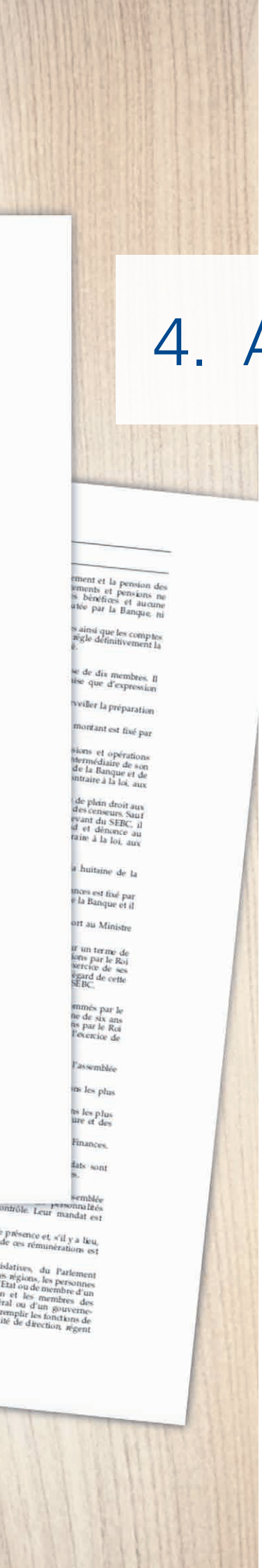

4. Annexes

The Bank's Organic law and the Corporate Governance Charter are listed below.

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

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

Annex 1 Organic Law[1]

Article 1. – This Law shall regulate a matter referred to in Article 78 of the Constitution.

Chapter I – Nature and objectives

Art. 2. – The National Bank of Belgium, in Dutch "Nationale Bank van België", in French "Banque Nationale de Belgique", in German "Belgische Nationalbank", established by the Law of 5 May 1850, shall form an integral part of the European System of Central Banks, hereinafter referred to as ESCB, the Statute of which has been established by the Protocol relating to it and annexed to the Treaty establishing the European Community.

Furthermore, the Bank shall be governed by this Law, its own Statutes and, additionally, by the provisions relating to limited liability companies by shares [*sociétés anonymes – naamloze vennootschappen*][2].

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

The Bank shall establish outside offices in locations on Belgian territory where the need for them exists.

Art. 4. – The Bank's share capital, which shall amount to ten million euro, shall be represented by four hundred thousand shares, of which two hundred thousand – registered and non-transferable – shall be subscribed by the Belgian State and two hundred thousand shall be registered or dematerialised shares. The share capital shall be fully paid up.

Except for those belonging to the State, the shares may be converted into registered or dematerialised shares, free of charge, as the owner wishes.

Chapter II – Tasks and transactions

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

- operate in the financial markets, by buying and selling outright (spot and forward), or under repurchase agreement or by lending or borrowing claims and marketable instruments expressed in Community or in non-Community currencies, as well as precious metals;
- conduct credit operations with credit institutions and other money market or capital market participants, with lending being based on adequate collateral.

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

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

1° issue and redeem its own loan instruments;

2° accept deposits of securities and precious metals, undertake the redemption of securities and act on

1 Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium (Unofficial coordinated translation: December 2021).

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

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

3° carry out transactions in interest-rate instruments;

4° carry out transactions in foreign currencies, gold or other precious metals;

5° carry out transactions with a view to the investment and financial management of its holdings of foreign currencies and of other external reserve elements;

6° obtain credit from foreign sources and provide guarantees for that purpose;

7° carry out transactions relating to European or international monetary cooperation.

Art. 7. – The Bank's claims arising from credit transactions shall entail a preferential claim on all securities which the debtor holds in an account with the Bank or in its securities clearing system as his own assets.

This preferential claim shall have the same rank as the preferential claim of the creditor secured with a pledge. It takes precedence over the rights set out in Article 8, paragraph 3, of the Law of 2 January 1991 on the market in public debt securities and monetary policy instruments, Articles 12, paragraph 4, and 13, paragraph 4, of Royal Decree N° 62 on the deposit of fungible financial instruments and the settlement of transactions involving such instruments, as coordinated by the Royal Decree of 27 January 2004, and 471, paragraph 4, of the Company Code.

In the event of default on payment of the Bank's claims referred to in the first paragraph, the Bank may, after notifying the debtor in writing that he is in default, take action automatically, without a prior court decision, to realise the securities on which it has a preferential claim, notwithstanding the possible bankruptcy of the debtor or any other situation in which there is concourse as between his creditors. The Bank must endeavour to convert the securities into cash at the most advantageous price and as quickly as possible, account being taken of the volume of the transactions. The proceeds from this conversion into cash shall be allocated to the Bank's claim in respect of principal, interest and costs, any balance remaining after settlement reverting to the debtor.

When the Bank accepts claims as a pledge, as soon as the pledge agreement has been entered into, it is noted in a register kept at the National Bank of Belgium or with a third party appointed for this purpose.

By being recorded in this register, which is not subject to any specific formalities, the National Bank of Belgium's pledge is given a firm date and becomes opposable *erga omnes*, with the exception of the debtor of the pledged claim.

The register may only be consulted by third parties who are considering acceptance of an *in rem* (collateral) right over claims which may be taken as a pledge by the National Bank of Belgium. Consultation of the register is governed by terms to be stipulated by the National Bank of Belgium.

In the event of insolvency proceedings being instituted, as set out in Article 3, paragraph 5 of the Law of 15 December 2004 relating to financial collateral and various tax provisions in relation to *in rem* collateral arrangements and loans relating to financial instruments, to the account of a credit institution having pledged claims to the National Bank of Belgium, the following provisions will apply:

a) the registered lien of the National Bank of Belgium on claims takes precedence of all other *in rem* collateral subsequently arranged or granted to third parties over the same claims, irrespective of whether or not the debtor of the pledged claims has been notified of the above-mentioned liens and whether or not the above-mentioned liens have been recognised by the debtor of the pledged claims; in the event that the National Bank of Belgium brings the pledge to the attention of the debtor of the pledged claim, the latter may now only make payment in full discharge to the National Bank of Belgium.

b) third parties acquiring a lien concurrent with that of the National Bank of Belgium, as described in the preceding paragraph, are obliged, in any event, to transfer to the National Bank of Belgium, without delay, the amounts which they have received from the debtor of the pledged claim upon insolvency proceedings being instituted. The National Bank of Belgium is entitled to demand payment of these amounts, without prejudice to its right to damages and interest.

c) notwithstanding any provision to the contrary, any set-off that could extinguish all or part of the

claims pledged to the Bank or realised by it may not under any circumstances be invoked in relation to the Bank or third-party buyers in the event of realization.

d) Article 8 of the Law of 15 December 2004 relating to financial collateral and various tax provisions in relation to *in rem* collateral arrangements and loans relating to financial instruments, shall apply by analogy to the taking of claims as a pledge by the National Bank of Belgium, the words "financial instruments" being replaced by "claims".

e) the combined provisions of Articles 5 and 40 of the Law relating to mortgages (*Loi hypothécaire*) do not apply.

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

It may carry out all transactions or provide facilities for these purposes.

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

§ 2. In respect of matters for which it has competence pursuant to this Article, the Bank may adopt regulations to supplement the applicable legislative or regulatory provisions on items of a technical nature.

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

These regulations shall come into force only after their approval by the King and their publication in the *Moniteur belge* / *Belgisch Staatsblad* (Belgian Official Gazette). The King may amend those regulations or establish any rules Himself if the Bank has not laid down those regulations.

§ 3. The Bank shall exercise the powers conferred on it by this Article exclusively in the general interest. Save in the event of fraud or gross negligence, the Bank, the members of its bodies and the members of its staff shall not be held civilly liable for their decisions, inactions, acts or conduct in the fulfilment of this mission.

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

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

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

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

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

It shall be entrusted, to the exclusion of all other Belgian or foreign bodies, with the conversion into

euros of the currencies of States not participating in Monetary Union or of States which are not members of the European Community borrowed by the State.

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

Art. 12. – **§ 1.** The Bank shall contribute to the stability of the financial system. In this respect and in accordance with the provisions of Chapter IV/3, it shall in particular have the power to detect, assess and monitor different factors and developments which may affect the stability of the financial system, it shall issue recommendations on measures to be implemented by the various relevant authorities in order to contribute to the stability of the financial system as a whole, particularly through strengthening the robustness of the financial system, preventing the occurrence of systemic risks and limiting the effect of potential disruptions, and it shall adopt measures falling within the ambit of its competences with a view to achieving the objectives described.

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

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

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

§ 2. Within the areas of supervision pertaining to its competence, the Bank may lay down regulations supplementing the legal or regulatory provisions on items of a technical nature.

Without prejudice to any consultation provided for in other laws or regulations, the Bank may, in accordance with the procedure of open consultation, explain, in a consultative memorandum, the content of any regulation it is considering adopting, and publish this on its website with a view to obtaining any comments by those concerned.

These regulations shall come into force only after their approval by the King and their publication in the *Moniteur belge* / *Belgisch Staatsblad* (Belgian Official Gazette). The King may amend those regulations or establish any rules Himself that He shall determine if the Bank has not laid down those regulations.

§ 3. The Bank shall carry out its supervisory tasks exclusively in the general interest. The Bank, the members of its bodies and the members of its staff shall not bear any civil liability for their decisions, non-intervention, acts or conduct in the exercise of the legal supervisory tasks of the Bank, save in the event of fraud or gross negligence.

§ 4. The Bank's operating costs relating to the supervision referred to in paragraph 1 are borne by the institutions subject to its supervision, according to the terms and conditions laid down by the King.

The Bank may make the Federal Public Service Finance's General Administration of Tax Collection and Recovery responsible for recovery of unpaid taxes.

Art. 12*ter*. – **§ 1.** The Bank shall exercise the duties of resolution authority and shall, in that capacity, be authorised to implement the resolution tools and exercise the resolution powers in accordance with the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms.

§ 2. The operating costs relating to the task referred to in § 1 are borne by the institutions which are subject to the legislation referred to in § 1, according to the terms and conditions laid down by the King.

§ 3. The provisions of Article 12*bis*, § 3 apply to the tasks referred to in this Article. In particular, the existence of gross negligence shall be assessed taking account of the concrete circumstances of the case,

and in particular the urgency with which these persons were confronted, the practices on the financial markets, the complexity of the case, threats for the protection of savings and the risk of damage to the national economy.

