with regard to the terms “bank” and “banking”, paragraph 1 shall not apply to the National Bank of Belgium, the European Central Bank, the “Institut de Réécompte et de Garantie/Herdiscontering- en Waarborginstituut” and banking institutions governed by international public law of which one or more EC Member States are members;

2° with regard to the terms “credit institution”, “bank”, “savings bank” and “securities bank”, paragraph 1 shall not apply to credit institutions established outside Belgium which are not authorized to carry on banking activities in Belgium and which publicly offer securities within the meaning of Title II of Royal Decree 185 of 9 July 1935;

3° without prejudice to 2° and to the case of credit institutions governed by the law of another EC Member State whose name includes this term, the only credit institutions authorized to use the term “savings bank” shall be those included in the category “savings banks” referred to in Article 13, the “Caisse générale d’Epargne et de Retraite-Banque/Algemene Spaar-en LijfrenteKas-Bank”, the “Caisse générale d’Epargne et de Retraite-Assurances/Algemene Spaar-en LijfrenteKas-Verzekering”, and those communal savings banks which were in existence on 1 January 1932;
4° the “Crédit Communal-Holding/Gemeentekrediet-Holding” and the financial holding companies provided for in Article 49, § 1, 2°, that are subject to the supervision referred to in that Article shall also be authorized to use the term “bancaire/bank” (bank) in the nomenclature “holding bancaire/bankholding” (bank holding company).

5° without prejudice to 2° and to the situation of credit institutions governed by the law of another EC Member State whose name comprises this term, the only credit institutions authorized to use the term “securities bank” shall be those included in the category “securities bank” referred to in Article 13.

If there is any danger of confusion, the Banking and Finance Commission may require from foreign credit institutions authorized to use the terms referred to in paragraph 1 in Belgium that their name be accompanied by certain explanatory particulars.

**TITLE II**

**CREDIT INSTITUTIONS GOVERNED BY BELGIAN LAW**

**CHAPTER I**

**Authorization for taking up the business of credit institutions**

**SECTION I**

Article 7

Before commencing operations, a credit institution governed by Belgian law wishing to exercise its activities in Belgium must be duly authorized by the Banking and Finance Commission, irrespective of any other place where it may exercise its activities.

Article 8

Requests for authorization shall be accompanied by a programme of operations complying with the conditions laid down by the Banking and Finance Commission and setting out *inter alia* the type and the volume of the business proposed, the structural organization of the institution, and any close links it has with other persons. Applicants shall provide all the information needed for their request to be examined.
Article 9

When the request for authorization emanates from a credit institution which is a subsidiary of a credit institution authorized in another EC Member State, or a subsidiary of the parent company of a credit institution authorized in another Member State, or controlled by the same persons, whether natural or legal, as those who control a credit institution authorized in another Member State, the Banking and Finance Commission will, before taking a decision, consult the competent authorities of the other Member States supervising the credit institutions which were granted authorization pursuant to their laws.

Article 10

The Banking and Finance Commission will grant authorization to the credit institutions meeting the conditions laid down in Section II. The Banking and Finance Commission will give its decision on the application for authorization within three months of presentation of the required information, and not later than nine months after receipt of the application.

Decisions on authorization will be communicated to the applicants within fifteen days by registered or recorded delivery letter.

Article 11

When granting authorization, the Banking and Finance Commission may, in the interest of sound and prudent management, impose certain conditions on the exercise of certain of the activities proposed.

Article 12

[....]

Article 13

Each year, the Banking and Finance Commission will draw up a list of the credit institutions which have been granted authorization pursuant to this Title. This list, and any amendments which have been made to it during the year, will be published in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette), and notified to the Commission of the European Communities.

The list of credit institutions governed by Belgian law comprises the following categories:

(a) banks;
(b) savings banks;
(c) public credit institutions;
(d) securities banks;
(e) communal savings banks.

The list may comprise sub-categories. The applicant indicates the category and the sub-category under which he wishes to be authorized. If an institution wishes to change to another category or sub-category, it may be so authorized, provided it complies with the conditions and the legal and regulatory consequences of this change.

Attached to the list are the names of the financial holding companies governed by Belgian law defined in Article 49, § 1, 2°.

**Article 14**

When the Commission of the European Communities is notified that authorization has been granted to a credit institution governed by Belgian law, which is a subsidiary of one or more parent companies which are governed by the law(s) of one or more non-Member States, the identity of this (these) parent company (companies) will be disclosed and, where appropriate, the financial structure of the group controlling the institution, to which the authorization is granted, will be indicated.

The Banking and Finance Commission will provide the Commission of the European Communities, at its request, with the same information, where an application for authorization is made by a credit institution governed by Belgian law satisfying the conditions of the preceding paragraph, in the circumstances described in Article 9, §§ 3 and 4, paragraph 1, of European Council Directive 89/646/EEC of 15 December 1989.

In the circumstances described in Article 9, § 4, paragraphs 2 to 4, of the same Council Directive, the Banking and Finance Commission will limit or suspend its decisions with respect to applications for authorization of credit institutions governed by Belgian law, referred to in paragraph 1, according to the rules and for the duration laid down by the Council or the Commission of the European Communities on the basis of these provisions.

**SECTION II**

Authorization conditions

Subsection I

Legal form

**Article 15**

Credit institutions governed by Belgian law shall be incorporated as any form of commercial company other than a private limited liability company formed by one person.
Subsection II

Initial capital

Article 16

In order to be granted authorization, minimum capital of EUR 6,200,000 shall be required.

The capital shall be fully paid up to the minimum amount set out in paragraph 1.

For existing institutions which request authorization, the share premium account, reserves and results brought forward will be considered as capital. However, the capital as such shall always amount to at least EUR 2,500,000 and be paid up to that amount.

Subsection III

Shareholders or members

Article 17

The Banking and Finance Commission will not grant authorization before it has been informed of the identities of the natural or legal persons which own direct or indirect holdings, regardless of whether they confer voting rights, of at least 5% in the credit institution’s capital, and of the amounts of capital or voting rights held by these persons. If a participating interest is held in concert or by mutual agreement by several persons, Articles 2, § 2, and 3, second sentence, of the Law of 2 March 1989 concerning the disclosure of large shareholdings in companies listed on the stock exchange and regulating takeover bids, and the measures implementing these articles taken pursuant to the above-mentioned Law, shall apply. Article 2, § 1, of the above-mentioned Law shall also apply.

The Banking and Finance Commission will refuse authorization if, taking into account the need to ensure the sound and prudent management of a credit institution, it is not satisfied as to the suitability of the natural or legal persons referred to in paragraph 1.

Subsection IV

Management

Article 18

The effective management of a credit institution shall be carried out by at least two natural persons, who shall have the necessary professional reputation and appropriate experience to carry out their functions.
Article 19

The persons referred to in Articles 1 to 3, 3bis, §§ 1 and 3, and 3ter of Royal Decree 22 of 24 October 1934 prohibiting persons convicted of certain offences and bankrupts from carrying out certain functions, professions or activities, and conferring power on the commercial courts to impose such prohibitions, may not be responsible for the management or administration of a bank, nor may they represent companies, which carry out such functions.

Furthermore, the functions described in paragraph 1 may not be carried out by:

1° persons sentenced to less than three months’ imprisonment or a fine for an offence foreseen in the above-mentioned Royal Decree 22 of 24 October 1934;

2° persons convicted of an offence under:

(a) Articles 104 and 105 of this Law;

(b) Articles 42 to 45 of Royal Decree 185 of 9 July 1935 on the supervision of banks and the rules governing the issue of securities;

(c) Articles 31 to 35 of the provisions regarding the supervision of private savings banks, as co-ordinated on 23 June 1967;

(d) Articles 13 to 16 of the Law of 10 June 1964 on the public soliciting of funds;

(e) Articles 100 to 112ter of Title V of Book I of the Commercial Code or Articles 75, 76, 78, 150, 175, 176, 213 and 214 of the Law of 4 December 1990 on financial transactions and financial markets;

(f) Article 4 of Royal Decree 41 of 15 December 1934 protecting savings by regulating instalment sales of premium bonds;

(g) Articles 18 to 23 of Royal Decree 43 of 15 December 1934 on the supervision of capitalization companies;

(h) Articles 200 to 209 of the Law on commercial companies, as co-ordinated on 30 November 1935;

(i) Articles 67 to 72 of Royal Decree 225 of 7 January 1936 regulating mortgage loans and organizing the supervision of mortgage loan companies or Article 34 of the Law of 4 August 1992 on mortgage loans;

(j) Articles 4 and 5 of Royal Decree 71 of 30 November 1939 on the peddling of securities and door-to-door sales of securities, merchandise and goods;
(k) Article 31 of Royal Decree 72 of 30 November 1939 regulating the stock exchanges and forward commodities markets, the profession of brokers and intermediaries working on these forward markets, and the non-enforceability of gambling debts;

(l) Article 29 of the Law of 9 July 1957 regulating hire purchase and the financing thereof, or Articles 101 and 102 of the Law of 12 June 1991 on consumer credit;

(m) Article 11 of Royal Decree 64 of 10 November 1967 regulating the status of holding companies;

(n) Articles 53 to 57 of the Law of 9 July 1975 on the supervision of insurance companies;

(o) Articles 11, 15, § 4, and 18 of the Law of 2 March 1989 concerning the disclosure of large shareholdings in companies listed on the stock exchange and regulating takeover bids;

(p) Articles 148 and 149 of the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms, on intermediaries and investment advisers;

3° persons convicted by non-Belgian courts of law of offences similar to those set out in 1° and 2°; Article 2 of the above-mentioned Royal Decree 22 of 24 October 1934 shall apply in such circumstances.

In respect of the persons referred to in paragraph 2, 2°, of this Article, and, for convictions mentioned in paragraph 2, 2°, of the persons referred to in paragraph 2, 3°, the Banking and Finance Commission may authorize dispensations from the prohibitions referred to in paragraph 2.

Subsection V

Organization

Article 20

A credit institution shall have a management structure, administrative and accounting procedures and internal control systems which are appropriate to the activities proposed.

If the credit institution has close links with other natural or legal persons, such links must not hinder prudential supervision of the credit institution at both company and consolidated level.
If the credit institution has close links with other natural or legal persons governed by the law of a non-Member State, the legal, regulatory and administrative provisions applicable to such persons, as well as the implementation of such provisions, must not hinder prudential supervision of the credit institution at both company and consolidated level.

Subsection VI

Head office

Article 21

The credit institution shall maintain its head office in Belgium.

Subsection VII

Deposit guarantee scheme

Article 22

The credit institution shall participate in a collective deposit guarantee scheme in compliance with Article 110 of this Law.

CHAPTER II

Conditions governing the pursuit of the business of credit institutions

SECTION I

Minimum own funds

Article 23

§ 1. A credit institution’s own funds may not fall below the minimum amount of capital required in accordance with Article 16, paragraphs 1 and 3.

Co-operative companies may not redeem shares if, as a result of the redemption, the institution is no longer able to respect the own funds ratios established pursuant to Article 43.

§ 2. If the own funds of the credit institutions already in existence on 1 January 1993 do not attain the minimum level prescribed in Article 16, paragraphs 1 and 3, on that date, the minimum amount required shall always be set at the highest level reached since 31 December 1989.

However,

1° in the event of a change in the control of a credit institution, the own funds shall attain the level prescribed in Article 16, paragraph 1 within three months;
2° in the event of a merger between two or more credit institutions falling within the scope of § 2, paragraph 1, first sentence, the total own funds of the institution resulting from the merger shall at the time of the merger attain the level prescribed in Article 16, paragraph 1. Under the conditions and for the period it establishes, the Banking and Finance Commission may authorize a lower level of own funds which may not, however, be less than the total own funds of the institutions before the merger.

§ 3. If the own funds no longer attain the levels prescribed by § 1, § 2, paragraph 1, or § 2, paragraph 2, 2° respectively, the Banking and Finance Commission may allow a limited period within which the proper level must again be attained.

SECTION II

Changes affecting capital structure

Article 24

§ 1. Without prejudice to Article 17 of this Law and the Law of 2 March 1989 concerning the disclosure of large shareholdings in companies listed on the stock exchange and regulating takeover bids, any natural or legal person who proposes to acquire securities or shares, regardless of whether they confer voting rights or represent capital, of a credit institution governed by Belgian law, in such a way that the proportion of the capital or of the voting rights directly or indirectly held were to reach at least 5%, shall first inform the Banking and Finance Commission of his intention and of the equity stake and the number of voting rights represented by the holding. Any natural or legal person who proposes to increase his holding in such a way that the proportion of the capital or of the voting rights held were to reach or exceed levels of 10%, 15%, 20% and so on, by increments of 5 percentage points, shall likewise inform the Banking and Finance Commission.

Articles 1, § 3, § 4, paragraph 2, and 2 of the above-mentioned Law of 2 March 1989 and their implementing decrees shall apply.

Within a month of this Law coming into force, any natural or legal person holding securities or shares which satisfy the criteria set out in paragraph 1, in a credit institution governed by Belgian law shall inform the Banking and Finance Commission in the manner set out in paragraphs 1 and 2.

§ 2. If the acquirer is a credit institution authorized in another EC Member State or a parent company of a credit institution or a natural or legal person controlling such a credit institution, and if, as a result of that acquisition, the institution in which the acquirer proposes to acquire a holding were to become a subsidiary or subject to the control of that institution, that parent company or that natural or legal person, the Banking and Finance Commission will first consult with the supervisory authority referred to in Article 9 with regard to the acquirer’s identity.
§ 3. The Banking and Finance Commission will have a maximum of three months from the date of receipt of the notification foreseen in § 1, paragraph 1 to object to the proposed acquisition if, in view of the need to ensure sound and prudent management, it is not satisfied as to the suitability of the natural or legal person who made the notification. If it does not object to the plan, it may fix a maximum period for the implementation of the proposed acquisition.