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

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

2° in the context of the performance of its task as resolution authority referred to in Article 12*ter* of this Law, or of any other resolution power assigned to the Bank by any other provision of national or European law, when such data have not been obtained from the person concerned;

3° in the context of the task assigned to the Bank by Article 8 of this Law to ensure that the clearing, settlement and payment systems operate properly and to make certain that they are efficient and sound, when such data have not been obtained from the person concerned;

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

The derogations referred to in paragraph 1, 1°, 2° and 3° shall apply as long as the person concerned has not, where appropriate, gained legal access to the administrative file concerning him or her which is held by the Bank and contains the relevant personal data.

§ 2. Article 5 of the aforementioned Regulation 2016/679 shall not apply to the processing of personal data as referred to in § 1 insofar as the provisions of that Article correspond with the rights and obligations provided for in Articles 12 to 22 of that Regulation.

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

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

Art. 14. – The Bank may entrust the performance of tasks not within the domain of the ESCB with which it is charged or for which it takes the initiative, to one or more distinct legal entities specially set up for this purpose and in which the Bank holds a significant interest; one or more members of the Bank's Board of Directors shall participate in directing such entities.

If the task is entrusted by law to the Bank, the prior consent of the King, on the proposal of the competent minister, shall be required.

Art. 15. – *Repealed*.

Art. 16. – The legal entities referred to in Article 14 and controlled exclusively by the Bank shall be subject to auditing by the Accounts Audit Court [*Cour des Comptes – Rekenhof*].

Chapter III – Bodies – Composition – Incompatibilities

Art. 17. – The bodies of the Bank shall be the Governor, the Board of Directors, the Council of Regency, the Board of Censors, the Sanctions Committee and the Resolution College.

Art. 18. – 1. The Governor shall direct the Bank and preside over the Board of Directors, the Council of Regency and the Resolution College.

2. If he is unable to attend, he shall be replaced by the Vice-Governor without prejudice to the application of Article 10.2 of the Statute of the ESCB.

Art. 19. – 1. In addition to the Governor, who shall preside over it, the Board of Directors shall be composed of a maximum of five directors, one of whom shall bear the title of Vice-Governor, conferred on him/her by the King. The Board of Directors shall include an equal number of French-speaking and Dutch-speaking members.In addition to the Governor, who presides, the Board of Directors shall be composed of at least five but not more than seven Directors, one of whom shall bear the title of Vice-Governor, conferred on him by the King. The Board of Directors shall include an equal number of French and Dutch speakers, with, possibly, the exception of the Governor.

2. The Board shall be responsible for the administration and management of the Bank and shall decide on the direction of its policy.

3. It shall exercise regulatory power in the cases laid down by law. In circulars or recommendations, it shall lay down all measures with a view to clarifying the application of the legal or regulatory provisions whose application the Bank supervises.

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

5. It shall pronounce upon all matters which are not expressly reserved for another body by law, the Statutes or the Rules of Procedure.

6. It shall provide opinions to the various authorities that exercise legal or regulatory power on all draft legislative or regulatory acts relating to the supervisory tasks with which the Bank is or may be charged.

7. In urgent cases or special circumstances determined by the Governor or, in his/her absence, the Vice-Governor, it may take decisions by written procedure or by using telecommunications technologies permitting interactive discussion in accordance with the specific rules laid down in the Bank's Rules of Procedure.

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

2. The Council shall exchange views on general issues relating to the Bank, monetary policy and the economic situation of the country and the European Community, supervisory policy with regard to each of the sectors subject to the Bank's supervision, Belgian, European and international developments in the field of supervision, as well as, in general, any development concerning the financial system subject to the Bank's supervision; without however having any competence to intervene at operational level or take note of individual dossiers. It shall take cognisance every month of the situation of the institution.

On a proposal from the Board of Directors it shall lay down the Rules of Procedure, containing the basic

rules for the operation of the Bank's bodies and the organisation of its Departments, Services and outside offices.

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

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

5. The King shall appoint one of the Regents as President of the Council of Regency. The President of the Council of Regency shall be independent as defined by Article 526*ter* of the Company Code, come from a different linguistic group than the Governor and be of a different sex from the Governor. When a new Governor is appointed, the King shall confirm the appointment of the president in office or appoint a new president.

6. In urgent cases or special circumstances determined by the President of the Council of Regency or, in his/her absence, by the longest-serving regent, or where there are several with equal length of service, by the oldest among the latter. The Council of Regency may take decisions by written procedure or by using telecommunications technologies permitting interactive deliberation in accordance with the specific rules laid down in the Bank's Rules of Procedure.

The President of the Council of Regency shall preside over meetings of the Council of Regency except when it is exchanging views on general issues as referred to in the first sentence of point 2 of this Article. These exchanges of views are chaired by the Governor.

Art. 21. – **§ 1.** An Audit Committee shall be set up within the Council of Regency, comprising three Regents appointed by the Council of Regency. The majority of members of the Audit Committee shall be independent as defined by Article 526*ter* of the Company Code.

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

The Council of Regency appoints the President of the Audit Committee who shall be independent as defined by Article 526*ter* of the Company Code. The President of the Council of Regency may not assume the presidency of the Audit Committee.

§ 2. A Remuneration and Appointments Committee shall be set up within the Council of Regency, comprising three Regents appointed by the Council of Regency. The majority of members of the Remuneration and Appointments Committee shall be independent as defined by Article 526*ter* of the Company Code.

The Remuneration and Appointments Committee exerts the advisory powers in the field of remuneration and appointments that are attributed to it by the Council of Regency.

The Governor shall attend meetings of the Remuneration and Appointments Committee in an advisory capacity.

Art. 21*bis*. – 1. Without prejudice to the responsibilities of the bodies of the Bank and without prejudice to the execution of the tasks and transactions within the domain of the ESCB and their review by the statutory auditor, the audit committee shall, at least:

a) monitor the financial reporting process;

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

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

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

2. Without prejudice to Article 27.1 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, and without prejudice to the competence of the Works Council with respect to the nomination, the proposal of the Board of Directors for the appointment of the statutory auditor

shall be given on proposal of the Audit committee. The Works Council shall be informed of this proposal. The Audit committee shall also advise on the tender procedure for the appointment of the statutory auditor.

3. Without prejudice to any reports and notices of the statutory auditor to the bodies of the Bank, he shall report to the Audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.

4. The statutory auditor shall:

a) confirm annually in writing to the Audit committee his independence from the Bank;

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

c) discuss with the Audit committee the threats to his independence and the safeguards applied to mitigate those threats and that have been documented by him in the audit working papers.

5. The Rules of Procedure shall specify the rules of procedure of the Audit committee.

Art. 21*ter*. – **§ 1.** The Bank hereby establishes a Resolution College, which shall be responsible for performing the tasks referred to in Article 12*ter*.

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

1° the Governor;

2° the Vice-Governor;

3° the Director of the Department in charge of the prudential supervision of banks and stockbroking firms;

4° the Director of the Department in charge of prudential policy and financial stability;

5° the Director designated by the Bank as the person responsible for resolution of credit institutions;

6° *repealed*;

7° the President of the Management Committee of the Federal Public Service Finance;

8° the official in charge of the Resolution Fund;

9° four members designated by the King by Royal Decree deliberated in the Council of Ministers; and

10° a magistrate designated by the King.

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

§ 3. The persons referred to in § 2, paragraph 1, 9°, shall be appointed based on their particular experience in banking and in financial analysis.

The persons referred to in § 2, 9° and 10° shall be appointed for a renewable term of four years. They shall remain in office until provision is made for their replacement. These persons can be relieved of their duties by the authorities which have appointed them only if they no longer fulfil the conditions necessary for their role or in the event of serious misconduct.

§ 4. The King shall determine, by Royal Decree deliberated in the Council of Ministers:

1° the organisation and operation of the Resolution College and of the departments tasked with preparing its work;

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

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

§ 5. In the event of infringements of the provisions of Book II, Titles IV and VIII, Book XI and Articles 581 and 588 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms and of the measures taken to comply with these provisions, the Resolution College shall replace the Board of Directors for the purposes of applying section 3 of Chapter IV/1 of this Law.

Art. 22. – 1. Except as regards the tasks and transactions within the domain of the ESCB, the supervisory tasks referred to in Article 12*bis* and the tasks referred to in Article 12 and Chapter IV/3, the Minister of

Finance, through his representative, shall have the right to supervise the Bank's transactions and to oppose the implementation of any measure which is contrary to the law, the Statutes or the interests of the State.

2. The representative of the Minister of Finance shall, *ex officio*, attend the meetings of the Council of Regency and the Board of Censors. Except as regards the functions and transactions within the domain of the ESCB, the supervisory tasks referred to in Article 12*bis* and the tasks referred to in Article 12 and Chapter IV/3, he shall supervise the Bank's transactions and suspend and bring to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State.

If the Minister of Finance has not given a decision within eight days on the suspension, the decision may be implemented.

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

The representative of the Minister shall report to the Minister of Finance each year on the performance of his task.

Art. 23. – 1. The Governor shall be appointed by the King for a renewable term of five years. He may be relieved from office by the King only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. With regard to this decision, he shall have the right of appeal as provided in Article 14.2 of the Statute of the ESCB.

2. The other members of the Board of Directors shall be appointed by the King, on the proposal of the Council of Regency, for a renewable term of six years. They may be relieved from office by the King only if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct.

3. The Regents shall be elected for a three-year term by the General Meeting. Their term may be renewed. Two Regents shall be chosen on the proposal of the most representative labour organisations. Three Regents shall be chosen on the proposal of the most representative organisations from industry and commerce, from agriculture and from small firms and traders. Five Regents shall be chosen on the proposal of the Minister of Finance. The methods of proposing candidates for these appointments shall be laid down by the King, after deliberation in the Council of Ministers.

4. *Repealed*.

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

Art. 25. – Members of the Legislative Chambers, the European Parliament, the Councils of the Communities and the Regions, persons who hold the position of Minister or Secretary of State or of member of the Government of a Community or Region and members of the staff of a member of the Federal Government or of the Government of a Community or Region may not hold the office of Governor, Vice-Governor, member of the Board of Directors, member of the Sanctions Committee, member of the Resolution College, Regent or Censor. The last-mentioned functions shall automatically cease when their holder takes the oath of office for exercise of the above-mentioned offices or performs such functions.

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

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

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

3. the legal entities referred to in Article 14.

For duties and mandates in an institution subject to the Bank's supervision or in an institution incorporated under Belgian law or foreign law established in Belgium or in a subsidiary of these institutions and subject to the supervision of the European Central Bank, the prohibitions referred to in the first paragraph shall continue to apply for one year after the Governor, Vice-Governor and other members of the Board of Directors have relinquished their office.

The Council of Regency shall determine the conditions relating to the relinquishment of office. It may, on the recommendation of the Board of Directors, waive the prohibition laid down for the period concerned after the relinquishment of office if it finds that the activity envisaged has no significant influence on the independence of the person in question.

§ 2. The Regents may not be a member of the administrative, management or supervisory bodies of an institution subject to the supervision of the Bank or in an institution incorporated under Belgian law or foreign law established in Belgium or in a subsidiary of these institutions and subject to the supervision of the European Central Bank, nor may they perform management duties in such an institution.

§ 3. On a proposal from the Board of Directors, the Council of Regency shall lay down the code of conduct which must be respected by the members of the Board of Directors and the staff, as well as the monitoring measures concerning respect for this code. Persons responsible for supervising compliance with that code must maintain professional secrecy as provided for in Article 458 of the Penal Code.

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

However, subject to authorisation by the Minister of Finance, they may complete their current term. The terms of the members of the Board of Directors may afterwards still be extended by one year, which term may be renewed. In the case of the Governor's term of office, the authorisation to complete the current term or its extension shall be granted by Royal Decree deliberated in the Council of Ministers.

On no account may the office-holders referred to above remain in office beyond the age of seventy years.

Art. 28. – The Governor shall send to the Chairman of the Chamber of Representatives the annual report referred to in Article 284(3) of the Treaty on the functioning of the European Union, as well as a yearly report on the tasks of the Bank in the field of prudential supervision of financial institutions and on its tasks relating to its contribution to the stability of the financial system as referred to in Chapter IV/3. The Governor may be heard by the competent committees of the Chamber of Representatives at the request of these committees or on his own initiative.

Communications made under this Article may not, because of their contents or the circumstances, jeopardise the stability of the financial system.

Chapter IV – Financial provisions and revision of the statutes

Art. 29. – *Repealed*.

Art. 30. – Any capital gain realised by the Bank through arbitrage transactions of gold assets against other external reserve components shall be entered in a special unavailable reserve account. This capital gain shall be exempt from all taxation. However, where some external reserve components have been arbitraged against gold, the difference between the purchase price of that gold and the average purchase price of the existing gold stock shall be deducted from the amount of that special account.

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

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

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

Art. 31. – The reserve fund is intended for:

1. compensating for losses in capital stock;

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

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

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

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

2° from the excess, an amount proposed by the Board of Directors and established by the Council of Regency shall be independently allocated to the reserve fund or to the available reserves;

3° from the second excess, a second dividend, established by the Council of Regency, forming a minimum of 50 % of the net proceeds from the assets forming the counterpart to the reserve fund and available reserves shall be allocated to the shareholders;

4° the balance shall be allocated to the State; it shall be exempt from company tax.

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

1. in accordance with this Law and the mandatory rules drawn up pursuant to Article 26.4 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank;

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

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

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

Art. 35. – **§ 1.** Except when called upon to give evidence in court in a criminal case, and except for communications given in the context of a parliamentary commission of inquiry, the Bank, members and former members of its bodies and its staff and experts upon whom it calls shall be subject to professional secrecy and may not divulge to any person or authority whatsoever confidential information of which they have had knowledge on account of their duties.

The persons referred to in § 1 shall be exempt from the obligation contained in Article 29 of the Code of Criminal Procedure.

Contraventions of this Article shall incur the penalties laid down by Article 458 of the Penal Code. The provisions of Book 1 of the Penal Code, including Chapter VII and Article 85, shall be applicable to contraventions of this Article.

This Article does not prevent the observance, by the Bank, the members of its bodies and its staff, of specific legal provisions as to professional secrecy, whether more restrictive or not, notably when the Bank is charged with collecting statistical data or information on prudential supervision.

§ 2. Notwithstanding paragraph 1, the Bank may communicate confidential information:

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

2° to expose criminal offences to the judicial authorities;

3° within the framework of administrative or judicial appeal proceedings against acts or decisions of the Bank and in any other proceedings to which the Bank is a party;

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

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

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

The Bank may publish the decision to expose criminal offences to the judicial authorities.

§ 3. Within the limits of European Union law and any restrictions expressly laid down by or pursuant to a law, the Bank may use any confidential information that it holds in the context of its legal tasks, in order to carry out its tasks referred to in Articles 12, § 1, 12*ter*, 36/2, 36/3 and its tasks within the ESCB.

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

1° *repealed*;

2° in performing its tasks referred to in Article 12*ter*, § 1, for the purposes of carrying out these tasks,

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

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

c) to the Minister of Finance;

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

- to the special administrators appointed pursuant to Article 281, § 2 of the Law of 25 April 2014 on the legal status and supervision of credit institutions;
- to the body in charge of resolution financing arrangements;
- to auditors, accountants, legal and professional counsellors, assessors and other experts hired directly or indirectly by the Bank, a resolution authority, a competent Ministry or a potential buyer;
- to a bridge institution referred to in Article 260 of the Law of 25 April 2014 on the legal status and supervision of credit institutions or to an asset management vehicle referred to in Article 265 of the same Law;
- to persons or authorities referred to in Article 36/14, § 1, 6°, 7°, 9°, 10°, 12°, 15° and 20°;
- to potential buyers of securities or assets respectively issued or held by the institution subject to the resolution procedure.

e) without prejudice to points a) to d), to any person or authority that has a function or task pursuant to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, when the communication of confidential information concerning a person referred to in Article 1, paragraph 1, point a), b), c) or d) of the said Directive has received the prior approval of this person or the authority carrying out identical tasks to those referred to in Articles 12, § 1 and 12*ter* as regards this person, when the information comes from this person or authority.

§ 2. The Bank may communicate confidential information in accordance with § 1 only on condition that the recipient authorities, institutions or persons use that information to carry out their tasks and that, as regards that information, they are subject to an obligation of professional secrecy equivalent to that referred to in Article 35. Furthermore, information communicated by an authority of another Member State may be divulged to a third-country authority only with the express agreement of that authority and, as the case may be, only for the purposes for which that authority has given its consent. Likewise, information coming from a third-country authority may only be divulged with the express agreement of that authority and, as the case may be, only for the purposes for which that authority has given its consent.

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

§ 3. Without prejudice to the more stringent provisions of the specific laws governing them, Belgian

persons, authorities and bodies shall be bound by professional secrecy as referred to in Article 35 as regards the confidential information they receive from the Bank pursuant to § 1 and shall ensure their internal regulations guarantee that any confidential information received from the Bank in accordance with paragraph 1, 2°, by persons involved in the resolution process is treated as confidential.

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

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

As part of the obligation incumbent on them to report on their own initiative to the supervisory authority as soon as they observe decisions or facts which may constitute violations of the legislation governing the supervision of the sector, the approved auditors attached to "institutions subject" to the supervision of the Bank or in the control of which the Bank participates pursuant to Articles 12*bis* and 36/2, are required, when they have, in the performance of their tasks, concrete knowledge of special mechanisms within the meaning of article 36/4, to report them to the Bank.

§ 1 and Article 86, § 1, first indent of the Law of 7 December 2016 on the organisation of the profession and the public supervision of auditors, shall not apply to the communication of information to the Bank that is stipulated or authorised by the legal or regulatory provisions governing the tasks of the Bank.

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

Other amendments to the Statutes shall be adopted, on the proposal of the Council of Regency, by a majority of three quarters of the votes pertaining to the total number of shares present or represented at the General Meeting of Shareholders.

Amendments to the Statutes shall require the approval of the King.

Chapter IV/1 – Provisions concerning the supervision of financial institutions

Section 1 – General provisions

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

1° "the Law of 2 August 2002": the Law of 2 August 2002 on the supervision of the financial sector and on financial services;

2° "financial instrument": an instrument as defined in Article 2, 1° of the Law of 2 August 2002;

3° "credit institution": any institution referred to in Book II and in Titles I and II of Book III of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;

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

5° "investment firm with the status of stockbroking firm": any investment undertaking referred to in Book XII of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms that is recognised as a stockbroking firm or authorised to provide investment services which would require authorisation to operate as a stockbroking firm to be obtained if they were being provided by a Belgian investment firm;

6° "insurance or reinsurance company": any undertaking referred to in Article 5, paragraph 1, 1°, or 2° of the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies;

7° *repealed*;

8° "mutual insurance association": any undertaking referred to in Article 57 of the Programme Law of 10 February 1998 on the promotion of the independent company;

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

10° "regulated market": any Belgian or foreign regulated market;

11° "Belgian regulated market": a multilateral system, run and/or managed by a market operator, which ensures or facilitates the matching – even within the system itself and according to its non-discretionary rules – of manifold interest expressed by third parties in buying and selling financial instruments, in a way that leads to making contracts in financial instruments admitted to trading under its rules and/or its systems, and that is recognised and operates regularly in accordance with the provisions of Chapter II of the Law of 2 August 2002;

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

13° "central counterparty": a central counterparty as defined in Article 2(1) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

14° *repealed*;

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

16° "competent authority": the Bank, the FSMA or the authority indicated by each Member State pursuant to Article 67 of Directive 2014/65/EU, Article 22 of Regulation 648/2012 or Article 11 of Regulation 909/2014, unless otherwise specified in the said Directive or Regulations;

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

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

19° *repealed*;

20° "European Banking Authority": the European Banking Authority set up by Regulation No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC;

21° "European Insurance and Occupational Pensions Authority": the European Insurance and Occupational Pensions Authority set up by Regulation No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/79/EC;

21°/1 "European Securities and Markets Authority": the European Securities and Markets Authority set up by Regulation No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/77/EC;

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

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

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

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

26° "Regulation 909/2014": Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012;

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

28° "the Law of 7 April 2019": the Law of 7 April 2019 establishing a framework for the security of network and information systems of general interest for public security;

29° "Bankruptcy Court": the Bankruptcy Court referred to in Article I.22, 4°, of the Code of Economic Law.