§ 4. Any natural or legal person holding shares in a credit institution representing 5% or more of the capital, or granting at least 5% of the voting rights and who proposes to dispose, directly or indirectly, of all or part of these shares in such a way that his holding would fall below the thresholds referred to in § 1, paragraph 1, shall inform the Banking and Finance Commission at least one month beforehand of the size of the equity stake and the number of voting rights which will be disposed of, and of both the equity stake and the number of voting rights which will remain in his possession after the disposal; insofar as the identity of the acquirer(s) is known to him, he shall inform the Banking and Finance Commission thereof.

§ 5. If the notification prescribed in § 1 is not given or if, despite objection of the Banking and Finance Commission, as provided for in § 3, a holding is acquired or increased, or if a holding is disposed of without notification, as set out in § 4, being made, the President of the Commercial Court, in whose jurisdiction the company has its registered office, may make a temporary injunction order and impose the measures provided for in Article 8, paragraph 1, of the above-mentioned Law of 2 March 1989. He may also overrule all or some of the decisions of any General Meeting which may have taken place in the above-mentioned cases.

Legal proceedings will be initiated by a summons issued by the Banking and Finance Commission. Article 8, paragraphs 4 and 5, of the above-mentioned Law of 2 March 1989 shall apply.

§ 6. Credit institutions shall inform the Banking and Finance Commission, on becoming aware of any acquisitions or disposals of their securities or shares, that cause holdings to exceed or fall below one of the thresholds referred to in § 1, paragraph 1.

They shall also, at least once a year, inform the Banking and Finance Commission of the names of shareholders and members directly or indirectly holding shares representing at least 5% of the capital, or conferring at least 5% of the voting rights, and of the equity stake and number of voting rights held. They shall also inform the Banking and Finance Commission of the number of shares and voting rights attaching to such shares the acquisition or disposal of which was declared to them in accordance with Article 5 of the above-mentioned Law of 2 March 1989 for the cases in which the notification to the Banking and Finance Commission is not prescribed by the articles of association.
§ 7. Where the Banking and Finance Commission has reason to believe that the influence, exercised by natural or legal persons directly or indirectly holding shares in the capital of the credit institution representing at least 5% of the capital or 5% of the voting rights, is likely to operate to the detriment of the sound and prudent management of the credit institution, it may, without prejudice to the other measures foreseen by this Law:

1° suspend the exercise of the voting rights attaching to the shares held by the shareholders or members in question and, at the request of all interested parties, withdraw the measures ordered by the Commission. Its decision will be communicated to the shareholders or members in question in the most appropriate way. Its decision is enforceable as soon as it has been communicated. The Banking and Finance Commission may make its decision public;

2° order the above-mentioned persons to dispose of the shares held within a period it establishes.

If the shares are not disposed of within this period, the Banking and Finance Commission may order the sequestration of the shares at the institution or with the person which it determines. The sequestrator thus appointed will inform the company, which shall adapt its shareholders' register accordingly and accept that the voting rights attaching to the shares be exclusively exercised by the sequestrator, even where no bearer shares are presented. The sequestrator will act for the benefit of the sound and prudent management of a credit institution, and in the interest of the holder of the sequestered shares. It exercises all the rights attaching to the shares. The amounts collected as dividend or otherwise will be remitted to the above-mentioned shareholder. The above-mentioned shareholder’s assent shall be required to subscribe to capital increases or other securities, regardless of whether they confer voting rights, to decide whether or not to accept stock dividends, to respond to takeover bids or exchange bids, and to pay up partly paid shares. The shares acquired pursuant to such transactions shall ipso jure be added to the above-mentioned sequestration. The sequestration charge will be set by the Banking and Finance Commission and paid by the shareholder. The sequestrator may deduct this charge from any amounts received which become part of the sequestration, or from the payments made by the shareholder with a view to or consequent to the above-mentioned transactions.

When voting rights, notwithstanding the suspension of their exercise in accordance with paragraph 1, 1°, have been exercised by the initial shareholder or by a person other than the sequestrator on behalf of the shareholder after the period fixed in accordance with paragraph 1, 2°, first sentence, has expired, the Commercial Court in whose jurisdiction the company has its registered office may, at the Banking and Finance Commission’s request, overrule all or part of the decisions of the General Meeting, if the quorums for attendance or for the majority needed for such decisions would not have been reached without the illegally exercised voting rights.
Article 25

The Banking and Finance Commission will notify the Commission of the European Communities whenever a direct or indirect holding is acquired in a credit institution governed by Belgian law by one or more natural or legal persons governed by the law(s) of one or more non-Member States in such a way that the credit institution would become their subsidiary.

The identity of such natural or legal persons will be given, and the amount of the holding and the financial structure of the group acquiring the holding will be indicated in the notification.

Whenever a plan to acquire a holding referred to in paragraph 1 is submitted to the Banking and Finance Commission, in accordance with Article 24, in the circumstances described in Article 9, (3) and (4), paragraph 1, of Council Directive 89/646/EEC of 15 December 1989, the Banking and Finance Commission will provide the Commission of the European Communities, at its request, with the same notifications and information.

The Banking and Finance Commission will limit or prohibit the acquisition of a holding in the circumstances described in Article 9, (4), paragraphs 2 to 4, of the above-mentioned Council Directive in the manner and for the duration laid down by the Council or Commission of the European Communities pursuant to these provisions.

Where a holding is acquired or increased, despite the measures taken by the Banking and Finance Commission in accordance with paragraph 4, Article 24, § 5 shall apply.

SECTION III

Management and managers

Article 26

The articles of association of credit institutions established as limited liability companies may authorize the Board of Directors to delegate all or some of the powers set out in Article 54, paragraph 1, of the Law on commercial companies to a management committee which exists within the Board, the members of which it nominates and removes, and the remuneration of which it determines.

This delegation of powers may not, however, extend to the definition of the general policy, or to the acts reserved for the Board of Directors by virtue of other provisions of the Law on commercial companies.
Article 27

§ 1. Without prejudice to Article 20, the directors, managers or managing directors of a credit institution and all persons who, in whatever name or capacity, participate in the institution’s administration and management, may, whether or not representing the credit institution, and on the conditions and within the limits set by the present article, act as director or manager of a commercial company, a company having legal commercial form or a company having another Belgian or foreign legal form, or a Belgian or foreign public institution with industrial, commercial or financial activities.

The external functions as referred to in paragraph 1 shall be governed by internal rules that the credit institution is required to adopt and have observed with a view to:

1° avoiding a situation where persons participating in the effective management of the credit institution are no longer adequately available to conduct that management because of their exercise of those functions;

2° preventing conflicts of interest arising at the credit institution, or risks occurring that are linked to the exercise of those functions, more particularly in respect of insider dealing;

3° ensuring adequate disclosure of those functions.

By regulation authorized by the King, the Banking and Finance Commission will determine the manner in which these requirements are to be implemented.

Should the Banking and Finance Commission fail to establish the regulation as mentioned in the preceding paragraph or to amend it in the future, the King may Himself take the initiative to establish or amend it.

§ 3. The company representatives appointed on the proposal of the credit institution shall be persons who participate in the effective management of the credit institution or persons that they designate.

Directors who do not participate in the effective management of the credit institution may act as directors of a company in which the credit institution holds a participating interest only provided they do not participate in the day-to-day management. However, this prohibition shall not apply for a limited period of six years in the case of directors appointed on the occasion of the acquisition of a participating interest or of the takeover of the activities of a company in which those same persons participate in the effective management.

Persons who participate in the effective management of the credit institution shall not hold a mandate that entails participation in the day-to-day management, save in a company as referred to in Article 32, § 4, with which the credit institution has close links, in an investment firm regulated by articles of association, in an investment firm’s management company regulated by contract in the sense of the Law of 4 December 1990 on financial transactions and financial markets, in a family and estate-planning company in which, within the framework of the normal management of their assets, they or their family hold a significant interest or in a company of which they...
are the sole directors and whose activity is restricted to the provision of management services to the above-mentioned companies or to that of a family and estate-planning company

§ 4. With a view to supervision of the observance of the provisions of the present article, credit institutions shall notify the Banking and Finance Commission forthwith of the functions exercised outside the credit institution by persons as referred to in § 1.

1 Mandates that are still current as at 17 August 2002 and whose exercise is contrary to the provisions of Article 27, § 3, paragraphs 2 and 3, of the Law of 22 March 1993 on the legal status and supervision of credit institutions, and of Article 70, § 3, paragraphs 2 and 3, of the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms, on intermediaries and investment advisers may be completed, though without them being able to be exercised after 31 December 2005.

Article 28

Credit institutions may only grant, directly or indirectly, borrowing facilities or guarantees to their directors or managers at the same conditions, for the same amounts and against the same security as those which apply to their customers.

Borrowing facilities and guarantees directly or indirectly granted by such institutions to companies and institutions in which the directors or managers or their spouses personally own, directly or indirectly, a qualifying holding, must be notified to the Banking and Finance Commission in accordance with the timing and in the manner it lays down. If the transactions were not concluded under normal market conditions, the Banking and Finance Commission may demand that the agreed conditions be amended on the date at which the transactions took effect. Otherwise, the managers who took the decision shall be jointly and severally liable for the difference borne by the institution.

Article 29

In the event of the bankruptcy of a credit institution, any payments made by the institution, either in cash or otherwise to the managers or directors in respect of annual fees or other forms of profit sharing, to which entitlement arose within two years preceding the moment established by the Court as to when payments were suspended, shall be considered null and void with regard to the bankrupt institution’s assets.

Paragraph 1 shall not apply if the Court recognizes that no serious and clear errors made by these persons have contributed to the bankruptcy.
SECTION IV

Mergers and transfers
between credit institutions

Article 30

The authorization of the Banking and Finance Commission is required:

1° with regard to mergers between credit institutions or between such institutions and other financial institutions;

2° when all or part of the activities or the network are transferred between credit institutions or between credit institutions and other financial institutions.

The Banking and Finance Commission may only refuse authorization within three months of the notification of the intended transaction, for reasons relating to the sound and prudent management of the credit institution(s) concerned. If the Commission has not acted within the above-mentioned period, the authorization is deemed to have been granted.

Article 31

Any complete or partial transfer of rights and obligations between credit institutions or between credit institutions and other financial institutions, which result from the transactions of the institutions or companies concerned, and, for which authorization was granted in accordance with Article 30, shall be enforceable against third parties as soon as the authorization of the Banking and Finance Commission has been published in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette).

SECTION V

Shareholdings and participating interests

Article 32

§ 1. Credit institutions may have direct or indirect shareholdings, irrespective of their form, in one or more enterprises under the conditions and within the limits established by this Article.

§ 2. For the purposes of this Article, “enterprises” shall mean commercial companies, civil companies having a legal commercial form, joint ownerships, economic interest groupings and European economic interest groupings.

§ 3. Credit institutions may hold in their trading portfolio shareholdings which they have acquired or subscribed to with a view to offering them for resale.

Credit institutions may, for a period not exceeding one year, have shareholdings in one or more joint ownerships established for the public issue of securities within the meaning of Article 26 of Royal Decree 185 of 9 July 1935.
Likewise they may have, for a maximum period of two years, shareholdings in settlement of doubtful or unpaid debts.

§ 4. Credit institutions may have shareholdings in:

1° Belgian or foreign credit institutions;

2° stockbroking firms established according to Belgian law and securities institutions established according to foreign law;

3° Belgian or foreign insurance companies;

4° other Belgian or foreign companies the principal activity of which consists in carrying out financial transactions or providing financial services falling within the activities of credit institutions as described in Article 3, § 2, and in companies established with a view to holding the capital of such companies;

5° Belgian or foreign companies the principal activity of which consists in providing financial services ancillary to the activity of credit institutions.

§ 5. Credit institutions may have shareholdings in cases other than those referred to in §§ 3 and 4, provided that no single shareholding exceeds 10% and that the total amount of all shareholdings does not exceed 35% of own funds. These limits may be increased by Royal Decree, after seeking the opinion of the Banking and Finance Commission, it being understood that a qualifying holding held by a credit institution may never exceed 15% of own funds and the total amount of all shareholdings may never exceed 60% of own funds.

For the purposes of the limits per shareholding established in accordance with paragraph 1, shares issued by companies which, irrespective of their status and legal form, are regarded as constituting a single risk shall be considered one single shareholding; affiliated enterprises shall be regarded as constituting a single risk until evidence to the contrary is furnished.

Without prejudice to paragraph 1, the following shareholdings shall be deducted in full from the own funds for the purposes of Articles 16, paragraph 3, 23 and 43:

(a) shareholdings in companies having a qualifying holding in credit institutions or the subsidiaries thereof;

(b) shareholdings in companies controlled by natural or legal persons having such qualifying holdings.

§ 6. In special cases, the Banking and Finance Commission may authorize shareholdings to be held temporarily, notwithstanding the conditions and restrictions laid down in § 5.
If, as a result of authorizations granted in accordance with paragraph 1 and in cases other than those referred to in §§ 3 and 4, a credit institution has a qualifying holding exceeding the percentage of own funds prescribed in § 5, or if the total amount of such shareholdings exceeds the percentage of own funds prescribed in the same § 5, the excess shall be deducted from the own funds for the purposes of the limits laid down in Articles 16, paragraph 3, 23 and 43. If both above-mentioned limits are exceeded, the highest excess shall be deducted from the own funds.

§ 7. The decrees provided for in this Article shall be implemented after consultation with the credit institutions represented by their professional associations.

§ 8. The provisions of this Article shall not prejudice the regulatory provisions laid down in application of Article 43.

SECTION VI

Use of funds and securities

Article 33

Credit institutions may not use funds and securities deposited with them to exercise a direct or indirect influence on public opinion for their own benefit.