30° "the Law of 18 September 2017": the Law of 18 September 2017 on preventing money laundering and terrorist financing and limiting the use of cash;

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

32° "Directive 2015/849": Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission.

Art. 36/2. – **§ 1.** In accordance with Article 12*bis*, with the provisions of this chapter and the specific laws governing the supervision of financial institutions, the Bank's mission shall be to undertake prudential supervision of credit institutions, investment firms with the status of stockbroking firm, insurance companies, reinsurance companies, mutual insurance associations, central counterparties, settlement institutions, institutions equivalent to settlement institutions, payment institutions, electronic money institutions, central securities depositories, institutions providing support to central securities depositories and custodian banks.

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

By derogation from paragraph 1, supervision of mutual insurance companies referred to in Articles 43*bis*, § 5, and 70, § 6, 7 and 8 of the Law of 6 August 1990 on mutual insurance companies and national unions of mutual insurance companies, as well as their operations, falls within the competence of the Control Office of mutual health funds and national unions of mutual health funds.

In carrying out its tasks, the Bank shall take account, in its capacity as competent prudential authority, of the convergence, in terms of supervision instruments and practices, of the implementation of the legislative, regulatory and administrative obligations imposed under the applicable European Directives.

To this end, it is required to:

a) take part in the work of the European Banking Authority, the European Insurance and Occupational Pensions Authority and, if necessary, the European Securities and Markets Authority;

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

In its capacity as competent prudential authority, when carrying out its general interest duties, the Bank shall take due account of the potential impact of its

decisions on the stability of the financial system in all the other Member States concerned and, particularly, in emergency situations, on the strength of information available at the time.

§ 2. In accordance with Article 12*bis* and the provisions of this chapter, and to the extent laid down by Article 85 of the Law of 18 September 2017, the Bank's mission shall also be to monitor respect by the financial institutions referred to in paragraph 1, first indent, for the legal and regulatory provisions or provisions of European law designed to prevent the use of the financial system for purposes of money laundering and terrorist financing, as well as financing of proliferation of weapons of mass destruction.

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

1° to intervene in the detection of any threats to the stability of the financial system, in particular by following up and assessing strategic developments in and the risk profile of systemic financial institutions;

2° to submit recommendations to the federal government and federal parliament on measures that are necessary or useful for the stability, the smooth running and the efficiency of the country's financial system;

3° to coordinate financial crisis management;

4° to contribute to the missions of the European and international institutions, organisations and bodies in the areas described in 1° to 3° and to collaborate in particular with the European Systemic Risk Board.

§ 2. The Bank shall determine, among the financial institutions referred to in Article 36/2, with the exception of credit institutions, stockbroking firms, payment institutions and electronic money institutions and insurance and reinsurance companies, those that must be considered as system-relevant and shall inform each one of these institutions. From this moment onwards, these institutions are required to send the Bank their proposals for strategic decisions. Within two months of receipt of a complete file supporting the strategic decision, the Bank may oppose these decisions if it feels that they go against sound and prudent management of the system-relevant financial institution or are liable to have a significant effect on the stability of the financial system. It may use all the powers conferred on it by this Law and the specific laws governing the supervision of the financial institutions concerned.

Strategic decisions shall be understood to mean decisions, once they assume a certain degree of importance, that concern any investment, disinvestment, participation or strategic cooperation relationship on the part of the system-relevant financial institution, notably decisions to acquire or establish another institution, to set up a joint venture established in another State, to conclude cooperation agreements or agreements on capital investment or acquisition of a branch of activity, merger or demerger.

The Bank shall specify the decisions that are to be considered as strategic and of a certain importance for the application of this Article. It shall publish these stipulations.

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

§ 4. To enable the Bank to exercise the competences laid down by the preceding paragraphs, each system-relevant financial institution shall send it a report on developments in its business activities, its risk position and its financial situation.

The Bank shall determine the content of the information that must be sent to it as well as the frequency and the arrangements for this reporting.

§ 5. Failure to respect the provisions of this Article may give rise to the imposition of administrative fines, penalties and penal sanctions provided for by this Law and the specific laws applicable to the financial institutions in question.

§ 6. The FSMA shall provide the Bank with the information it possesses and which the latter has requested for the purposes of carrying out the tasks referred to in this Article.

Art. 36/4. – In carrying out its tasks referred to in Article 12*bis* and 36/2, the Bank shall have no

competence in respect of fiscal matters. However, should it have concrete knowledge of special mechanisms applied by an establishment of which it provides or participates in the supervision, it shall report them to the judicial authorities.

A "special mechanism" is defined as a process that cumulatively fulfils the following conditions:

1° its purpose or effect is to permit or encourage tax evasion by third parties;

2° the initiative originates from the establishment itself or clearly involves the active cooperation of the establishment or is the result of manifest negligence on the part of the establishment;

3° it involves a set of behaviours or failures to act;

4° it has a special character, such that the establishment knows or ought to know that the mechanism deviates from the norms and normal practices governing banking, insurance and financial operations.

Art. 36/5. – **§ 1.** In the instances stipulated by the law regulating the task in question, the Bank may give prior written consent on an operation. The Bank make its consent dependent on the conditions that it deems appropriate.

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

1° where it appears that the operations to which it refers are incompletely or incorrectly described in the request for consent;

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

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

4° where the conditions upon which the consent is dependent are not or no longer fulfilled.

§ 3. Upon the recommendation of the Bank, the King determines the terms and conditions for application of the present Article.

Art. 36/6. – **§ 1.** The Bank shall organise a website and keep it up to date. This website shall contain all regulations, proceedings and resolutions that are required to be published in the context of its legal tasks pursuant to Article 12*bis*, as well as any other information that the Bank deems appropriate to disseminate in the interest of these same tasks.

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

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

1° besides the legislation on the legal status and supervision of credit institutions and stockbroking firms and the legislation on the legal status and supervision of insurance and reinsurance companies, along with any Decrees, Regulations and Circulars issued under or pursuant to this legislation or Regulations of European Union law relating to these matters, a table setting out the provisions of European Directives on the prudential supervision of credit institutions and stockbroking firms and on the legal status and supervision of insurance and reinsurance companies, stating the chosen options;

2° the supervisory objectives that it exercises pursuant to the legislation referred to in 1°, and in particular the functions and activities carried out as such, the verification criteria and the methods it uses to carry out the assessment referred to in Article 142 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, including the criteria for the application of the principle of proportionality referred to in paragraph 4 of said Article 142, and Articles 318 to 321 of the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance;

3° aggregate statistical data on the main aspects relating to the application of the legislation referred to in 1°;

4° any other information laid down by the Decrees and Regulations issued under this Law.

The information referred to in paragraph 1 shall be published according to the guidelines established,

as the case may be, by the European Commission, the European Banking Authority or the European Insurance and Occupational Pensions Authority. The Bank shall ensure that the information provided on its website is updated regularly.

The Bank shall also publish any other information required under acts of European Union law applicable in the area of supervision of credit institutions and stockbroking firms and in the area of supervision of insurance and reinsurance companies.

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

Art. 36/7. – All notifications that the Bank or the Minister are required to make by registered letter or recorded delivery in accordance with the laws and regulations whose application is supervised by the Bank may be made by writ of execution or by any other method determined by the King.

Art. 36/7/1. – **§ 1.** The person who has informed the Bank, in good faith, of an alleged or infringement of the laws and regulations governing the legal status and supervision of financial institutions referred to in Article 36/2, may not be subjected to any civil, penal or disciplinary proceedings nor have any professional sanctions imposed on him or her that might be lodged or imposed because he/she reported the said information. This report shall not be considered in breach of any restrictions on the disclosure or communication of information imposed by a contract or by a legal, regulatory or administrative provision, and the responsibility of the person who raised such an alert may not in any way be liable for having reported this information.

Paragraph 1 may not benefit the lawyers who report any information that they have received from one of their clients or obtained from one of their clients.

§ 2. The Bank shall not reveal the identity of the person who makes a report referred to in § 1, first indent. Unless this person consents, the Bank shall reject any request for consultation, explanation or communication, in any form whatsoever, of an administrative document in which his or her identity appears directly or indirectly.

Without prejudice to paragraph 1, upon request of the person concerned, the Bank may assist the person who raised the alert as referred to in paragraph 1, first indent, before the administrative or judicial authorities asked to hear a case of unfair treatment or measure prohibited under paragraph 3, first indent, and on that occasion in particular may confirm in labour disputes the status of informant of the person who raised the alert.

§ 3. Reprisals, or any discrimination or other types of unfair treatment or measure related to the report referred to in § 1, first indent, shall be prohibited against anybody in a labour relationship who raises the alert in good faith, whether or not they are in a contractual or statutary relationship.

§ 4. In the event of any unfair treatment or measure for a period of twelve months from the alert being raised, the burden of proof that this treatment or measure is not related to the said report is on the employer, provided that the person concerned provides reasonable arguments suggesting that the unfair treatment constitutes reprisals because of this person raising the alert.

§ 5. If, in breach of paragraph 3, an employer terminates an employment relationship or unilaterally and unfavourably amends the working conditions of a person who raises an alert as referred to in paragraph 1, first indent, the person concerned or the representative organisation to which he or she belongs, may request his or her reintegration on the conditions prevailing before the breach of the employment relationship or the adverse amendment of the working conditions. The request shall be made by registered letter within thirty days of the date of notice of termination of employment or adverse amendment of the working conditions. The employer must act on that request within thirty days of receipt of the request for reintegration. The employer who reintegrates the person concerned under the same terms, is required to compensate for any lost benefits and salary during the period preceding the reintegration.

§ 6. Any employer who does not reinstate the person concerned on the same terms after the request referred to in paragraph 5, is required to pay them, without prejudice to any compensatory payment due in the event of any breach of contract. At the option of the person concerned, the compensation shall be equal to either a flat-rate sum corresponding to six months' total gross salary, including all non-statutory employee benefits, or to the actual harm suffered. In

the latter case, the person concerned has to prove the extent of that damage.

The employer is required to pay the same compensation, without the request referred to in paragraph 5 being introduced when the reprisals, discrimination and other types of unfair treatment or measure have been established by the competent jurisdiction as being applied because of the report referred to in § 1, first indent.

When a measure or any unfair treatment in breach of paragraph 3 is agreed after severance of the employment relationship, the person who raised the alert, referred to in § 1, first indent, has the right to the compensation referred to in the first indent, for the duration of the employment relationship, when the unfair treatment or measure has been established by the competent jurisdiction as being applied because of the report referred to in § 1, first indent.

§ 7. Contractual or statutory provisions or provisions set out in a collective labour agreement which run contrary to this Article or to the relevant implementing measures, as well as any contractual clauses that provide for a waiver of the protection conferred by this Article or the relevant implementing measures shall be deemed null and void.

Section 2 – Sanctions Committee

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

§ 2. The Sanctions Committee shall comprise six members appointed by the King:

1° a State counsellor or honorary State counsellor, appointed on a proposal from the First President of the Council of State

2° a counsellor at the Court of Cassation or honorary counsellor at the Court of Cassation, appointed on a proposal from the First President of the Court of Cassation;

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

4° two other members.

§ 3. The chairman is elected by the members of the Sanctions Committee from among the persons mentioned in § 2, 1°, 2° and 3.

§ 4. For the three years preceding their appointment, the members of the Sanctions Committee may not have been either member of the Board of Directors of the Bank, or of the Resolution College of the Bank, or of the Bank's staff, or of the CSRSFI.

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

§ 5. The mandate of the members of the Sanctions Committee is six years and renewable. In the event of non-renewal, the members shall remain in office until the first meeting of the Sanctions Commission in its new composition. Members may be removed from office by the King only if they no longer fulfil the conditions for the performance of their duties or if they have been guilty of serious misconduct.

Should a member of the Sanctions Committee's seat fall vacant, whatever the reason, a replacement for that member shall be found for the remaining term of office.

§ 6. The Sanctions Committee may take valid decisions when two of its members and its chairman are present and in a position to deliberate. If its chairman is unable to attend, it may take valid decisions when three of its members are present and in a position to deliberate.

Members of the Sanctions Committee may not deliberate in a case in which they have a personal interest that may influence their opinion.

§ 7. The King shall determine, in consultation with the management of the Bank, the amount of

compensation allocated to the chairman and to the members of the Sanctions Committee in accordance with the cases on which they have deliberated.

§ 8. The Sanctions Committee shall lay down its rules of procedure and its rules of conduct.

Section 3 – Rules of procedure for the imposition of administrative fines

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

The investigations officer is designated by the Council of Regency from among the members of staff of the Bank. He shall enjoy total independence in the performance of his duties as investigations officer.

In order to carry out his task, the investigations officer may exercise all the powers of investigation vested in the Bank by the legal and regulatory provisions governing the matter concerned. He shall be assisted in the conduct of each inquiry by one or more members of the Bank's staff that he chooses from among the members of staff designated to this end by the Board of Directors.

§ 1/1. Notwithstanding § 1, paragraph 3, the investigations officer has the power to summon and interview any person, according to the rules set out below.

The summons to a hearing shall be delivered either by simple notification, by registered post, or by writ by a court officer.

Any person summoned under paragraph 1 must appear.

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

1° at the beginning of the hearing, the respondent shall be informed that

a) he may ask that all the questions asked to him and all the answers given by him be recorded exactly as stated;

b) he may ask that a specific taking of evidence or interview be carried out;

c) his statements may be used as evidence in court;

2° the respondent may use the documents in his possession, provided that this does not involve the hearing being delayed. He may, at the time of the hearing or thereafter, ask that these documents be attached to the minutes of the hearing;

3° at the end of the hearing, the report shall be given to the respondent to read, unless he asks for it to be read out to him. He shall be asked whether his statements need to be corrected or completed;

4° if the respondent wishes to express himself in a language other than the language of the proceedings, his statements shall be noted in his language, or he shall be asked to write his statement himself;

5° the respondent shall be informed that he may obtain a copy of his hearing free of charge; where applicable, this copy will be given or sent to him immediately or within a month.

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

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

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

§ 3. If the Board of Directors puts forward a proposal for a compromise settlement, and its proposal is accepted, the compromise settlement shall be published on the Bank's website without specifying any names, except in cases where the compromise settlement is proposed for infringements of Articles 4, 5 and 7 to 11 of Regulation 648/2012 and where such publication would seriously jeopardise the financial

markets or cause disproportionate damage to the relevant central counterparties or their members.

The amount of the compromise settlements shall be recovered in favour of the Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

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

§ 5. In the event that one of the grievances is liable to constitute a criminal offence, the Board of Directors shall inform the Crown prosecutor. The Board of Directors can decide to make its decision public.

When the Crown prosecutor decides to set criminal proceedings in motion for the charges to which the notification of grievances refers, he shall immediately inform the Bank. The Crown prosecutor can give the Bank, automatically or upon request from the latter, a copy of any material from the procedure relating to the charges that are the subject of the transmission.

Decisions taken by the Board of Directors pursuant to this Article are not open to appeal.

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

§ 2. Persons implicated may obtain copies of case documents from the Sanctions Committee and may be assisted or represented by a lawyer of their choice.

They may request an objection to a member of the Sanctions Committee if they have any doubts about the independence or impartiality of this member. The Sanctions Committee shall pronounce on this request by a reasoned decision.

§ 3. Following an adversary procedure and after the investigations officer has been heard, the Sanctions Committee may impose an administrative fine on the persons in question. The Sanctions Committee shall pronounce by a reasoned decision. No sanctions may be decided without the person or his/her representative first having been heard or at least duly summoned. At the hearing, the Board of Directors shall be represented by the person of its choice and may have its observations heard.

§ 4. Except where additional or different criteria are set out in specific laws, the amount of the fine shall be set in accordance with the seriousness of the breaches committed and in relation to any benefits or profits that may have been drawn from these breaches.

§ 5. The Sanctions Committee's decision shall be sent by registered letter to the persons concerned. The letter of notification shall indicate the legal remedies, the competent authorities in order for cognisance to be taken of them, as well as the form and terms that are required to be respected, failing which the period of limitation for bringing an appeal shall not come into effect.

§ 6. The Sanctions Committee shall publish its decisions on the Bank's website, specifying the names of the persons concerned, for a period of at least five years, unless such publication is liable to jeopardise the stability of the financial system or an ongoing criminal investigation or proceedings, or to be disproportionately detrimental to the persons or the institutions involved, in which case the decision shall be published on the Bank's website without specifying any names. In the event of an appeal against the sanction decision, this decision shall be published without specifying any names pending the outcome of the legal proceedings, and mentioning the lodging of said appeal. Any subsequent information on the outcome of said appeal, including any decision overturning the sanction decision, shall also be published.

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

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

Art. 36/12. – The administrative fines imposed by the Sanctions Committee and that have become definitive, as well as the compromise settlements made

before the criminal judge has made a definite pronouncement on the same facts, shall be imputed to the amount of any penal fine that is imposed for those facts in respect of the same person.

Art. 36/12/1. – **§ 1.** Without prejudice to other measures laid down by this Law, the Bank may, where it ascertains an infringement of Article 36/9, § 1/1, paragraph 3 of this Law, impose on the offender an administrative fine which shall not be less than € 2 500 nor, for the same fact or the same set of facts, more than € 2 500 000.

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

Section 3bis – Periodic penalty payments imposed by the Bank

Art. 36/12/2. – **§ 1.** The Bank may order any person to comply with Article 36/9, § 1/1, paragraph 3 of this Law, within the time limit specified by the Bank.

If the person to whom it has addressed an order pursuant to paragraph 1 fails to comply at the end of the period specified, and provided that this person has been heard, the Bank may impose the payment of a periodic penalty which shall not be more than € 50 000 per calendar day, nor exceed the total sum of € 2 500 000.

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

Art. 36/12/3. – Where a periodic penalty payment is imposed by the Bank pursuant to this Law or other legal or regulatory provisions, and as long as the person on whom it is imposed has not complied with the obligation underlying the imposition of this penalty, the Bank may publish its decision to impose the penalty on its website, specifying the names of the persons concerned.

Section 3ter – Professional secrecy – purpose principle

Art. 36/12/4. – The Bank may use the information obtained by it by virtue of its powers referred to in Articles 36/2 and 36/3 solely for the purpose of performing its tasks, including the imposition of sanctions, or in the context of an administrative appeal or legal action taken against a decision by the Bank. This refers to the tasks mentioned in Article 36/2 § 1, including in particular the use of information to monitor respect for the conditions of access to the business of the institutions subject to its supervision pursuant to Article 36/2 and in order to facilitate supervision, on an individual or consolidated basis, of the conditions for carrying out this business, to impose corrective measures or sanctions, where applicable, in the framework of the extrajudicial mechanism for settling investors' complaints.

Section 4 – Exceptions to the professional secrecy obligation

Sub-section 1 – Task of preventing money laundering and terrorist financing

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

1° to the Belgian supervisory authorities referred to in Article 85 of the Law of 18 September 2017 ;

2° to the supervisory authorities of other Member States of the European Economic Area and the supervisory authorities of third-country States which exercise one or more supervisory powers by virtue of Directive 2015/849 or the equivalent provisions of their national law ;

3° to the FSMA ;

4° to the Federal Public Service Economy, SMEs, Middle Classes, and Energy in its capacity of supervisory authority within the meaning of Article 120/2, 7° of the Law of 18 September 2017 ;

5° to the competent authorities of the European Union and of other Member States of the European Economic Area and to the competent authorities of third-country States that perform tasks for the supervision of compliance with the provisions of European or national law relating to the supervision of credit

institutions and/or financial institutions as referred to by Article 2, (1) and (2) of Directive 2015/849 or the equivalent provisions of national law, and to the European Central Bank with regard to the tasks conferred on it by the SSM Regulation;

6° to the Financial Intelligence Processing Unit (CTIF/CFI);

7° to the General Treasury Administration of the Federal Public Service Finance, where such communication is provided for by the law of the European Union or by a legal or regulatory provision regarding financial sanctions (in particular binding provisions relating to financial embargos as laid down in Article 4, 6° of the Law of 18 September 2017) or where the General Treasury Administration acts as supervisory authority ensuring compliance with Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom;

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

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

1° the information is intended for the carrying-out of the tasks of the recipient authorities or institutions, including the communication of the said information to third parties under a legal obligation applying to such authorities or institutions; in other cases, the Bank may authorise, within the limits of European Union law, the recipients of the said information to divulge it to third parties, with the Bank's prior agreement and, where applicable, only for the purposes for which the Bank has given its consent;

2° the information communicated in this manner to foreign authorities and institutions is subject to an obligation of professional secrecy equivalent to that referred to in Article 35;

3° in the event that the exchange takes place with the authorities of a third-country State, a cooperation agreement has been concluded;

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

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

Sub-section 2 – Tasks relating to prudential supervision

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

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

Whenever an emergency situation arises, including unfavourable developments on the financial markets, that is likely to threaten market liquidity and the stability of the financial system in one of the Member States in which entities of a group comprising credit institutions or investment firms have been authorised or in which branches of significant importance are established within the meaning of Article 3, 65° of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, the Bank may pass on information to the central banks in the European System of Central Banks when this information is relevant for carrying out their respective legal duties, notably conduct of monetary policy and provision of liquidity connected with it, oversight of payment, clearing and settlement systems, as well as preserving the stability of the financial system.