This prohibition shall not apply to public advertising campaigns.

SECTION VII

Opening branches abroad

Article 34

A credit institution wishing to establish a branch within the territory of another EC Member State, in order to exercise all or some of the activities listed in Article 3, § 2, for which it has been granted authorization in Belgium, shall notify its intentions to the Banking and Finance Commission.

This notification shall contain a programme of operations, setting out in particular the types of business proposed, the structural organization of the branch, the correspondence address in the Member State concerned, and the names of the managers of the branch.

The Banking and Finance Commission may object to the establishment of such a branch, stating its reasons for doing so, if the establishment of a branch could impair the organization, financial position or supervision of the credit institution.

The decision of the Banking and Finance Commission must be communicated to the credit institution by registered or recorded delivery letter at the latest within six weeks of receipt of all the information referred to in paragraph 2. If the Commission fails to communicate its decision within this period, it is deemed to have no objection to the establishment of the branch.
The Banking and Finance Commission will inform the Commission of the European Communities, of the number of decisions, with reasons, in respect of which it has made a final decision, pursuant to paragraphs 3 and 5, to object to the proposed opening of a branch in EC Member States, and according to the timing laid down by the Commission of the European Communities.

This Article, with the exception of paragraph 6, shall apply to the opening of branches in non-Member States, whatever activities the branch proposes to carry on.

Article 35

Where the host Member State of the branch is an EC Member State, the Banking and Finance Commission, if it has not objected to the establishment of the branch pursuant to Article 34, paragraph 3, or where its objection has been or should be considered overruled in accordance with Article 34, paragraph 5, will forward to the supervisory authorities of the credit institutions of the State concerned, within three months after having received all the information required pursuant to Article 34, paragraph 2, all such information received, as well as the credit institution’s amount of own funds, its solvency ratio, the identity of its managers, and any terms and conditions of the deposit guarantee scheme, applicable to the credit institution, which is intended to ensure the protection of depositors in the branch.

Article 36

Where the host Member State of the branch is a non-Member State, the Banking and Finance Commission may, in consultation with the supervisory authorities of credit institutions of that State, establish the rules governing the opening and supervision of that branch, in addition to the exchange of information, which it requires, with a view to complying with Articles 95 ff.

Article 37

Any credit institution opening a branch abroad shall communicate all changes in the information provided, pursuant to Article 34, paragraph 2, to the Banking and Finance Commission at least one month before making the change.

Article 34, paragraphs 3 to 5, shall apply should the case arise and Article 35 shall apply in the event of any change to the information referred to in Article 34, paragraph 2, or in the applicable deposit guarantee scheme.
SECTION VIII

Free provision of banking services abroad

Article 38

If a credit institution wishes to exercise, within the territory of another EC Member State, all or part of the activities listed in Article 3, § 2, for which authorization was granted in Belgium, but does not wish to establish a branch, it shall communicate its intention to the Banking and Finance Commission and specify the activities proposed.

Article 39

In the case referred to in Article 38, the Banking and Finance Commission will, within one month of receipt of the notification, send the notification referred to in Article 38 to the supervisory authorities of the credit institutions of the State concerned.

Article 40

[...]

SECTION IX

Exercise of banking activities by specialized subsidiaries of credit institutions in another EC Member State

Article 41

Financial institutions governed by Belgian law which are direct or indirect subsidiaries of one or more credit institutions governed by Belgian law and which are authorized to carry on in Belgium the activities listed in point 2 et seq. of the list set out in Article 3, § 2, may, for the purpose of carrying on such activities, establish branches in other EC Member States according to the rules laid down in Articles 34, 35 and 37, or exercise their activities in such countries without establishing branches according to the rules laid down in Articles 38 and 39, provided they meet the following conditions:

1° the credit institutions which are the parent companies of these financial institutions must be authorized as credit institutions in accordance with this Title;

2° the financial institutions must actually carry on the activities within Belgium;

3° the credit institutions which are the parent companies of these financial institutions must hold at least 90% of the voting rights attaching to the shares of these financial institutions;
4° the parent companies must satisfy the Banking and Finance Commission with regard to the sound and prudent management of the financial institutions;

5° the parent companies must declare, according to the rules adopted by the Banking and Finance Commission, that they jointly and severally guarantee the commitments entered into by the financial institutions;

6° the financial institutions must be effectively included in the consolidated supervision of the parent company, in accordance with Article 49, in particular for the calculation of the solvency ratio, for the control of large exposures and for purposes of the limitation of holdings provided for in Article 32.

Before taking the decision referred to in Article 34, the Banking and Finance Commission will verify compliance with these conditions. For that purpose, it will supply a certificate of compliance which will form part of the notification referred to in Article 35. By way of departure from Article 35, the Banking and Finance Commission will report the amount of own funds of the financial institution concerned and the consolidated solvency ratio of the credit institutions of which the financial institution is a subsidiary.

If the financial institutions referred to in this Article cease to meet any of the above conditions, the Banking and Finance Commission will notify the competent supervisory authorities of the credit institutions of the Member States where such financial institutions are operating through a branch or by way of provision of services.

**Article 42**

The amount of own funds of the financial institutions referred to in Article 41 may not fall below the amount of own funds attained at the time of notification referred to in Article 41, paragraph 2, third sentence.

Articles 20, 24, 46 to 49, 50 to 55, 57, § 1, paragraphs 1 and 2, 1° to 3°, and §§ 2 and 3, 58, 95 to 100, 101, paragraph 1, 102 to 105, fixing the penalties for offences against the foregoing provisions shall apply to such financial institutions.

The financial institutions referred to in this Section will be listed in an Annex to the list of credit institutions referred to in Article 13.
SECTION X

Required ratios

Article 43

Without prejudice to the legal provisions concerning the regulatory measures applicable to credit institutions, which measures are based on monetary considerations, the Banking and Finance Commission may, for the purpose of supervising the solvency and liquidity of such institutions, issue requirements covering all credit institutions or categories of credit institution, after consultation with the National Bank of Belgium and by means of regulations submitted to the approval of the Minister of Finance and the Minister of Economic Affairs, in order to determine the ratios to be observed:

(a) between all or some of their off-balance sheet assets, and all or some of their off-balance sheet liabilities;

(b) between their own funds, and all or some of their off-balance sheet assets and liabilities;

(c) between their own funds, and all or some of their off-balance sheet assets and liabilities receivable from, or due to, the same counterparty, or group of counterparties, which are deemed as constituting a single risk.

The requirements referred to in paragraph 1 may also establish the limits applicable to certain items referred to in (a) to (c).

The items referred to in (a) to (c) of paragraph 1 may be considered by reference to a total amount, to a variation in relation to a reference period, or to both.

Moreover, they may be considered by reference to currency, by type, by category of counterparty, by maturity or to the market, on which the transactions, to which the items relate, are traded.

The requirements laid down in this Article will be issued after consultation with the credit institutions represented by their professional associations.

In special cases, the Banking and Finance Commission may authorize dispensations from these requirements.
SECTION XI

Periodic information and accounting rules

Article 44

Credit institutions shall periodically submit a detailed statement to the National Bank of Belgium and to the Banking and Finance Commission. The statement shall be drawn up in accordance with the rules laid down in consultation with the National Bank of Belgium by the Banking and Finance Commission, which will also determine its frequency. Moreover, the Commission may order the regular transmission of any other figures or explanations which may be required to ascertain that the provisions of this Law or its implementing decrees or rules have been complied with.

Credit institutions shall file their annual accounts with the National Bank of Belgium.

The King will determine, after the Banking and Finance Commission and the National Bank of Belgium have given their opinion:

1° the rules according to which credit institutions are required to maintain accounting systems, carry out valuations of the inventory of their business and prepare their annual accounts;

2° the rules according to which credit institutions are required to prepare, supervise and publish their consolidated annual accounts, and prepare and publish their annual and supervisory reports with regard to the consolidated accounts.

The Banking and Finance Commission may, for certain categories of credit institution or in special cases, authorize dispensations from the decrees and rules referred to in paragraphs 1 and 3.

The dispensations authorized for certain categories of credit institution are granted after consultation with the National Bank of Belgium.

The decrees and rules referred to in this Article will be issued after consultation with the credit institutions represented by their professional associations.

Article 45

The National Bank of Belgium will publish periodically and at least four times a year, a global statement of credit institutions according to the rules laid down by the Banking and Finance Commission after consultation with the National Bank and the credit institutions represented by their professional associations. This statement may be sub-divided according to the categories of institution referred to in Article 13.
CHAPTER III

Supervision of credit institutions

SECTION I

Supervision by the Banking and Finance Commission

Article 46

Credit institutions are subject to supervision by the Banking and Finance Commission.

The Banking and Finance Commission may request information to be provided on their financial position, their transactions, the manner in which they are organized and the way in which they function.

The Banking and Finance Commission may carry out on-the-spot inspections, and inspect and copy, at the firm's premises, any information in the institution’s possession in order to:

1° ascertain that the laws and regulations governing the status of credit institutions are complied with, and that the accounting system, the annual accounts, the statements and other information supplied by the institution reflect a true and fair view;

2° ascertain that the institution’s management structure, administrative and accounting procedures and internal control systems are appropriate;

3° satisfy itself that the management policy of the institution is sound and prudent, and that its position or transactions are not likely to operate to the detriment of its liquidity, profitability or solvency.

Article 47

The Banking and Finance Commission will not interfere in the relationship between a credit institution and a given customer unless required to do so for the purposes of supervising the institution.

Article 48

Provided that it first informs the competent national supervisory authorities, the Banking and Finance Commission may carry out, at the premises of the branches of credit institutions governed by Belgian law, which are established in another EC Member State, the inspections referred to in Article 46, paragraph 3, in addition to on-the-spot inspections necessary to collect or verify all information on the management policy and administration of the branch and any information which may facilitate the supervision of the credit institution, especially with regard to liquidity, solvency, deposit guarantee schemes, limitation of large exposures, administrative and accounting procedures and internal control systems.
The Commission may, for the same reasons, and after having informed the supervisory authorities, referred to in paragraph 1, appoint an expert to carry out any verification and investigation work deemed necessary. The fees and any other expenses incurred by the expert shall be borne by the institution.

The Commission may also ask the authorities concerned to carry out any of the verification and investigation work referred to in paragraph 1.

**Article 49**

§ 1. For the purposes of this Article,

1° “exclusive or joint control” and “consortium” shall be defined with reference to the rules governing annual accounts and consolidated annual accounts issued for the implementation of Article 44, paragraph 3;

2° “financial holding company” shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, with at least one of those subsidiaries being a credit institution.

§ 2. If a credit institution is a parent company, the credit institution and its Belgian and foreign subsidiaries will be subject to supervision on a consolidated basis by the Banking and Finance Commission.

Supervision on a consolidated basis will relate to its financial position, the limits and conditions laid down in Article 32, the management policy, the organization and the internal control systems of the consolidated entity, and the influence of the consolidated companies on other companies. The King may extend the supervision on a consolidated basis to other areas referred to in the EC Directives.

The ratios and limits laid down in paragraphs 1 to 3 of Article 43 may be applied on the basis of the consolidated position of the credit institution and its subsidiaries.

[…]

The Banking and Finance Commission may, where it deems it appropriate for prudential supervision, require that companies which are not subsidiaries, but in which the credit institution has a participating interest, or with which it has another equity link, be included in the consolidation.
The Banking and Finance Commission may prescribe or require that the credit institutions concerned, their subsidiaries, and other consolidated companies, supply all information relevant for the exercise of supervision on a consolidated basis. In this regard, the Banking and Finance Commission may verify the information received at the premises of all consolidated companies, or have such verifications carried out by accredited auditors or, where appropriate, by foreign experts accredited by the Commission for that purpose, the costs of whom will be borne by the credit institutions concerned. The Banking and Finance Commission may carry out verification procedures, or have them carried out, at the premises of a company established in another EC Member State, only if it has informed the supervisory authorities of that Member State beforehand, and if those authorities are not carrying out such verification procedures themselves, or having an auditor or an expert carry them out.

[...]

Supervision on a consolidated basis does not imply that the Banking and Finance Commission supervises each consolidated company individually.

Supervision on a consolidated basis does not affect supervision of the consolidated credit institutions on an individual company basis. Nevertheless, the impact of supervision at a consolidated level may be taken into account when determining the scope of and procedures for supervision at the individual company level, or at a sub-consolidation level, of a credit institution which is a subsidiary of another credit institution.

The King may determine under which conditions Belgian companies included in the consolidation of a foreign credit institution may be required to provide information to foreign authorities responsible for the supervision on a consolidated basis of the foreign credit institution, and under which conditions on-the-spot verification of the information provided may be carried out by the authorities themselves or by auditors or experts authorized by them to do so.

[...]

§ 3. A credit institution, which forms a consortium with one or more companies, shall be subject to supervision on a consolidated basis, which shall include all companies in the consortium and their subsidiaries.

The provisions of § 2 shall apply.

§ 4. All credit institutions, whose parent company is a Belgian or foreign financial holding company, shall be subject to supervision on the basis of the financial holding company’s consolidated financial position. This supervision covers the areas referred to in paragraphs 2 and 3 of § 2. The King may define, change and extend supervision procedures, indicating any other provisions of this Law which may apply to the financial holding companies.
§ 5. Companies which are neither credit institutions nor financial holding companies, and which control a credit institution singly or jointly with one or more other companies, in addition to the subsidiaries of such controlling companies, shall submit to the Banking and Finance Commission and the competent foreign authorities all information and data deemed relevant for the exercise of supervision of the credit institutions controlled by these companies.

The same obligation to provide information shall apply to companies which, although subsidiaries of a credit institution or a financial holding company, are not subject to supervision on a consolidated basis. Where the subsidiary concerned is itself a credit institution, the Banking and Finance Commission, or the foreign authorities responsible for the supervision of that subsidiary, may require that the parent credit institution or the parent financial holding company submit all information and data deemed relevant for the exercise of supervision of the subsidiary concerned.

The King will determine

(a) the conditions and procedures to comply with the obligations resulting from paragraphs 1 and 2 and with the on-the-spot verifications of the information and data referred to therein;

(b) without prejudice to Article 104, which of those sanctions set out in Title VIII shall apply where companies, foreseen in paragraphs 1 and 2 fail to meet their obligations.

§ 6. Moreover, the King will establish rules for supervision on a consolidated basis in accordance with the provisions of Directive 92/30/EEC of 6 April 1992.

§ 7. The Banking and Finance Commission may, in special cases, authorize dispensations from the decrees and rules instituted by virtue of this Article.

SECTION II

Auditing

Article 50

For credit institutions governed by Belgian law, the function of statutory auditor, foreseen in the Law on commercial companies, may only be entrusted to one or more auditors or audit firms accredited by the Banking and Finance Commission in accordance with Article 52.

For credit institutions which are not required to have statutory auditors under the Law on commercial companies, the General Meeting shall appoint one or more auditors or audit firms accredited in the manner described in paragraph 1. They shall exercise the function and have the title of statutory auditor. The provisions of the Law on commercial companies, with regard to the statutory auditors of limited liability companies, shall apply to the appointment and the function of the statutory auditor in such cases. When applying the Law on commercial companies with regard to the above provisions, the General Meeting of members shall replace the General Meeting
of shareholders in companies where no General Meeting of shareholders is required by law.

Credit institutions may appoint substitute statutory auditors who exercise the statutory audit function in the event of long-term incapacity of the statutory auditor. The provisions of this Article and of Article 51 shall apply to these substitutes.

The accredited statutory auditors, appointed in accordance with this Article, shall certify the credit institution’s consolidated annual accounts.

**Article 51**

Accredited audit firms shall exercise the statutory audit function, referred to in Article 50, through an accredited auditor appointed by them and in accordance with Article 33, § 2, of the Law of 22 July 1953. The provisions of this Law and its implementing decrees with regard to the appointment, function, duties and prohibitions applicable to statutory auditors, and with regard to the sanctions, other than penal sanctions, applicable to auditors, shall apply to both the audit firms and to the accredited auditors representing them.

An accredited audit firm may appoint a substitute representative from among its partners who meet the appointment conditions.

**Article 52**

The Banking and Finance Commission establishes the rules governing the accreditation of auditors and audit firms, with the approval of the Minister of Finance and the Minister of Economic Affairs.

The rules governing accreditation are issued after consultation with the accredited auditors represented by their professional association.

The “Institut des réviseurs d’entreprises/Instituut der Bedrijfsrevisoren” will inform the Banking and Finance Commission, indicating its reasons for doing so, whenever a disciplinary procedure is instituted against an accredited auditor or an accredited audit firm for any omission in the exercise of his or its function within a credit institution, and whenever a disciplinary measure is taken against an accredited auditor or an accredited audit firm.

**Article 53**

The appointment of accredited statutory auditors and substitute accredited statutory auditors to credit institutions is subject to the prior approval of the Banking and Finance Commission. This approval shall be applied for by the management body proposing the appointment. Where an accredited audit firm is appointed, the approval applies to both the firm and its representative.

The renewal of the mandate shall also be subject to approval.
If, pursuant to the Law, the President of the Commercial Court or of the Court of Appeal nominates the statutory auditor, he will choose from a list of accredited auditors approved by the Banking and Finance Commission.

**Article 54**

The Banking and Finance Commission may at any time revoke the approval given to an accredited statutory auditor, a substitute accredited statutory auditor, an accredited audit firm or a representative or substitute representative in accordance with Article 53, detailing the reasons based on their legal status or on the exercise of their functions as an accredited auditor or an accredited audit firm as provided for in or pursuant to this Law. This revoking of this approval terminates the mandate of the statutory auditor.

If an accredited statutory auditor resigns, the Banking and Finance Commission and the credit institution shall be informed in advance of the resignation and the reasons therefor.

The accreditation rules set out the procedure to be followed.

In the absence of a substitute accredited statutory auditor, or a substitute representative of an accredited firm, the credit institution or the accredited audit firm shall provide a replacement within two months in compliance with Article 53. The proposal to revoke the mandate of an accredited statutory auditor of a credit institution, as foreseen by Article 64quater and 64quinquies of the Law on commercial companies, shall first be submitted to the Banking and Finance Commission for its opinion. This opinion is communicated to the General Meeting.

**Article 55**

The accredited statutory auditors shall collaborate with the Banking and Finance Commission in its supervision on their own personal and exclusive responsibility, and in accordance with this Article, their professional standards and the instructions of the Banking and Finance Commission. To this end, they shall:

1° ascertain that credit institutions have adopted such measures as may be required for their administrative and accounting organization and internal control systems to comply with the laws, decrees and regulations governing the legal status of credit institutions;

2° confirm to the Banking and Finance Commission that the periodic returns provided by the credit institutions at the end of the first six months, and at the end of the financial period, are complete, correct and drawn up according to the applicable rules;

3° report periodically to the Banking and Finance Commission or, at its request, submit special reports on the credit institution’s organization, activities and financial structure;
4° on their own initiative, to report to the Banking and Finance Commission within the framework of their function at the credit institution or of an audit task at an enterprise linked to the credit institution, where

(a) decisions, facts or developments have come to their attention which have, or may have, a significant influence on the credit institution’s financial position, its administrative and accounting organization or internal control systems;

(b) decisions or facts have come to their attention which may be in violation of the Law on commercial companies, the institution’s articles of association, this Law and its implementing decrees and regulations;

(c) other decisions or facts have come to their attention which may lead to a refusal to certify the accounts, or to reservations regarding the certification of the accounts.

No civil, criminal or disciplinary action shall be taken or any professional sanction be pronounced against accredited statutory auditors who have communicated in good faith such information as referred to in paragraph 1, 4°.

The accredited statutory auditors shall transmit to the credit institution’s management all reports sent to the Banking and Finance Commission in accordance with paragraph 1, 3°. These reports shall be subject to the conditions of professional secrecy indicated in Article 40 of Royal Decree 185 of 9 July 1935. They shall send the Commission a copy of any reports addressed to the credit institution’s management which are relevant to the Commission’s supervisory task.

The accredited statutory auditors and the accredited audit firms may carry out on-the-spot verification and investigations, in the context of their mandate, at foreign branches of the credit institution to which they have been appointed.

The Banking and Finance Commission may direct them, at the request of the National Bank of Belgium or of the European Central Bank to certify that the information, which credit institutions are required to disclose to the authorities, is complete, correct and drawn up according to the applicable rules.

CHAPTER IV
Withdrawal of authorization and exceptional measures

Article 56

The Banking and Finance Commission shall communicate its decision, by registered or recorded delivery letter, to withdraw authorization from credit institutions which have not commenced activities within twelve months of being authorized, which give up their authorization or which have ceased to carry on their activities.

[...]
Article 57

§ 1. If the Banking and Finance Commission finds that a credit institution is not operating in accordance with the provisions of this Law and its implementing decrees and regulations, that its management policy or its financial position is likely to prevent it from honouring its commitments or does not offer sufficient guarantees for its solvency, liquidity or profitability, or that its management structure, administrative and accounting procedures or internal control systems present serious deficiencies, it will determine the deadline within which the situation must be rectified.

If the situation has not been rectified by the deadline, the Banking and Finance Commission may

1° appoint a special inspector.

In this case, the special inspector’s general or special authorization shall be required in writing for all acts and decisions taken by all decision-making bodies within the credit institution, including the General Meeting, and by all persons with managerial responsibilities; the Banking and Finance Commission may, however, limit the activities for which the special inspector’s authorization is required.

The special inspector may submit for decision any proposals, which he deems useful for making a decision, to any decision-making body in the institution, including the General Meeting. Remuneration for the services of the special inspector is set by the Banking and Finance Commission, and borne by the credit institution.

Members of decision-making and management bodies and persons with managerial responsibilities, who carry out acts or take decisions without the special inspector’s authorization, shall be jointly and severally liable for any subsequent damage suffered by the institution or by third parties.

Once the Banking and Finance Commission has published the appointment of a special inspector in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette), and specified the acts and decisions to be submitted to his authorization, all acts carried out and all decisions taken without the special inspector’s authorization shall be null and void, unless ratified by him. All decisions taken by the General Meeting under the same conditions without the special inspector’s authorization shall be null and void, unless ratified by him.

The Banking and Finance Commission may appoint a substitute inspector.

2° suspend, for the period determined by the Commission, the direct or indirect exercise of all or part of a credit institution’s activities or prohibit these activities altogether.

Any members of decision-making and management bodies and persons with managerial responsibilities, who carry out acts or take decisions in violation of a suspension measure shall be jointly and severally liable for any subsequent damage suffered by the institution or by third parties.
Once the Banking and Finance Commission has published the suspension in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette), all acts carried out and all decisions taken in disregard of this suspension shall be deemed null and void.

The Banking and Finance Commission may also direct a credit institution to dispose of participating interests which it owns, in accordance with Article 32, §§ 4 and 5; Article 24, § 7, 2°, shall apply.

3° order the institution’s managers or directors to be replaced within a period determined by the Commission, failing which, replace the institution’s decision-making or management bodies with one or more temporary managers or directors who will, individually or jointly where applicable, have the same powers as those replaced. The Banking and Finance Commission will publish its decision in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette).

The remuneration for the services of the temporary manager(s) or director(s) is set by the Banking and Finance Commission, and borne by the credit institution.

The Banking and Finance Commission may at any time replace the temporary manager(s) or director(s), either automatically, or at the request of a majority of shareholders or members, if they can show that the management policy no longer offers the necessary guarantees.

4° revoke the authorization.

§ 2. The decisions of the Banking and Finance Commission referred to in § 1 will become effective, for the institution, from the date of notification to the institution by registered or recorded delivery letter, and, for third parties, from the date of publication in accordance with the provisions of § 1.

[...]

§ 3. § 1, paragraphs 1 and 2, 2°, and § 2 shall apply where the Banking and Finance Commission has knowledge that a credit institution has put into place a scheme designed to facilitate tax fraud by third parties.

§ 4. § 1, paragraphs 1 and 2, 2°, and § 2 shall apply to credit institutions which fail to comply with the rules applicable to securities transactions as set out in Articles 22 to 27 of the Law of 4 December 1990 on financial transactions and financial markets.

§ 5. § 1, paragraph 1, and § 2 shall not apply in the event of withdrawal of the authorization of a credit institution which has been declared bankrupt.

§ 6. At the request of any interested party the Commercial Court shall annul the acts and decisions in the manner provided for in § 1, paragraph 2, 1° and 2°.
Annulment of acts and decisions is directed against the institution. If there are serious grounds for doing so, the interested party may apply for a temporary injunction to suspend the disputed acts or decisions. The injunction and the ruling to annul such acts or decisions are effective against all parties. Where the suspended or invalidated act or decision has been published, the injunction and the ruling to annul such acts and decisions are also published in the form of extracts from the ruling.

Where the annulment of acts and decisions is likely to have an adverse effect on rights acquired in good faith by a third party against the institution, the Court may declare the annulment to be overruled with respect to the rights concerned, subject to the interested parties’ right to demand damages, as appropriate.

Such annulment actions may not be introduced after the expiry of a six-month period starting from the date on which the disputed acts or decisions become enforceable against the applicant, or on which he becomes aware of them.

**Article 58**

Where the Banking and Finance Commission is informed by the supervisory authorities of credit institutions of another EC Member State, in whose territory, within the framework of provision of services, a credit institution governed by Belgian law has a branch or carries on any banking activities listed in Article 3, § 2 that there have been violations of the legal, regulatory or administrative provisions adopted in that State pursuant to the provisions of Council Directive 89/646/EEC of 15 December 1989 and supervised by the above-mentioned authorities, the Commission will immediately take the corrective measures provided for in Article 57, § 1. The Commission will communicate the nature of the measures to the authorities concerned. Article 57, § 2 shall apply.

**Article 59**

The Banking and Finance Commission will immediately communicate its decisions, taken in accordance with Articles 56 and 57 to the supervisory authorities of credit institutions of other EC Member States in whose territory, within the framework of provision of services, a credit institution governed by Belgian law has a branch or carries on any banking activities listed in Article 3, § 2. It will keep the supervisory authorities informed of the status of appeals lodged against these decisions in accordance with Articles 56, paragraph 2, and 57, § 2.

**Article 60**

Credit institutions, whose authorization has been withdrawn or revoked pursuant to Articles 56 and 57, remain subject to this Law and its implementing decrees and regulations until such time as the funds collected from the public have been reimbursed, unless the Banking and Finance Commission discharges them from specific requirements.

This Article shall not apply where the authorization of a credit institution which has been declared bankrupt has been revoked.
CHAPTER V

Federations of credit institutions

Article 61

§ 1. This Article refers to credit institutions which carry on their activities under the following conditions:

1° they are permanently affiliated to a central organization subject to the provisions of Chapters 1 to 4 or 6 of this Title, with which central organization they form a federation pursuant to the affiliation rules approved by the Banking and Finance Commission;

2° the commitments of the affiliated institutions and the central organization are considered joint and several commitments;

3° the transactions and the organization of the affiliated institutions are subject to the uniform internal rules of the federation;

4° the central organization directly supervises the affiliated institutions and is empowered to direct them with regard to their management policy, transactions and organization.