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

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

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

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

4° to the FSMA;

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

6° to central counterparties, to institutions for the settlement of financial instruments or to central securities depositories that are authorised to provide services for transactions in financial instruments conducted on a Belgian organised market, where the Bank deems that communication of the information concerned is necessary for the orderly operation of those central counterparties, settlement institutions and central securities depositories to be protected against the shortcomings – potential, even – of participants on the market in question;

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

8° during civil or commercial proceedings, to the authorities and legal representatives involved in bankruptcy or composition proceedings or analogous collective proceedings concerning companies subject to the Bank's supervision, with the exception of confidential information in respect of the participation of third parties in rescue attempts prior to such proceedings;

9° to statutory auditors, to company auditors and to other persons charged with the legal examination of the accounts of companies subject to the supervision of the Bank, of the accounts of other Belgian financial institutions or of the accounts of similar foreign companies;

10° to sequestrators for the exercise of their task as envisaged in the laws regulating the tasks entrusted to the Bank;

11° to the Audit Oversight College (*College van toezicht op de bedrijfsrevisoren / Collège de supervision des réviseurs d'entreprises*) and the authorities of Member States or third parties supervising the persons charged with the legal examination of the annual accounts of companies subject to the supervision of the Bank;

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

13° *repealed*;

14° to the General Treasury Administration of the Federal Public Service Finance, where such communication is provided for by the law of the European Union or by a legal or regulatory provision regarding financial sanctions (in particular binding provisions relating to financial embargos as laid down in Article 4, 6° of the Law of 18 September 2017) or where the General Treasury Administration acts as supervisory authority ensuring compliance with Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom;

15° within the limits of European Union law, to actuaries independent of enterprises who, by virtue of the law, carry out an assignment whereby they supervise those enterprises, and to the bodies in charge of supervising these actuaries;

16° to Fedris;

17° within the limits of European Union law, to the Federal Public Service Economy, in its capacity as competent authority for monitoring compliance with the provisions referred to in Book VII, Titles 1 to 3, Title 5, Chapter 1, and Titles 6 and 7 of the Code of Economic Law, as well as to officers commissioned by the Minister, who have authority, within the context of the task assigned to them under Article XV.2 of the Code of Economic Law, to investigate and report infringements of the provisions of Article XV.89 of the said Code;

18° to the authorities subject to the law of Member States of the European Union which have competence in macroprudential oversight, and to the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010;

19° within the limits of the European Regulations and Directives, to the European Securities and Markets Authority, to the European Insurance and Occupational Pensions Authority and to the European Banking Authority;

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

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

21° the Control Office of mutual health funds and national unions of mutual health funds, for carrying out its legal tasks referred to in Article 303, § 3 of the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies, as regards mutual insurance companies referred to in Articles 43*bis*, § 5, and 70, §§ 6, 7 and 8 of the Law of 6 August 1990 on mutual insurance companies and national unions of mutual insurance companies and their operations;

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

23° to any person performing a function specified by or pursuant to the law who takes part in or contributes to the performance of the Bank's supervision tasks, if that person was designated by the Bank or with the Bank's approval for the purposes of that function, such as:

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

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

c) the special commissioner referred to in Article 236, § 1, 1° of the said law, Article 517, § 1, 1° of the

Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies, Article 35, § 1 second indent, 1° of the Law of 21 December 2009 on the legal status of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing of electronic money, and on access to payment systems, Article 87, § 1, second indent, 1° of the said law, Article 48, first indent, 1° of the Royal Decree of 30 April 1999 regulating the legal status and supervision of mutual guarantee societies, and Article 36/30, § 1, second indent, 3° of this Law;

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

25° to the Federal Public Service Economy, SMEs, Middle Classes, and Energy in the performance of its tasks referred to in Article 85, § 1 and 5° of the Law of 18 September 2017 with regard to the entities referred to in Article 5, § 1, 21° of the same law;

26° within the limits of European Union law, to the financial intelligence units referred to in Article 4, 15° of the Law of 18 September 2017 on preventing money laundering and terrorist financing and limiting the use of cash.

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

1° the information is intended for the carrying-out of the tasks of the recipient authorities or institutions, including the communication of the said information to third parties under a legal obligation applying to such authorities or institutions; in other cases, the Bank may authorise, within the limits of European Union law, the recipients of the said information to divulge it to third parties, with the Bank's prior agreement and, where applicable, only for the purposes for which the Bank has given its consent;

2° the information communicated in this manner to foreign authorities and institutions is subject to an obligation of professional secrecy equivalent to that referred to in Article 35; and

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

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

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

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

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

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

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

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

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

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

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

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

3° the information is communicated exclusively to persons directly participating in the performance of the specific task;

4° the information is covered by an obligation of professional secrecy on the part of the requesting institution equivalent to that provided for in Article 35.

§ 3. Communication of confidential information by virtue of paragraph 1 shall be permitted solely in aggregated or anonymised form, or failing that, by access to information on the Bank's premises.

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

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

Sub-section 1 – General obligation of cooperation

Art. 36/16. – **§ 1.** Without prejudice to Articles 35, 35/2, 35/3, 36/13 and 36/14 and to the provisions of specific laws, the Bank shall, in matters pertaining to its competence, cooperate with foreign competent authorities that exercise one or more competences comparable to those referred to in Articles 36/2 and 36/3.

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

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

§ 2. Without prejudice to the obligations arising for Belgium from the law of the European Union, the Bank may, on the basis of reciprocity, conclude agreements with competent authorities, as referred to in § 1, first indent, with a view to establishing the terms and conditions of that cooperation, including the method of any distribution of supervisory tasks, the designation of a competent authority as supervision coordinator and the method of supervision through on-the-spot inspections or otherwise, what cooperation procedures shall apply, as well as the terms and conditions governing the collection and exchange of information.

§ 3. Without prejudice to Articles 35, 35/2, 35/3, 36/13 and 36/14 and to the provisions of specific laws, the Bank shall conclude cooperation agreements with the Control Office of mutual health funds and national unions of mutual health funds on the subject of supplementary health insurance practised by the mutual insurance companies referred to in Articles 43*bis*, § 5, and 70, § 6, 7 and 8, of the Law of 6 August 1990 on mutual insurance companies and national unions of mutual insurance companies. The cooperation agreements shall govern, inter alia, exchange of information and the uniform application of the legislation concerned.

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

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

1° The Bank shall collaborate with the other competent authorities whenever that is necessary in order to fulfil their duties, by making use of the legal prerogatives at its disposal. The Bank shall offer its assistance to the competent authorities of the other Member States. In particular, it shall exchange information and cooperate with the other competent authorities in enquiries or supervisory activities including on-the-spot checks, even if the practices that are subject to an investigation or verification do not constitute a violation of any rules in Belgium. The Bank may also cooperate with the other competent authorities in order to facilitate the collection of fines.

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

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

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

4° Where the Bank has serious grounds to suspect that acts infringing the provisions of Directive 2014/65/EU or Regulation 600/2014 are being or have been committed on the territory of another Member State, it shall inform the competent authority of that other Member State, the European Securities and Markets Authority and also the FSMA, about those acts in as detailed a manner as possible. If the Bank has been informed by an authority of another Member State that such acts have been committed in Belgium, it shall inform the FSMA accordingly, take appropriate measures and communicate the results of its intervention to the authority that informed it, the European Securities and Markets Authority and the FSMA, in so far as possible stating the significant points emerging in the meantime.

§ 2. In the execution of § 1, the Bank may refuse to follow up a request for information, investigation, on-the-spot verification or monitoring if:

- following up such a request is liable to threaten Belgium's sovereignty, security or public order, or
- legal proceedings have already been initiated for the same charges against the same persons in Belgium, or
- these persons have already been tried irrevocably for the same charges in Belgium.

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

§ 3. *Repealed*.

§ 4. Paragraphs 1 and 2 shall also apply, according to the conditions determined in the cooperation agreements, in the context of cooperation with the authorities of third States.

§ 5. The FSMA is the authority that acts as the single point of contact in charge of receiving requests for exchange of information or cooperation in execution of § 1.

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

Art. 36/18. – *Repealed*.

Section 5 – Powers of investigation, penal provisions and means of appeal

Art. 36/19. – Without prejudice to the powers of investigation conferred upon it by the legal and

regulatory provisions governing its tasks, the Bank may, in order to verify whether an operation or an activity is envisaged by the laws and regulations whose application it is responsible for supervising, demand all necessary information from those carrying out the operation or activity in question and from all third parties permitting that operation or activity to take place.

The Bank shall have the same power of investigation in order to verify whether, within the framework of a cooperation agreement concluded with a foreign authority and in respect of the substantive points indicated in the written request from that authority, an operation or activity carried out in Belgium is envisaged by the laws and regulations whose application that foreign authority is responsible for supervising.

The person or institution concerned shall communicate that information within the deadline and in the form specified by the Bank.

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

If the person or institution in question has not sent the information requested upon expiry of the deadline set by the Bank, once the person or institution concerned have been heard, and without prejudice to the other measures provided for by law, the Bank may impose the payment of a fine which may not be less than € 250 nor higher than € 50 000 per calendar day, nor exceed € 2 500 000 in total.

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

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

- those who hamper the Bank's investigations pursuant to the present Chapter or who knowingly provide it with inaccurate or incomplete information;
- those who knowingly, through declarations or otherwise, intimate or allow it to be believed that the operation or operations that they carry out or intend to carry out are conducted under the conditions stipulated by the laws and regulations whose application is supervised by the Bank, whereas those laws and regulations either do not apply to them or have not been respected by them.

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

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

§ 2. Without prejudice to the special provisions laid down by or pursuant to the law, the term for appeal shall, on pain of extinction, be 30 days.

The term for appeal shall commence from notification of the decision in dispute.

§ 3. On pain of inadmissibility, pronounced officially, the appeal as referred to in § 1 shall be lodged by signed petition delivered to the Registry of the Brussels Court of Appeal in as many copies as there are parties.

On pain of inadmissibility, the petition shall contain:

1° mention of the date, month and year;

2° where the petitioner is a natural person, his or her name, first names and address; where the petitioner is a legal entity, its name, legal form, registered office and the body that is representing it;

3° mention of the decision that is the subject of the appeal;

4° statement of the arguments;

5° indication of the place, day and hour of the court appearance fixed by the Registry of the Court of Appeal;

6° inventory of the supporting documents lodged together with the petition with the Registry.

Notification of the petition shall be given by the Registry of the Brussels Court of Appeal to all parties summoned in the suit by the petitioner.

The Market Court may at any time officially summon to appear in the suit all other persons whose situation threatens to be affected by the ruling on the appeal.

The Market Court shall determine the term within which the parties are required to exchange their written comments and to lodge a copy of those comments with the Registry. It shall likewise determine the date of the hearing.

Each of the parties may lodge his/her/its written comments with the Registry of the Brussels Court of Appeal and consult the dossier there on the spot.

The Market Court shall determine the term within which the comments are required to be produced. The Registry shall notify the parties of them.

§ 4. Within five days after registration of the petition, the Registry of the Brussels Court of Appeal shall request the Bank to forward the procedure dossier. The dossier shall be forwarded within five days after receipt of the request.

§ 5. The appeal as referred to in § 1 shall serve to suspend the decision of the Bank.

Art. 36/22. – According to an accelerated procedure determined by the King, an appeal may be lodged with the Council of State:

1° by the applicant for an authorisation, against decisions taken by the Bank in respect of authorisation pursuant to Article 12 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms. Such an appeal may also be lodged where the Bank has made no ruling within the periods laid down in paragraph 1 of the aforementioned Article 12; in the latter case, the appeal shall be handled as if the request had been rejected;

2° by the credit institution and by the stockbroking firm, against decisions taken by the Bank pursuant to, respectively, Articles 86, paragraph 4, 88/1, 544 and 546 of the aforementioned Law of 25 April 2014, insofar as these three articles render the said Article 86, paragraph 4, applicable;

3° by the credit institution and by the stockbroking firm, against decisions taken by the Bank pursuant to, respectively, Articles 234, § 2, 1° to 12°, 236, § 1, 1° to 6, and Articles 583 and 585, insofar as these articles render the above-mentioned Articles 234, § 2, 1° to 12° and 236, § 1, 1° to 6, applicable to stockbroking firms, and against similar decisions taken pursuant to, respectively, Articles 328, 329 and 340, and Articles 599 and 607 of the aforementioned Law of 25 April 2014, insofar as these latter articles render the said Articles 328, 329 and 340 applicable to stockbroking firms. The appeal shall serve to suspend the decision and its publication save where the Bank, for reasons of serious threat to savers or to investors, has declared its decision executory notwithstanding any appeal;

3°*bis* by the credit institution and by the stockbroking firm, against decisions taken by the Resolution College pursuant to, respectively, Article 232 and 581 of the aforementioned Law of 25 April 2014, insofar as this last article renders the said Articles 232 applicable to stockbroking firms;

4° by the applicant, against decisions taken by the Bank regarding authorisation pursuant to Article 495 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms. A like appeal may be lodged by the applicant where the Bank has made no ruling within the periods laid down in Article 495, first indent, paragraph 1 of the aforementioned Law of 25 April 2014. In the latter case, the appeal shall be handled as if the request had been rejected;

5° *repealed*;

6° *repealed*;

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

8° *repealed*;

9° by the insurance or reinsurance undertaking, against decisions to raise tariffs taken by the Bank pursuant to Article 504 of the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies;

10° by the insurance or reinsurance undertaking, against decisions taken by the Bank pursuant to

Articles 508, § 2, 1° to 10°, and 517, § 1, 1°, 2°, 4°, 6° and 7°, of the aforementioned Law of 13 March 2016;

11° by the insurance or reinsurance undertaking, against decisions to withdraw authorisation taken by the Bank pursuant to Article 517, § 1, 8°, 541 and 598, § 2, of the aforementioned Law of 13 March 2016;

12° by the insurance or reinsurance undertaking, against decisions to protest taken by the Bank pursuant to Articles 108, § 3 and 115, § 2, of the aforementioned Law of 13 March 2016, or where the Bank has not ruled within the period laid down in Articles 108, § 3, paragraph 2, and 115, § 2, paragraph 2, of the same Law;

12°*bis* by the insurance undertaking, against decisions taken by the Bank pursuant to Article 569 of the aforementioned Law of 13 March 2016;

13° by the applicant for authorisation and by the authorised institution, against the decision by the Bank to refuse, suspend or revoke the authorisation pursuant to Articles 3, 12 and 13 of the Law of 2 January 1991 on the national debt securities market and monetary policy instruments, and its implementing Decrees. The appeal shall serve to suspend the decision unless the Bank, for serious reasons, has declared its decision executory notwithstanding any appeal;

14° *repealed*;

15° by the reinsurance undertaking, against decisions to protest taken by the Bank pursuant to Articles 114 and 121 of the aforementioned Law as they refer respectively to Articles 108, § 3 and 115, § 2, of the same Law or where the Bank has not ruled within the period laid down in Articles 108, § 3, paragraph 2, and 121, 2°, of the same Law;

16° *repealed*;

17° *repealed*;

18° by the reinsurance undertaking, against decisions taken by the Bank pursuant to Articles 600 and 601 as they refer respectively to Articles 580 and 598 of the aforementioned Law;

19° by the applicant for an authorisation, against decisions taken by the Bank in respect of authorisation pursuant to Article 12 of the Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems. A like appeal may be lodged where the Bank has made no ruling within the periods laid down in paragraph 1 of the aforementioned Article 12. In the latter case, the appeal shall be handled as if the request had been rejected;

19°*bis* by the applicant for the registrations referred to in Articles 82, § 2, and 91 of the Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems, against decisions taken by the Bank in this respect. A like appeal may be lodged by the registration applicant where the Bank has made no ruling within the periods laid down in paragraph 1 of the aforementioned Article 82, § 2 and paragraph 1 of the aforementioned Article 91, respectively. In the latter case, the appeal shall be handled as if the request had been rejected;

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

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

22° by the institution concerned, against decisions taken by the Bank pursuant to Article 517, § 6, of

the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies and Article 585 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, insofar as it renders Article 236, § 6 of the said Law applicable to stockbroking firms;

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

24° *repealed*;

25° *repealed*;

26° *repealed*;

26°/1 by the applicant for an authorisation, against decisions taken by the Bank pursuant to Articles 17 and 55 of Regulation 909/2014. A like appeal may be lodged where the Bank has made no ruling within the periods laid down in 17(8). In the latter case, the appeal shall be handled as if the request had been rejected;

26°/2 by the applicant for an authorisation, against decisions taken by the Bank pursuant to Article 36/26/1, § 5 or § 6. A like appeal may be lodged where the Bank has made no ruling within the periods laid down pursuant to the aforementioned Article. In the latter case, the appeal shall be handled as if the request had been rejected;

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

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

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

27° *repealed*;

28° *repealed*;

29° *repealed*;

30° *repealed*;

31° *repealed*;

32° by the applicant for an authorisation, against decisions taken by the Bank in respect of authorisation pursuant to Article 169 of the Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems. A like appeal may be lodged where the Bank has made no ruling within the periods laid down in paragraph 1 of the aforementioned Article 169. In the latter case, the appeal shall be handled as if the request had been rejected;

32°*bis* by the applicant for the registration referred to in Article 200, § 2 of the Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems, against decisions taken by the Bank in this respect. A like appeal may be lodged by the registration applicant where the Bank has made no ruling within the periods laid down in paragraph 1 of the aforementioned Article 200, § 2. In the latter case, the appeal shall be handled as if the request had been rejected;

33° by the payment institution, against decisions taken by the Bank pursuant to Article 186 of the Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money,

and access to payment systems, insofar as it renders Article 61 of the same Law applicable;

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

34°*bis* by any regulated entity referred to in Article 5, § 1, 4° to 10°, of the Law of 18 September 2017 on preventing money laundering and terrorist financing and limiting the use of cash, against decisions taken by the Bank pursuant to Articles 94 and 95 of the said Law;

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

35° by any person to whom a penalty has been imposed by the Bank pursuant to Articles 36/3, § 5, 36/19, paragraph 5, 36/30, § 1, paragraph 2, 2°, and 36/30/1, § 2, 2°, of this Law, Article 93, § 2, 2° of the Law of 18 September 2017 on preventing money laundering and terrorist financing and limiting the use of cash, Article 603, § 2, paragraph 3 of the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies, Articles 147, § 2, paragraph 3, 161, § 1, 2° and 229, § 2, paragraph 3 of the Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems, Article 16, § 2 of the Law of 24 March 2017 on the oversight of payment transaction processors, Article 346, § 2 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms and Article 608 of the aforementioned Law of 25 April 2014, insofar as it renders the said Article 346, § 2 applicable to stockbroking firms;

Art. 36/23. – With a view to requesting enforcement of the criminal law, the Bank is authorised to intervene, at any stage of the proceedings, before the criminal court to which an infraction punishable by this Law or by a law charging the Bank with supervision of its provisions has been referred, without the Bank thereby being required to demonstrate the existence of any prejudice. The intervention shall be according to the rules applying to the plaintiff.