§ 2. Without prejudice to the other provisions of this Title and of Titles V, VI, VIII and IX, the following provisions shall apply to the credit institutions referred to in § 1:

1° authorization shall be granted after the central organization has informed the Banking and Finance Commission that the institution meets the affiliation conditions and the conditions referred to in § 1 of this Article. The affiliated institutions must disclose their affiliation in their articles of association, shares, securities, documents, correspondence and advertising. The authorization shall lapse when the affiliation terminates in accordance with the rules applicable to the federation; the federation must inform the Banking and Finance Commission at least one month in advance and the Commission may order any measures deemed necessary to protect the rights of creditors. The authorizations granted need not be published in the list of credit institutions;

2° the minimum amount of capital laid down by Article 16 is required on the basis of the overall financial position of the central organization and its affiliated institutions;

3° Article 18 shall not apply to the managers of affiliated institutions;

4° Article 23 shall be applied on the basis of the overall financial position of the central organization and its affiliated institutions;

5° Article 27 shall only apply to the persons who actually manage the affiliated institutions;
6° Article 28 shall be extended to affiliated institutions in respect of the granting of borrowing facilities and guarantees to directors and managers of the central organization; it shall not apply to the granting of borrowing facilities and guarantees by the central organization or another affiliated institution to managers of affiliated institutions who do not participate in their daily management, provided that such borrowing facilities and guarantees meet the conditions laid down in the rules applicable to the federation and approved by the Banking and Finance Commission;

7° [...];

8° Article 32 shall be applied on the basis of the overall financial position of the central organization and its affiliated institutions;

9° the regulations established pursuant to Article 43 shall be applied on the basis of the overall financial position of the central organization and its affiliated institutions;

10° without prejudice to the central organization’s compliance with the relevant applicable provisions, paragraphs 1 and 2 of Article 44 and Article 45, setting out notification and publication requirements, shall be applied on the basis of the overall financial position of the central organization and the affiliated institutions;

11° by way of departure from Articles 46, 56 and 57, the central organization shall be answerable for compliance by the affiliated institutions with the provisions of this Title and its implementing provisions; it shall also be answerable for their policy, administrative and accounting organization, and internal control system;

12° section 2 of chapter 3 of this Title does not apply to each separate affiliated institution. The mandate and duties of the central organization’s accredited statutory auditors shall be conducted by reference to the overall financial position and functioning of the federation. The statutory auditors may carry out such inspections as they consider necessary at the premises of the affiliated institutions. They will report to the decision-making bodies of the central organization. The affiliated institutions may neither grant borrowing facilities or guarantees to these accredited statutory auditors, nor grant them any remuneration or benefits;

13° the central organization’s accredited statutory auditors shall have the same duties with regard to the federation’s integrated periodic returns and annual accounts as with regard to the central organization’s periodic returns and annual accounts;
14° by way of departure from Article 64, § 1, and Article 147octies, § 1, of the Law on commercial companies, affiliated institutions incorporated as co-operative companies, regardless of their size, need not appoint statutory auditors. If they do not appoint an auditor, Articles 64, § 2, and 147octies, § 2, of the Law on commercial companies shall apply. Such affiliated institutions are not required to file individual annual accounts as prescribed in Article 44, paragraph 2. However, the members of these affiliated institutions and all interested parties have the right to consult the most recent annual accounts at the premises of the affiliated institutions;

15° by way of departure from Article 4, paragraph 2, of the Law on commercial companies, affiliated institutions incorporated as limited liability co-operative companies may be established by special public or private deed. The deeds amending the articles of association may also be special public or private deeds, regardless of the form of deed of incorporation.

Article 61bis

The “caisses de crédit/kredietkassen” accredited by the “Institut national de Crédit agricole/Nationale Kas voor Landbouwkrediet” form, together with the latter, a federation of credit institutions within the meaning of Article 61. The board of directors of “Crédit agricole S.A./Landbouwkrediet N.V.” decides on the accreditation of a “caisse de crédit/kredietkas” if it fulfills the conditions provided for in the affiliation rules adopted by the Board of Directors in accordance with Article 61, § 1, 1°.

The management committee establishes the uniform internal rules of the federation of credit institutions, in accordance with Article 61, § 1, 3°, and exercises with regard to these “caisses de crédit/kredietkassen”, the powers referred to in Article 61, § 1, 4°.

Article 61ter

§ 1. The affiliation rules of the federation referred to in Article 61bis shall include the necessary provisions for the enforcement and implementation of Article 61. Without prejudice to the powers entrusted to the Banking and Finance Commission by virtue of Article 61, §2, 1°, the relinquishment of the accreditation or the cessation of any banking activity may not be subject to any conditions other than compliance with a period of notice that expires on 31 December of the year that follows the notification, to the central organization, of the relinquishment or of the cessation of deposit-taking and credit-granting activities. However, the board of directors of “Crédit agricole S.A./Landbouwkrediet N.V.” shall be able to authorize, through a reasoned decision, an earlier date for the relinquishment of the accreditation or the voluntary cessation of deposit-taking and credit-granting activities to come into effect.
§ 2. The accredited “caisses de crédit/kredietkassen” may acquire, on their own or with third parties, control of the central organization. An accredited “caisse de crédit/kredietkas” may not acquire the exclusive control or joint control of the central organization without having previously proposed to the other “caisses de crédit/kredietkassen” to participate in the control proportionally to the following accounting captions recorded on 31 December 1993 after appropriation of the results, and as defined by the regulations on the annual accounts of credit institutions: reserves, revaluation surpluses, any contingency fund for possible future risks and profits or losses brought forward;

CHAPTER VI

Public credit institutions

Article 62

Without prejudice to the legal provisions and the articles of association regulating their organization, activity and administrative supervision, the following institutions are subject to this Law, within the limits laid down in Article 63:

1° the following public credit institutions: [...], [...], [...], [...], [...] and [...];

2° any public credit institutions not referred to under 1° which may be established on the initiative of or with the support of the Belgian authorities.

Article 63

The following Articles shall apply to the public credit institutions referred to in Article 62:

1° Articles 7, 10, 11, 13;

2° Articles 15 to 26, 27, § 4, 28, 30 to 42;

3° Article 43; if a public credit institution subject to the requirements referred to in Article 43 concludes a management agreement with the Belgian State as laid down in Articles 75 ff. of the Royal Decree on the coordination of legal and regulatory provisions relating to the organization of the public credit sector and of the public sector’s shareholdings in certain private financial companies, the Minister of Finance will consult the Minister who concluded such agreement before approving the requirements under Article 43 insofar as they contain specific provisions applicable to the public credit institutions involved;

4° Articles 44 to 61;

5° Articles 85 to 94 and 102 to 110.
CHAPTER VII

Communal savings banks

Article 64

The communal savings banks referred to in Article 124 of the new communal law and which were in existence on 1 January 1932 are subject to the following rules:

1° their activity must consist in collecting deposits, other than sight deposits, in euro and investing them in euro with other credit institutions established in Belgium or governed by the law of an EC Member State or in securities in euro evidencing the receipt of repayable funds and issued or guaranteed by the Communities, the Regions, international organizations of which Belgium is a member, EC Member States and credit institutions established in Belgium or governed by the law of an EC Member State;

2° they must be incorporated in such a way that their own equity capital and management is kept strictly separate from the equity capital and management of the commune to which they belong;

3° they must be subject to Articles 13, 18 to 20, 23, § 2, paragraphs 1 and 2, and § 3, 27 to 31, 33, 43, 44, paragraphs 1, 2, 3, 1°, 4 and 5, 45, 46 and 47;

4° they must appoint an accredited statutory auditor or an accredited audit firm, pursuant to Article 52; Articles 50, paragraph 3, 51, 52, 53, 54, paragraphs 1 to 3, and 55 shall apply;

5° Articles 57, §§ 1 to 4, 85 to 94, 102 to 110 shall apply.
TITLE III

THE OPERATION OF BRANCHES AND THE PROVISION OF SERVICES IN BELGIUM BY CREDIT INSTITUTIONS GOVERNED BY THE LAW OF ANOTHER EC MEMBER STATE

CHAPTER I

Authorization for taking up the business of credit institutions

Article 65

A credit institution governed by the law of another EC Member State, and authorized pursuant to the law of that State to carry on any banking activities listed in Article 3, § 2, in its home Member State, may carry on its activities by the establishment of a branch, provided that the Banking and Finance Commission has notified it of its registration as a branch of a European Community credit institution by registered or recorded delivery letter.

Notification of registration shall be effected within a maximum of two months of submission of the information specified in the relevant European Community legislation by the supervisory authorities of the credit institutions of the home Member States. If notification is not forthcoming within this period, the credit institution may open the branch and carry on the above-mentioned activities after having informed the Banking and Finance Commission accordingly.

The Banking and Finance Commission will publish a list of registered branches and all changes which have occurred during the year in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette).

Article 66

A credit institution governed by the law of another EC Member State, and authorized pursuant to the law of that State to carry on any banking activities listed in Article 3, § 2, in its home Member State, may carry on its activities in Belgium by way of the provision of services, provided that the Banking and Finance Commission has informed it that the supervisory authorities of the home Member State have communicated the activities listed in Article 3, § 2 which it intends to carry on in Belgium. The Banking and Finance Commission will notify the institution concerned within three working days of receipt of communication of the activities concerned. If notification is not forthcoming within this period, it may carry on the proposed activities after having informed the Banking and Finance Commission accordingly. The Banking and Finance Commission will publish a list of institutions which take deposits and other repayable funds from the public in Belgium and all changes which have occurred during the year in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette).
Article 67

When carrying on their activities in Belgium, the credit institutions referred to in Articles 65 and 66 shall mention their home Member State and, in the case referred to in Article 66, their registered office alongside their name.

CHAPTER II

Obligations and prohibitions

Article 68

The branches referred to in Article 65 shall be subject to the same obligations and prohibitions with regard to liquidity as credit institutions governed by Belgian law, within the limits laid down by the Banking and Finance Commission, after consultation with the National Bank of Belgium.

Article 69

These branches shall be subject to the laws and regulations on internal and external monetary policy which are applicable to credit institutions governed by Belgian law, without prejudice to the right of the authorities implementing or applying these provisions to impose special requirements which are adapted to the nature of these branches and their activities.

Article 70

The provisions of this Title shall not detract from the obligation incumbent upon credit institutions exercising the activities listed in Article 3, § 2 to comply with the laws and regulations applicable in Belgium to such institutions and their transactions in the interest of the general good.

The Banking and Finance Commission will inform the credit institutions referred to in Article 65 of the provisions which in its opinion protect the general good.

The provisions of this Title shall not detract from the obligation to comply with the laws and regulations applicable in Belgium to activities other than those listed in Article 3, § 2.
CHAPTER III

Reporting requirements and accounting rules

Article 71

The credit institutions referred to in Article 65 shall submit periodic returns for statistical purposes to the Banking and Finance Commission on the transactions they carry out in Belgium via branches established there, according to the format and frequency laid down by the Commission after consultation with the National Bank of Belgium.

The Banking and Finance Commission may require the branches referred to in Article 65 to provide the same information both to it and to the National Bank of Belgium as is required from credit institutions governed by Belgian law, concerning aspects of the branches for which the Commission is competent, according to the format and frequency laid down by the Commission after consultation with the National Bank of Belgium.

The branches referred to in Article 65 may also be obliged to provide the National Bank of Belgium with the same information as is required from credit institutions governed by Belgian law.

Article 72

The King will determine, after consultation with the Banking and Finance Commission and the National Bank of Belgium, the rules on the basis of which the branches referred to in Article 65 must:

1° maintain an accounting system and carry out valuations of the inventory of their business;

2° prepare their annual accounts;

3° prepare annual accounting information with regard to their operations.

CHAPTER IV

Supervision of branches

Article 73

§ 1. The branches referred to in Article 65 shall be subject to supervision by the Banking and Finance Commission with regard to the provisions of Articles 68, 70, 71 and 72, inasmuch as the matters referred to therein fall within the competence of the Banking and Finance Commission. Articles 46 and 47 shall apply accordingly.
In order to assist the supervisory authorities of the credit institution’s home Member State, the Banking and Finance Commission may, at their request, agree to carry out inspections at the premises of branches, inasmuch as they concern matters referred to in paragraph 1 and in Article 48, paragraph 1.

Provided that the supervisory authorities of the credit institution’s home Member State are immediately informed, the Banking and Finance Commission may in the event of emergency verify that the activities of the Belgian branch comply with the relevant applicable regulations and the principles of sound administrative and accounting procedures and adequate internal control.

The costs of the inspections referred to in paragraph 2 shall be borne by the requesting authorities.

§ 2. Foreign authorities in charge of the supervision of credit institutions which have established a branch in Belgium as referred to in Article 65 may themselves, or through the intermediary of experts appointed for that purpose, verify at the premises of branches, at their own expense, the information referred to in Article 48, paragraph 1, after having first informed the Banking and Finance Commission.

Article 74

§ 1. The managers of the branches referred to in Article 65 shall appoint one or more auditors or audit firms accredited by the Banking and Finance Commission, such appointment to be for a renewable term of office of three years.

Articles 53 and 54, paragraphs 1 to 4, shall apply to these auditors and audit firms. The prior opinion of the Banking and Finance Commission is required before an accredited auditor or accredited audit firm is dismissed.

§ 2. The accredited auditors or audit firms appointed in accordance with § 1 shall collaborate with the Banking and Finance Commission in its supervision on their own personal and exclusive responsibility, and in accordance with this paragraph, their professional standards and the instructions of the Banking and Finance Commission. To this end:

1° they shall ascertain that the branches have adopted such measures as may be required for their administrative and accounting organization and internal control systems to comply with the laws, decrees and regulations applicable to branches pursuant to Articles 68, 69, 71 and 72;
2° they shall confirm to the Banking and Finance Commission that the periodic statistical returns referred to in Article 71, as provided to the Commission at the end of the first six months and at the end of the financial period, are complete, correct and drawn up according to the applicable rules, as is the other information which the Banking and Finance Commission requires branches to provide. They may be required by the Banking and Finance Commission, at the request of the National Bank of Belgium or the European Central Bank, to confirm the information which the branches have provided to these authorities under Articles 69 and 71;

3° they shall report periodically to the Banking and Finance Commission or, at its request, submit special reports on the organization, activities and financial structure of the branches with reference to those aspects for which the Commission is competent;

4° they shall take the initiative to report to the Banking and Finance Commission with reference to those aspects for which the Commission is competent and within the framework of the collaboration with the head office’s supervisory authorities, where:

(a) decisions, facts or developments have come to their attention which have or may have a significant influence on the branch’s financial position, administrative and accounting organization or internal control systems;

(b) decisions or facts have come to their attention which may be in violation of the provisions of this Law and of its implementing decrees and regulations or of other laws and regulations applicable to their activity in Belgium, insofar as the matters referred to in these provisions are the responsibility of the Banking and Finance Commission;

5° they may be requested by the Banking and Finance Commission to submit a report on any violation of legislation protecting the general good applicable to branches notified by another Belgian authority.

No civil, criminal or disciplinary action shall be taken nor any professional sanction be decided against accredited auditors who have communicated in good faith such information as referred to in paragraph 1, 4°.

They shall transmit to the credit institution’s managers all reports sent to the Banking and Finance Commission in accordance with paragraph 1, 3°. These reports shall be subject to the conditions of professional secrecy provided for in Article 40 of Royal Decree 185 of 9 July 1935. They shall transmit to the Commission a copy of any reports sent to the managers and dealing with matters which are the responsibility of the Commission.

In branches where a works council has been established in application of the Law of 20 September 1948 organizing economic activity, the accredited auditors and audit firms shall carry out the functions referred to in Article 15bis of this Law.
Article 15quater, paragraph 2, sentences 1 and 3, and paragraph 3, of this Law shall apply.

They may accept assignments from the supervisory authorities of the branch’s home Member State to carry out inspections at the premises of these branches in order to assist such authorities in the matters referred to in Articles 48, paragraph 1, and 73, § 1, provided the Banking and Finance Commission has been informed beforehand; the cost of such assignments shall be borne by the supervisory authorities of the home Member State.

§ 3. The accredited auditors and audit firms shall certify the annual accounting information published pursuant to Article 72, ³°.

CHAPTER V

Exceptional measures

Article 75

§ 1. Where the Banking and Finance Commission ascertains that a credit institution governed by the law of another EC Member State having a branch or providing services in Belgium is not complying with the laws and regulations applicable in Belgium in matters falling within the competence of the Commission, it will require the credit institution to take corrective action within the period it prescribes. If, at the end of that period, the institution concerned fails to do so, the Banking and Finance Commission will inform the supervisory authorities of the institution’s home Member State accordingly.

§ 2. If the branch persists in violating the laws and regulations, the Banking and Finance Commission may take the measures provided for in Article 57, § 1, paragraph 2, ¹°, ²° and ³°, after informing the supervisory authorities referred to in § 1. Article 57, §§ 2 to 4 shall apply.

If the credit institution having a branch or providing services in Belgium persists in violating the laws and regulations, the Banking and Finance Commission may prohibit this institution from initiating any further transactions within its territory, after informing the authorities referred to in § 1 accordingly. It may limit the duration of this prohibition or revoke it. Article 57, § 1, paragraph 2, ²°, and § 2 shall apply to these decisions. The present paragraph shall also apply in the cases referred to in Article 57, §§ 3 and 4.
§ 3. In emergencies where the periods prescribed in §§ 1 and 2 cannot be observed, the Banking and Finance Commission may take any precautionary measures necessary to safeguard the interests of depositors and other customers of the branch. The Banking and Finance Commission will communicate such measures to the Commission of the European Communities and the supervisory authorities of the institution’s home Member State and of the host Member States of other branches as soon as possible. The Banking and Finance Commission will amend or abolish those measures when the Commission of the European Communities orders it to do so in due consideration of the relevant provisions of Community law.

§ 4. The Banking and Finance Commission may, at the request of the competent authorities, apply §§ 1 to 3 to any credit institution referred to in Article 65 or Article 66 which has committed acts in Belgium contrary to the laws and regulations referred to in Article 69 or to the laws and regulations applicable in the interest of the general good in matters other than those referred to in Articles 68 and 71, paragraphs 1 and 2.

§ 5. The Banking and Finance Commission will inform the Commission of the European Communities, according to the periodicity it establishes, of the number and type of measures taken pursuant to § 2.

Article 76

If a credit institution’s authorization is withdrawn or revoked by the supervisory authorities of its home Member State, the Banking and Finance Commission will order the institution’s branch in Belgium to be closed, after having informed the home Member State’s authorities. It may appoint a temporary custodian of the branch’s assets, pending a decision on their allocation; this custodian will be authorized to take all precautionary measures to safeguard the creditors’ interests.

Article 77

The Banking and Finance Commission may inform the supervisory authorities of a credit institution governed by the law of another EC Member State why it has reason to believe that the institution’s Belgian branch is not in a position to offer the necessary guarantees of sound administrative or accounting organization or internal control.

CHAPTER VI

The operation of branches and the provision of services in Belgium by specialized subsidiaries of credit institutions governed by the law of another EC Member State

Article 78

Financial institutions governed by the law of another EC Member State which, with regard to credit institutions governed by the law of that State and their supervisory authorities, meet the conditions laid down in Article 41, paragraph 1, may request the application of Chapters I to V of this Title.
TITLE IV
BRANCHES IN BELGIUM
OF CREDIT INSTITUTIONS GOVERNED BY
THE LAW OF NON-MEMBER STATES

CHAPTER I

Authorization

Article 79

§ 1. The following Articles shall apply:

1° Articles 7, 8, 10, 11 and 12: before deciding whether to authorize the branch, the Banking and Finance Commission will consult the supervisory authorities of the State where the credit institution has its registered office;

2° Article 13, paragraph 1: the branches referred to in this Title shall be entered in a separate category of the list;

3° Article 15: authorization may nevertheless be granted to branches of institutions which are incorporated otherwise than as commercial companies;

4° Article 16, paragraphs 1 and 2, replacing the words “initial capital” by “endowment capital”; the components of this endowment capital will be assessed by the Banking and Finance Commission;

5° Articles 17 to 20.

Paragraph 1, 3° and 5°, shall apply to the credit institution to which the branch belongs.

§ 2. The Banking and Finance Commission may refuse to authorize branches of credit institutions governed by the law of a State which does not offer reciprocal market access under the same conditions to credit institutions governed by Belgian law.

§ 3. The Banking and Finance Commission may refuse to grant authorization to a branch referred to in this Title where it is of the opinion that the protection of savers or the sound and prudent management of the institution requires the company to be incorporated under Belgian law.

CHAPTER II

Pursuit of the business of credit institutions

Article 80

§ 1. The following Articles shall apply:
1° Article 23, § 1, paragraph 1, § 2, paragraph 1, and § 3;
2° Article 27, with regard to the managers of the branch;
3° Articles 28, paragraph 1 and paragraph 2, sentences 1 and 2, 30 and 31;
4° Articles 33, 43 to 45.

§ 2. The King will determine the obligations and rules for the publication of the annual accounting statements of the branches.

CHAPTER III

Supervision

Article 81

Articles 46 and 47 shall apply.

Article 82

The management of the branches referred to in this Title must appoint one or more accredited auditors or accredited audit firms in accordance with Article 50. It may also appoint a substitute.

When an audit firm is appointed, Article 51 shall likewise apply. Articles 53, 54, paragraphs 1 to 4, 55, paragraphs 1, 2, 3 and 5, and 74, § 1, paragraph 2, § 2, paragraphs 4 and 5, and § 3, shall apply.

Article 83

The Banking and Finance Commission may, on a reciprocal basis, with the approval of the Minister of Finance, and by means of agreements concluded with the supervisory authorities of the credit institution’s home country and of other branches of the institution established outside Belgium, lay down rules relating to the obligations and prohibitions imposed on the branch in Belgium, the contents of and the procedures for supervision, and the procedures for co-operation and exchange of information with these authorities, as foreseen in Articles 97 to 101.

These agreements may depart from the provisions of this Law, in order to establish rules and procedures which are better suited to the nature and range of activities of the credit institution and to its supervision.

Subject to the overall supervision process meeting the criteria laid down pursuant to this Law, these agreements may grant exemption from the application of certain provisions of this Law and its implementing decrees and regulations.
The agreements provided for in this Article shall not incorporate provisions, which result in the branches enjoying more favourable treatment than that accorded to branches established in Belgium of credit institutions governed by the laws of other EC Member States.

The agreement must contain a clause allowing termination by either party, subject to a maximum of 6 months’ notice.

The Banking and Finance Commission will publish the list and the substance of the agreements concluded pursuant to this Article in its annual report.

CHAPTER IV
Withdrawing of authorization, exceptional measures and penalty clauses

Article 84

Articles 56, 57 and 60 and Articles 102 to 109 shall apply.

TITLE V

REPRESENTATIVE OFFICES, CREDIT COMPANIES AND INTERMEDIARIES

Article 85

Credit institutions governed by the law of a foreign State which have not established a branch in Belgium, but which plan to open a representative office in due consideration of the restrictions laid down in Article 86 in order to promote their activities and to collect and distribute information, shall first register with the Banking and Finance Commission.

Before effecting the registration, the Banking and Finance Commission will consult the supervisory authorities of the credit institution’s home country.

Article 86

A representative office may not carry on banking activities; in particular, it may under no circumstances interfere with the conclusion or the normal processing of financial transactions or financial services, except for those linked to its own operation.

Article 87

The Banking and Finance Commission may request any relevant information, carry out or have carried out on-the-spot inspections and take cognizance of all correspondence and documents with regard to the activities of representative offices registered in accordance with Article 85.
The Banking and Finance Commission may revoke the registration of any representative office which fails to meet its obligations.

**Article 88**

Credit institutions governed by Belgian law which plan to establish a representative office within the territory of a foreign State shall notify their intention to the Banking and Finance Commission. If, under its home State legislation, the office is authorized to carry on activities falling outside the restrictions laid down by Articles 86 and 87, Articles 34 to 37 shall apply. The Banking and Finance Commission may request any information on the organization, activities and financial position of the office and verify it or have it verified. Article 48 shall apply.

**Article 89**

The King may, after consultation with the Banking and Finance Commission and the National Bank of Belgium, in the interest of sound administrative and accounting organization and internal control systems and for statistical and monetary policy purposes, lay down the rules applicable to natural or legal persons established in Belgium who habitually grant borrowing facilities or guarantees to their customers in Belgium.

Paragraph 1 shall not apply to credit institutions subject to this Law, insurance companies subject to the Law of 9 July 1975, companies providing mortgage loans or consumer credit, the National Bank of Belgium, the “Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstuut” and the “Office national du Ducroire/Nationale Delcrederedienst”.

The King may require that the persons referred to in paragraph 1 register with a public authority designated by Him, determine which information must be provided to that authority, subject them to supervision rules and enforce upon them Articles 43 to 45 insofar as they affect the borrowing facilities and guarantees referred to in paragraph 1.

The King may, in compliance with the international obligations of Belgium, extend the application of all or part of this Article to foreign natural or legal persons meeting the conditions laid down in paragraph 1.

**Article 90**

The King may, after consultation with the Banking and Finance Commission and the National Bank of Belgium, in the interest of sound administrative and accounting organization and internal control systems and for statistical and monetary policy purposes, lay down the rules applicable to natural or legal persons established in Belgium who habitually conclude in Belgium any transactions referred to in Article 3, § 2, in the capacity of representative, broker or agent (“commissionnaire/commissionair”).
Article 89, paragraph 2 shall apply. Paragraph 1 of this Article shall apply neither to intermediaries operating on secondary markets for financial instruments, nor to financial instrument broking firms. Nor shall it apply to the persons referred to in Article 118 of the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms, on intermediaries and investment advisers.

Article 89, paragraph 3 shall apply.

The King may, in compliance with the international obligations of Belgium, extend the application of all or part of paragraphs 1 and 3 to natural or legal persons meeting the conditions laid down in paragraph 1.

**TITLE VI**

**CENTRALIZATION OF INFORMATION WITH REGARD TO EXPOSURE**

**Article 91**

§ 1. Credit institutions established in Belgium shall report any exposure incurred or repurchased to the National Bank of Belgium, as soon as the total exposure to one individual customer or the amount of the drawdowns by this customer equals or exceeds EUR 25,000 or an equivalent amount in a foreign currency or in currency units.

The King may

1° modify this amount;

2° determine, per category of exposure or customer, the amounts below which exposure need not be reported to the National Bank of Belgium;

3° determine the categories of exposure which need only be reported when payment is overdue by a certain period;

4° extend the obligation referred to in paragraph 1 to such categories of financial institution and insurance company as He may determine, and to undertaking for investment in receivables.

The following exposures need not be reported:

1° exposures to credit institutions;

2° exposures to the Belgian State, the “Fonds des Rentes/Rentenfonds” and the “Institut de Réécompte et de Garantie/Herdiscontering- en Waarborginstituut”;

3° exposures to the European Communities, the European Investment Bank, the European Bank for Reconstruction and Development, the International Monetary Fund and multilateral development banks defined in the seventh indent of Article 2, (1) of Council Directive 89/747/EEC of 18 December 1989;
4° exposures in respect of which the registration at the National Bank of Belgium is foreseen in another law.

§ 2. The King will determine the content and the rules of reporting, if necessary per type of institution and exposure.

He may also request the National Bank of Belgium to:

1° define the instructions for the proper implementation of the reporting obligation referred to in § 1;

2° agree, where appropriate, upon specific rules for reporting information with institutions whose circumstances so require.

§ 3. A remuneration shall be due to the National Bank of Belgium to cover the costs resulting from the tasks of collecting and registering the data reported by virtue of § 1.

The terms and conditions of the remuneration referred to in paragraph 1 shall be determined by the National Bank of Belgium after consultation with the Banking and Finance Commission and with the credit institutions referred to in § 1, which may be represented by their professional associations.

**Article 92**

Upon request, and on the basis of its tariff, the National Bank of Belgium will disclose information received in accordance with Article 91 to:

1° customers, for exposures recorded in their name; such customers may request inaccurate personal data to be corrected. Any such consultations and rectifications shall be free of charge;

2° credit institutions, for the assessment of the risk attaching to exposures granted or repurchased, or for outstanding borrowing applications. The King may extend the right of consultation to any financial institution or insurance company which He may designate from among those referred to in Article 91, § 1, paragraph 2, 4°;

3° the Banking and Finance Commission. Articles 97, 98, paragraph 1, and 99, § 1, paragraph 1, 1°, 2°, 3°, 4° and 7°, and paragraph 2, and § 3, shall apply.

4° foreign credit registers (“centrales de risques/risicocentrales”) under the conditions laid down in agreements with regard to exchange of information to be concluded by the National Bank of Belgium, insofar as the legislation applicable to such credit registers guarantees professional secrecy at a level at least equivalent to that resulting from paragraph 2 of this Article.

The institutions referred to in 2° above shall take appropriate measures to guarantee the confidentiality of the information referred to in paragraph 1 and the exclusive use of this information for the objectives laid down by law.
The King will determine

1° the content of and the rules governing the consultations and returns made pursuant to this Article;

2° the rules governing the rectification procedure referred to in paragraph 1, 1°.

He may also request the National Bank of Belgium to define the relevant technical instructions.

Article 93

The National Bank of Belgium may ask the Banking and Finance Commission to disclose all information which it deems useful, to carry out investigations and inspections, and to take copies on-the-spot of all accounting or other documents held by the institutions which fall under this Title pursuant to Article 91, § 1, paragraph 1 and paragraph 2, 2°, in order to verify whether:

1° the information reported to the National Bank of Belgium pursuant to this Title is true and fair;

2° the provisions of this Title have been complied with.

The Banking and Finance Commission will inform the National Bank of Belgium of the results of the investigations, verifications and inspections referred to in paragraph 1. The Bank will bear the expenses incurred by the Commission.

Article 94

The decrees to implement this Title will be enacted after consultation with the National Bank of Belgium, the Banking and Finance Commission and the institutions referred to in Article 91, § 1, represented by their professional associations.

TITLE VII

PROFESSIONAL SECRECY AND COLLABORATION BETWEEN AUTHORITIES

CHAPTER I

Professional secrecy of the Banking and Finance Commission and exchange of information

Article 95

[...]

Article 96

[...]

- 56 -
Article 97

[...]

Article 98

[...]

Article 99

[...]

Article 100

[...]

CHAPTER II

Co-operation between authorities

Article 101

[...]

TITLE VIII

SANCTIONS

CHAPTER I

Administrative sanctions

Article 102

Without prejudice to other measures provided for in this Law, the Banking and Finance Commission may make a public announcement that a Belgian or foreign credit institution has failed to comply with injunctions, ordering it to comply with the provisions of this Law or its implementing decrees within the period laid down by the Banking and Finance Commission.

Article 103

§ 1. Without prejudice to other measures provided for in this Law, the Banking and Finance Commission may lay down a period within which a credit institution governed by Belgian or foreign law and established in Belgium must:

(a) comply with specific provisions of this Law or its implementing decrees; or
(b) introduce the necessary changes to its management structure, administrative and accounting procedures, or internal control systems.

The injunction referred to in paragraph 1 (b) shall not apply to branches of credit institutions of other EC Member States.

Where the institution remains in default at the end of the period specified, the Banking and Finance Commission may, having heard or at least duly summoned the institution, impose on it the payment of a penalty, which shall not exceed 2,500,000 euros per infringement or 50,000 euros per day’s delay.

§ 2. Without prejudice to other measures laid down by this Law and without prejudice to the measures laid down in other laws or regulations, the Banking and Finance Commission may, where it establishes an infringement of the provisions of this Law or the implementing decrees thereof, impose an administrative fine on a credit institution governed by Belgian or foreign law and established in Belgium that, for the same offence or same totality of offences, shall not be less than 2,500 euros and not more than 2,500,000 euros.

§ 3. The penalties and fines imposed in application of §§ 1 and 2 shall be recovered in favour of the Treasury by the “Administration du Cadastre, de l’Enregistrement et des Domaines”/“Bestuur van het Kadaster, de Registratie end de Domeinen” (the Land Registry, Public Records and Crown Lands Office).

CHAPTER II
Penal sanctions

Article 104

§ 1. The following persons shall be liable to a term of imprisonment of between one month and one year, and to a fine ranging from EUR 50 to EUR 10,000 or to either one of these penalties:

1° anyone who contravenes the provisions of Article 4 or who does not comply with the provisions of Article 6;

2° anyone who carries on the business of a credit institution within the meaning of Article 7 or in Title IV, whereas the institution has either not been authorized or its authorization has been withdrawn or revoked;

3° anyone who knowingly fails to give the notifications provided for in Article 24, §§ 1, 4 and 6, anyone who disregards the objection referred to in Article 24, § 3, and anyone who in situations foreseen in Articles 24, § 7, and 57, § 1, paragraph 2, 2°, fourth sentence, fails to hand in his securities to the “Institut de Réécompte et de Garantie/Herdiscontering- en Waarborginstituut” in accordance with Article 24, § 7, paragraph 1, 2°, or disregards the suspension referred to in Article 24, § 7, paragraph 1, 1°;
4° any directors, managers or managing directors and all other persons referred to in Article 27 who disregard the provisions of this Article;

5° any directors, managers or managing directors who disregard Articles 28, 30, 32, 33, 49, § 2, paragraph 4, first sentence, and paragraph 6, and § 5, paragraphs 1 and 2, or Articles 85 to 88;

6° any directors, managers or managing directors of a credit institution which opens a branch abroad or provides services abroad without providing the notification foreseen in Articles 34, 38 or 40, or which does not comply with Article 37;

7° any directors, managers or managing directors of a credit institution who disregard the decrees or regulations referred to in Articles 44, paragraph 1, second sentence, and paragraph 3, 49, § 2, paragraph 4, second sentence, and paragraph 10, § 4, § 5, paragraph 3, and § 6, 72, 89 or 90;

8° any directors, managers or managing directors of a credit institution who fail to comply with Article 44, paragraph 1, first and third sentence, and paragraph 2;

9° anyone who carries out acts or transactions without being authorized by the special inspector, in the manner provided for in Article 57, § 1, paragraph 2, 1°, or who carries out acts or transactions which conflict with a decision to suspend the activities taken in accordance with Article 57, § 1, paragraph 2, 2°, and anyone who does not comply with the prohibition provided for in Article 75, § 2, paragraph 2, or § 4, or with the protective measures provided for in Article 75, § 3, or with the order laid down in Article 76;

10° anyone who knowingly accepts funds or securities which are held in contravention of Article 33;

11° anyone, who in his capacity of statutory auditor, accredited auditor or independent expert has certified, approved or confirmed the accounts, annual accounts, balance sheets and income statements or consolidated accounts of companies or periodic statements or information while the provisions of this Law or its implementing decrees were not being complied with, either in the knowledge that those provisions were not being complied with, or without having completed the procedures which should normally be carried out in order to ascertain that the provisions had been complied with;

12° anyone who impedes the inspection and verification procedures which are required to be carried out in his home country or abroad, or who refuses to provide the information, which he is required to provide pursuant to this Law, or who knowingly provides incorrect or incomplete information;

13° anyone who has taken unauthorized cognizance of individual information transmitted to the National Bank of Belgium pursuant to Article 91, as well as anyone who has obtained information pursuant to Article 92, who has disclosed it or who has communicated it to unauthorized persons;
14° any directors and managers who fail to comply with the provisions of Articles 50, paragraphs 1 and 2, and 74, § 1, paragraph 1.

§ 2. Any offence against the prohibition of Article 19 shall be liable to a term of imprisonment of between three months and 2 years, and to a fine ranging from EUR 1,000 to EUR 10,000.

§ 3. Any directors, managers or managing directors who fail to comply with the provisions of the implementing regulations of Article 43 shall be liable to a term of imprisonment of between 8 days and 3 months, and to a fine ranging from EUR 50 to EUR 10,000 or to either one of these penalties.

**Article 105**

Any offence against Articles 95 to 100 shall be liable to the sentences provided for in Article 458 of the Penal Code.

**Article 106**

The provisions of Book I of the Penal Code, including Chapter VII and Article 85, are applicable to the offences referred to in this Chapter.

**Article 107**

Credit institutions, financial institutions and companies shall be legally responsible for any fines which may be imposed on their directors, managers, managing directors or representatives in application of the provisions of this Chapter.

**Article 108**

Any investigations into an offence against this Law or legislation referred to in Article 19 initiated against directors, managers, managing directors, representatives or accredited statutory auditors of credit institutions or financial institutions, and any investigations into an offence against this Law, initiated against any other natural or legal person, shall be notified to the Banking and Finance Commission by the judicial or administrative authority before whom the case was brought.

All penal actions on the ground of the offences referred to in paragraph 1 will be notified to the Banking and Finance Commission by the Public Prosecutor.

**Article 109**

The Banking and Finance Commission is empowered to intervene at any stage of the proceedings in the criminal court, before which an offence against this Law has been brought, without being required to establish that any damage was sustained.

This intervention will follow the rules applicable to a plaintiff seeking compensation.
TITLE IX
DEPOSIT GUARANTEE SCHEMES

Article 110

Credit institutions established in Belgium shall participate in a collective deposit guarantee scheme which is financed by them and which aims to indemnify certain categories of depositors who do not carry on banking or financial activities in the event of default by an institution, and, if necessary, to enable action to be taken to prevent such a default. Special deposit guarantee schemes may be established for certain categories of credit institution.

When not established either by the State or a State governmental authority, the deposit guarantee schemes must be authorized by Royal Decree in compliance with the harmonized application of the relevant provisions of European law to the various categories of credit institution.

Paragraph 1 shall apply neither to branches of credit institutions governed by the law of an EC Member State, nor to branches of credit institutions governed by the law of another State whose deposit guarantee scheme would cover the branch’s commitments at least to the same extent as the corresponding Belgian deposit guarantee scheme.

The “Fonds de protection des dépôts et des instruments financiers/Beschermingsfonds voor deposito’s en financiële instrumenten” is authorized to manage and administer the deposit guarantee schemes.

Authorities which manage the Belgian deposit guarantee schemes may conclude collaboration agreements with foreign bodies.

By way of departure from Article 22, the communal savings banks are not required to participate in a credit institution deposit guarantee scheme. The King will determine what information the communal savings banks must provide to their depositors concerning the protection of their deposits.

Article 110bis¹


Article 110bis²

§ 1. Except in the cases where the credit institution has been declared bankrupt, or where a procedure for compulsory administration has been initiated, the decision whereby a credit institution governed by Belgian law is determined to be in default shall be taken by the Banking and Finance Commission. This determination shall be made at the latest twenty-one days after it has been established for the first time that the credit institution has failed to repay deposits that are due and payable.
In addition, the Banking and Finance Commission decides whether to extend the periods of time within which the “Fonds de protection/Beschermingsfonds” reimburses the deposits. A maximum of three extensions can be granted, each of which may not exceed three months. Such extensions may only be granted in very exceptional circumstances and in special cases where credit institutions are in default.

§ 2. Without prejudice to any voluntary excess arrangements, provided it complies with European law, the deposit guarantee schemes established or managed by the “Fonds de protection/Beschermingsfonds” provide for the reimbursement, up to at least EUR 20,000 or the equivalent value of that amount, of deposits and bank savings certificates, bonds and other banking debenture certificates, whether registered or in safe custody, that are expressed in euro or in currencies of Member States which have not adopted the single currency, inasmuch as these deposits are specified in the deeds of incorporation of these schemes in accordance with European law. The above-mentioned sum of EUR 20,000 is replaced by the amount of EUR 15,000 until 31 December 1999.

The King will determine the content of the information to be provided by credit institutions to the depositors with respect to the protection of their assets as a result of the above-mentioned schemes.

**Article 110ter**

§ 1. The “Fonds de protection des dépôts et des instruments financiers/Beschermingsfonds voor deposito’s en financiële instrumenten” shall take the necessary measures to enable branches of credit institutions governed by the law of another Member State of the European Community to join the credit institution deposit guarantee schemes which it establishes or manages, in order to supplement, within the limits of these schemes, the guarantees given by the scheme in which the credit institution participates in its country.

If a branch granted membership under paragraph 1 does not comply with its obligations towards the deposit guarantee scheme which it has joined, the “Fonds de protection/Beschermingsfonds” will, in co-operation with the Banking and Finance Commission, refer the matter to the authority that has granted authorization to the branch’s parent credit institution. If the situation is not rectified within twelve months, the “Fonds de protection/Beschermingsfonds” may, with the consent of that authority, exclude the branch after a twelve month notice period. Term deposits made before the exclusion shall continue to be covered until they fall due. Other deposits made before the exclusion shall continue to be covered for twelve months. The depositors of the branch shall be informed by the branch, or, failing that, by the Banking and Finance Commission, of the cessation of the cover.
§ 2. From 1 January 1995 until 31 December 1999, the Banking and Finance Commission may require branches established in Belgium by credit institutions governed by the law of Spain or Greece whose commitments are not covered through 31 December 1999 by a deposit guarantee scheme established in those States, to join one of the deposit guarantee schemes established or managed by the “Fonds de protection des dépôts et des instruments financiers/Beschermingsfonds voor deposito’s en financiële instrumenten”.

**Article 110quater**

The King may, after the Banking and Finance Commission and the “Fonds de protection des dépôts et des instruments financiers/Beschermingsfonds voor deposito’s en financiële instrumenten” have given their opinion, determine the rules for the evaluation and calculation of the initial contribution to be made to the deposit guarantee schemes referred to in § 1 by credit institutions which participate in these schemes for the first time, and for which insufficient contributions have been made, and are transferred from a scheme in which they have previously participated, or which do not benefit from the guarantee referred to in Article 110sexies.

**Article 110quinquies**

[...]

**Article 110sexies**

In the case that, between 1 January 1995 and the date determined in accordance with paragraph 4, the credit institution deposit guarantee schemes established or managed by the “Fonds de protection des dépôts et des instruments financiers/Beschermingsfonds voor deposito’s en financiële instrumenten” to replace the schemes that came into force on 1 January 1985, must intervene as a result of the situation of:

- the “Crédit Communal de Belgique/Gemeentekrediet van België”;
- the “Caisse nationale de crédit professionnel/Nationale Kas voor Beroepskrediet”;
- the “Institut national de crédit agricole/Nationaal Instituut voor Landbouwkrediet”;
- [...];
- the “Caisse générale d’Epargne et de Retraite-Banque/Algemene Spaar-en Lijfrentekas-Bank”;
- the “Société nationale de crédit à l’industrie/Nationale Maatschappij voor Krediet aan de Nijverheid”,

the State shall make available a maximum amount of EUR 75,000,000 for the whole of the above-mentioned interventions.
The allocation of the above-mentioned amount of EUR 75,000,000 shall be without prejudice to the prior execution of the State guarantee provided for in Articles 249 of the Law of 17 June 1991 on the organization of the public credit sector and on the public sector’s shareholdings in certain private financial companies, and 56, paragraphs 3 and 4, of the Royal Decree of 29 September 1993 modifying the Law of 17 June 1991 organizing the public credit sector and harmonizing the supervision and the working conditions of credit institutions, and, as regards the “Société nationale de crédit à l’industrie/Nationale Maatschappij voor Krediet aan de Nijverheid”, in Article 249 of the above-mentioned Law of 17 June 1991.

After the above-mentioned amount of EUR 75,000,000 has been exhausted, the new resources that have been contributed after 1 January 1995 to the deposit guarantee schemes referred to in paragraph 1 shall be called upon.

In any circumstances, the State guarantee, to which this Article relates, shall for the amounts that will not have been called upon and for each of the credit institutions for which that guarantee was provided, be decreased and expire under the same conditions as those which will be determined in the deeds of incorporation of the applicable scheme, as regards the reimbursement to credit institutions of any balance of the assets of the deposit guarantee scheme which, for the credit institution concerned, is replaced by the applicable scheme.

**TITLE X**

**AMENDING PROVISIONS**

**CHAPTER I**

Changes affecting Royal Decree 185 of 9 July 1935 on the supervision of banks and the rules governing the issue of securities

Articles 111 to 121

[...]

[These amending provisions concern another piece of legislation that has since been amended.]

**CHAPTER II**

Articles 122 to 131

[...]

[These amending provisions concern another piece of legislation not directly related to the tasks of the Banking and Finance Commission.]
CHAPTER III

Article 132 to 143

[...]

[These amending provisions concern another piece of legislation not directly related to the tasks of the Banking and Finance Commission.]

TITLE XI

TRANSITIONAL PROVISIONS

Article 144

Credit institutions which, on the date on which this Law comes into force, were included in the list of banks referred to in Article 2 of Royal Decree 185 of 9 July 1935, in the list of private savings banks referred to in Article 5 of the provisions relating to private savings banks as co-ordinated on 23 June 1967, or in the list referred to in Article 2 of the Law of 10 June 1964, public credit institutions listed in Article 62, 1°, of this Law, credit associations accredited by the “Caisse nationale de Crédit professionnel/Nationale Kas voor Beroepskrediet”, “caisses de crédit/kredietkassen” accredited by the “Institut national de Crédit agricole/Nationaal Instituut voor Landbouwkrediet” and communal savings banks shall be authorized de jure for the purposes of this Law.

Except for the communal savings banks, credit institutions governed by Belgian law and referred to in paragraph 1 shall inform the Banking and Finance Commission, within a month of this Law coming into force, of the category listed in Article 13, paragraph 2 under which they wish to be registered.

By way of departure from paragraphs 1 and 2, the branches of credit institutions governed by the law of another EC Member State and which, on the date on which this Law comes into force, were included on one of the lists referred to in paragraph 1, shall be registered de jure on the list referred to in Article 65, paragraph 3.

Representative offices of foreign credit institutions existing in Belgium on the date on which this Law comes into force, shall be registered de jure in accordance with Article 85, paragraph 1.

Article 145

[...]

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Article 146

By way of departure from Article 32, § 5, and without prejudice to §§ 3 and 4 of that Article, credit institutions established as unlimited liability companies which owned shareholdings on 1 January 1992, may own shares insofar as no individual qualifying holding exceeds 15% of own funds and the total amount of qualifying holdings does not exceed 60% of own funds.

Paragraphs 2 and 3 of Article 32, § 5, and Article 49, § 2, paragraph 3, shall apply.

Article 147

For the first application of Article 52 after this Law comes into force, the consultation provided for in that Article shall be the consultation with the auditors who are accredited in accordance with Article 21 of Royal Decree 185 of 9 July 1935.

Article 148

§ 1. Auditors who are accredited in accordance with Article 21 of Royal Decree 185 of 9 July 1935 on the supervision of banks and the rules governing the issue of securities shall remain in function with the credit institutions to which they were appointed by the Banking and Finance Commission:

1° for credit institutions governed by Belgian law, until the first AGM after 31 December 1995;

2° for branches of foreign credit institutions, until the end of the third month following the closure of the first financial period after 31 December 1995.

During that period the accredited auditors referred to in paragraph 1 shall exercise the function of statutory auditor or auditor appointed pursuant to this Law for the purpose of collaboration with the Banking and Finance Commission in its prudential supervision. When appointed as an accredited statutory auditor or accredited auditor, they shall exercise those functions accordingly.

The Banking and Finance Commission may, however, terminate their function as accredited auditors at any time in the interests of the prudential supervision of the credit institution.

Without prejudice to the duties of a statutory auditor, the accredited auditors referred to in paragraph 1 may request to address the Board of Directors or the Board of Administration, the management committee or, where there are no such bodies, the body actually in charge of management, the general meeting of shareholders or members and the works council, if one exists.

The remuneration of the accredited auditors referred to in § 1 shall be determined and paid by the Banking and Finance Commission and borne by the credit institution according to the rules laid down by Royal Decree.
This paragraph shall cease to apply to accredited auditors who, personally or as representatives of audit firms accredited after this Law comes into force, are appointed as statutory auditors accredited in accordance with Article 50 or as auditors designated by virtue of Articles 74 to 82.

§ 2. Non-accredited auditors or audit firms which exercise the function of statutory auditor or auditor with a credit institution on the date on which this Law comes into force shall complete their mandate.

Where such auditors or audit firms are already or are subsequently accredited, they shall perform the duties laid down in this Law with regard to collaboration with the Banking and Finance Commission in its prudential supervision jointly with the accredited auditors referred to in § 1.

Article 149

Credit institutions governed by Belgian law which, before the date on which this Law comes into force, carried on any of the banking activities referred to in Article 3, § 2, in one or more EC Member States by way of provision of services shall be exempted from the application of Article 38 for those categories of activity and for the States concerned.

Credit institutions of an EC Member State which, before the date on which this Law comes into force, carried on any of the banking activities referred to in Article 3, § 2, in Belgium by way of provision of services shall be exempted from the application of Article 66 for those categories of activity.

Article 150

The authorizations and dispensations granted on the basis of legislation applicable to credit institutions by the Banking and Finance Commission before this Law comes into force shall continue to apply, unless they are revoked pursuant to this Law.

The rules governing accreditation and disciplinary procedure laid down by the Banking and Finance Commission on 6 September 1983 shall continue to apply:

1° to accredited auditors referred to in Article 146, § 1, until the expiry of their mandate as provided for in this provision;

2° to all accredited auditors until the date on which the rules governing the accreditation of auditors and audit firms as provided for in Article 52 come into force.

Article 151

[...]

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Article 152

[...

Article 152bis

§ 1. By way of departure from Article 16, paragraph 2, the initial capital, in the case of authorization as a securities bank of a stockbroking firm authorized as at 31 December 1995, must only be fully paid up or the following minimum amounts:

1° if the authorization is granted at the latest on 31 December 1996: EUR 3,100,000;

2° if the authorization is granted during 1997: EUR 3,500,000;

3° if the authorization is granted during 1998: EUR 4,000,000;

4° if the authorization is granted during 1999: EUR 4,590,000;

5° if the authorization is granted during the year 2000: EUR 5,330,000;

§ 2. By way of departure from Article 23, the own funds of securities banks that were previously authorized as stockbroking firms shall attain the following minimum levels:

1° until 31 December 1996: EUR 3,100,000;

2° from 1 January 1997 until 31 December 1997: EUR 3,500,000;

3° from 1 January 1998 until 31 December 1998: EUR 4,000,000;

4° from 1 January 1999 until 31 December 1999: EUR 4,590,000;

5° from 1 January 2000 until 31 December 2000: EUR 5,330,000;

Until 31 December 2000, the own funds of the securities banks referred to in paragraph 1 may not fall below the maximum amount attained since their authorization as securities banks.

If the own funds no longer attain the levels prescribed by § 2, the Banking and Finance Commission may allow a limited period within which the appropriate level must again be attained.

§ 3. The securities banks that benefit from the departures provided for in §§ 1 and 2, may carry out the activities referred to in Article 3, § 2 (2) and (6), only in the framework of transactions on securities and financial instruments. They may not carry out the activities referred to in Article 3, § 2 (3), (4) and (5).
Article 152ter

Until the date on which the provisions for the implementation in Belgian law of the provisions of European law on the protection of investors in financial instruments come into force, those credit institutions which on 31 December 1995 were authorized as stockbroking firms shall participate in the investor protection scheme referred to in Title V of Book II of the Law of 6 April 1995 on secondary markets, on the legal status and supervision of investment firms, on intermediaries and investment advisers with respect to their commitments resulting from financial instruments that are not covered by the collective deposit guarantee scheme established by virtue of Article 110 of this Law.

TITLE XII

REPEALING PROVISIONS

Article 153

The following provisions are repealed:


(a) the provisions under Title I;

(b) the titles of Titles III, IV, V and VI;

(c) 1° to 7° of Article 42;

(d) Articles 39bis, 43, 44, 45, 61, 64 and 65;


4° Articles 69 to 74 of the Law of 30 June 1975 on the legal status of banks, private savings banks and certain other financial intermediaries, as amended by the Laws of 8 August 1980, 1 July 1983 and 4 December 1990;

5° Article 18 of the Law of 5 August 1978 on economic and budgetary reforms.

**TITLE XIII**

**MISCELLANEOUS PROVISIONS**

*CHAPTER I*

**Amendments to European Community law**

**Article 154**

§ 1. The King may, by means of a decree taken after deliberation in the Council of Ministers, adapt the provisions of this Law to Belgium’s obligations arising out of international agreements or treaties, insofar as they do not relate to matters which the Constitution reserves for the legislator.

§ 2. The draft Royal Decrees referred to in § 1 shall be submitted to the legislation department of the Council of State for its opinion.

The opinion shall be published together with the Report to the King and the Royal Decree concerned.

§ 3. The Royal Decrees implementing § 1 will be repealed if they have not been confirmed by means of a Law within a year of their publication in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette).

**Article 155**

[...]

**Article 156**

[...]

*CHAPTER IV*

**Netting between credit institutions**

**Article 157**

§ 1. Agreements on bilateral or multilateral netting and explicit close-out agreements intended to enable netting between credit institutions or between credit institutions and establishments in charge of the clearing or settlement of payments or financial transactions may, in the event of bankruptcy or other circumstances whereby creditors are ranked *pari passu*, be enforceable against creditors, provided that the receivable
and payable to be netted were part of the same estate at the time of bankruptcy or of pari passu ranking, irrespective of their maturity, their substance or the currency in which they are denominated.

If the agreements referred to in the first paragraph were concluded after the date on which payments were suspended as determined by the Court, or within ten days prior to that date, they may not be enforceable against creditors if they relate to debts previously contracted but not yet due.

For the purpose of this paragraph, the National Bank of Belgium, the European Central Bank and the “Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut” are treated in the same way as credit institutions.

§ 2. Without prejudice to the provisions of § 1 and of Articles 445 to 449 of the Commercial Code, the payments, transactions and acts carried out by and payments made to a credit institution on the day it was declared bankrupt are valid if they predate the legal declaration order, or if they were carried out without knowledge of the credit institution’s bankruptcy.

For the purpose of this paragraph, the establishments in charge of the clearing or settlement between credit institutions of payments or financial transactions shall be treated in the same way as credit institutions.

§ 3. The King may, for the transactions and payments which He determines, extend the application of this Article to other categories of financial institution.

**TITLE XIV**

**ENTRY INTO FORCE**

**Article 158**

This Law comes into force on the day of its publication in the “Moniteur belge/Belgisch Staatsblad” (Belgian Official Gazette).

However,

1° Articles 22 and 110 shall come into force on the date to be fixed by Royal Decree;

2° Articles 111 and 121 shall come into force on the day on which the Code on financial transactions and financial markets referred to in Article 225 of the Law of 4 December 1990 on financial transactions and financial markets comes into force;

3° [...];

4° [...];

5° [...].