Section 6 – Anti-crisis measures

Art. 36/24. – **§ 1.** Upon the recommendation of the Bank, the King may, in the event of a sudden crisis on the financial markets or in the event of a serious threat of a systemic crisis, with a view to limiting the extent or the consequences of this crisis:

1° determine regulations supplementing or derogating from the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies, the Law of 2 January 1991 on the national debt securities market and monetary policy instruments, the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, the Law of 25 October 2016 on the regulation of investment services and on the legal status and supervision of companies for portfolio management and investment advice, the Law of 2 August 2002 on the supervision of the financial sector and on financial services, Book VIII, Title III, chapter II, section III, of the Company Code, and Royal Decree 62 on the deposit of fungible financial instruments and the settlement of transactions in these instruments, coordinated by Royal Decree of 27 January 2004;

2° put in place a system for granting a State guarantee for commitments entered into by institutions supervised pursuant to the aforementioned laws that He shall determine, or for granting the State guarantee to certain claims held by these institutions;

3° put in place, if necessary by means of regulations laid down in accordance with 1°, a system for granting a State guarantee for the reimbursement of associates who are natural persons of their share of the capital of cooperative societies, authorised in accordance with the Royal Decree of 8 January 1962 on the licence requirements for the national groups of cooperative societies and for cooperative societies,

which are institutions supervised pursuant to the aforementioned laws or at least half of whose capital is invested in such institutions;

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

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

The Royal Decrees taken under the terms of paragraph 1, 1°, shall cease to have effect if they have not been confirmed by law within twelve months from their date of entry into force. The confirmation shall be retroactive to the date of entry into force of the Royal Decrees. The Royal Decrees taken pursuant to paragraph 1, 2° to 6°, shall be deliberated in the Council of Ministers.

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

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

In determining the groups referred to in paragraph 1, any links between institutions that is the result of State control over such institutions shall not be taken into consideration.

Any crossing of the limit determined in paragraph 1 as a result of changes in exchange rates shall not affect the validity of the guarantees or cover commitments granted.

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

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

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

§ 3. In accordance with the provisions of Regulation 648/2012, the Bank shall grant authorisation to institutions established in Belgium which intend to offer services as central counterparties. The Bank shall decide on the request for authorisation based upon a recommendation from the FSMA in accordance with Article 22 of the Law of 2 August 2002.

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

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

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

The Bank monitors compliance by central counterparties of the provisions of Chapters 1 and 3 of Title IV of

Regulation 648/2012, with the exception of Article 33 of Regulation 648/2012, which falls within the competence of the FSMA.

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

Central counterparties shall be prohibited from setting up special mechanisms within the meaning of Article 36/4, paragraph 2, the norms and normal practices referred to in 4° of said article being the norms and normal practices with regard to transactions carried out in the framework of the services referred to in Articles 14 and 15 of Regulation 648/2012.

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

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

Any natural or legal person who has taken the decision either to acquire, directly or indirectly, a qualifying holding in a central counterparty, or to increase, directly or indirectly, his qualifying holding in a central counterparty, must give the Bank advance notice in accordance with Regulation 648/2012. The Bank shall assess this notification in accordance with the provisions of Regulation 648/2012 and after consultation with the FSMA where the potential purchaser is a regulated company subject to supervision by the FSMA.

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

§ 6. The provisions of this Article and of its implementing Decrees shall be without prejudice to the powers of the Bank as laid down in Article 8 of this Law.

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

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

The Bank is in particular responsible for monitoring compliance by the counterparties referred to in paragraph 1, with Title II of Regulation 648/2012 concerning the clearing obligation, reporting obligation and risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty and with Article 37(3) of Regulation 648/2012 in respect of the financial resources and the operational capacity required to perform the activity of clearing member in accordance with Regulation 648/2012.

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

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

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

Art. 36/26. – *Repealed*.

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

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

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

In applying Regulation 909/2014, the Bank shall consult the FSMA for matters falling within the ambitscope of its competences, in accordance with Article 23*bis* of the Law of 2 August 2002. If the Bank does not take account of the opinion of the FSMA, it shall mention this and state the reasons thereof in the explanation accompanying its decision. The opinion of the FSMA shall be attached to the notification of the Bank's decision, unless it relates to matters as referred to in Article 23*bis*, § 3, paragraph 4 of the Law of 2 August 2002.

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

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

§ 3. The Bank shall be responsible for exercising supervision of the authorised central securities depositories pursuant to § 1. Without prejudice to the provisions of Regulation 909/2014, the King may, upon the recommendation of the Bank, determine:

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

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

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

§ 5. Institutions providing support as referred to in § 4 are required to obtain an authorisation from the Bank upon the recommendation of the FSMA. The Bank shall be responsible for exercising supervision of such institutions. On the recommendation of the Bank and the FSMA, the King shall lay down in particular:

1° both on a consolidated basis and on an individual basis, the conditions and procedures for the granting of the authorisation and for maintaining the authorisation of such institutions by the Bank, including the scope of the FSMA's opinion and the conditions that persons who are in charge of the actual management and persons who hold a major stake must meet;

2° the rules, as well as the corrective measures, regarding the prudential supervision exercised by the Bank on institutions as referred to in § 4 that are not credit institutions established in Belgium;

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

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

Upon the recommendation of the Bank and the FSMA, the King may, in compliance with Belgium's international obligations, apply fully or partially the rules referred to in § 4 and 5 to institutions established abroad whose business consists in securing, in whole or in part, the provision of support services or the performance of important operational functions to ensure the performance of the services and activities of central securities depositories established in Belgium.

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

§ 5/1. Central securities depositories and institutions providing support shall be prohibited from setting up specific mechanisms within the meaning of Article 36/4, paragraph 2, the norms and normal uses referred to in 4° of said article being the norms and normal practices with regard to transactions carried out within the framework of the services referred to in the Annex to Regulation 909/2014.

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

The custodian banks referred to in the first paragraph are required to obtain an authorisation from the Bank, upon the recommendation of the FSMA. The Bank is responsible for exercising prudential supervision of these institutions. Upon the recommendation of the Bank and the FSMA, the King shall notably regulate, both on a consolidated and non-consolidated basis, the conditions and procedures for the granting of the authorisation and for maintaining the authorisation of such institutions by the Bank, including the scope of the FSMA's opinion and the conditions that persons who are in charge of the actual management and persons who hold a major stake must meet.

The Bank may authorise custodian banks to provide other services than those referred to in paragraph 1 and shall determine the conditions of such authorisation.

§ 7. The provisions of this Article shall be without prejudice to the powers of the Bank as laid down in Article 8. Upon recommendation of the Bank, the King may determine :

1° the standards regarding the supervision of securities settlement systems ;

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

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

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

§ 9. Without prejudice to Articles 273 and 378 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, before any decision is taken on the opening of bankruptcy proceedings with respect to a central securities depository or of an institution providing support, the president of the Bankruptcy Court shall submit to the Bank a request for an opinion. The clerk of the court shall transmit this request immediately. He shall inform the Crown prosecutor.

The Bank shall submit the case to the court in writing. This request shall include the items necessary for information.

The Bank shall hand down its opinion within fifteen days from the date of receipt of the request for an

opinion. In the event of a procedure relating to a central securities depository or an institution providing support that it deems liable to have major systemic implications or which requires prior coordination with foreign authorities, the Bank may hand down its opinion within a longer timeframe, on condition, however, that the total period does not exceed thirty days. When it considers that it must make use of this exceptional period, the Bank shall inform the court called upon to decide. The period available to the Bank to hand down its opinion shall serve to suspend the period within which the Bankruptcy Court must rule. If the Bank has not responded within the period specified, the court may decide on the request.

The opinion of the Bank shall be in writing. It shall be transmitted by any means to the clerk, who shall hand it over to the president of the Bankruptcy Court and the Crown prosecutor. The opinion shall be annexed to the dossier.

Art. 36/27. – **§ 1.** When a settlement institution or an equivalent institution as referred to in Article 36/26, or a central securities depository or an institution providing support as referred to in Article 36/26/1 is not operating in accordance with the provisions of this Law and of the decrees issued implementing them, when its management or financial position are of a nature to call into question the performance of its obligations or do not offer sufficient guarantees for its solvency, liquidity or profitability, or when its management structures, its administrative or accounting organisation or its internal audit reveal serious shortcomings such that the stability of the Belgian or international financial system is likely to be affected, the King may, by Decree deliberated in the Council of Ministers, either upon the Bank's request, or on own initiative, after receiving the Bank's opinion, lay down any act of disposal, in favour of the State or any other person, Belgian or foreign, a public or private legal entity, notably any act of disposal, sale or capital investment with regard to :

1° assets, liabilities or one or more branches of activity and, more generally, all or part of the rights and obligations of the institution concerned, including proceeding to transfer client assets consisting of financial instruments governed by coordinated Royal Decree 62 on the deposit of fungible financial instruments and the settlement of transactions in these instruments, as well as underlying securities held with depositories in the name of the institution concerned, just as proceeding with the transfer of resources, notably information technology resources, necessary for processing transactions concerning these assets and the rights and obligations relating to such processing ;

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

§ 2. The Royal Decree taken pursuant to pursuant to paragraph 1 shall fix the compensation to be paid to the owners of the property or to the right-holders subject to the transfer specified by the Decree. If the transferee designated by the Royal Decree is a person other than the State, the price payable by the transferee under the terms of the contract concluded with the State shall pass to the said owners or right-holders as compensation, according to the distribution formula defined by the same Decree.

Part of the compensation may be variable as long as this part is determinable.

§ 3. The institution concerned shall be notified of the Royal Decree taken pursuant to paragraph 1. Furthermore, the measures provided for in this Decree shall be announced by publication of a notice in the *Moniteur belge / Belgisch Staatsblad*.

As soon as it has received the notification referred to in paragraph 1, the organisation shall lose the right to dispose of the assets referred to in the acts of disposal provided for by the Royal Decree.

§ 4. The acts referred to in paragraph 1 may not be subject to non-invocability pursuant to Articles XX.111, XX.112 or XX.114 of the Code of Economic Law.

Notwithstanding any conventional provision to the contrary, the measures determined by the King pursuant to the first paragraph may not have the effect of modifying the terms of a contract concluded between the institution and one or more third parties, or of terminating such a contract, nor of giving any of the parties concerned the right to terminate it unilaterally.

As regards the measures decreed by the King pursuant to pursuant to paragraph 1, any statutory or contractual authorisation clause or pre-emption clause, any option to buy from a third party, as well as any statutory or contractual clause preventing a change in the supervision of the institution concerned, shall be ineffective.

The King has the power to make any other rules that are necessary for the proper execution of the measures taken pursuant to paragraph 1.

§ 5. The civil liability of persons, acting in the name of the State or upon its request, intervening in the framework of the measures referred to in this Article, incurred as a result of or in relation to their decisions, acts or conduct in the context of these measures is limited to cases of fraud or gross negligence concerning them. The existence of gross negligence must be assessed taking account of the concrete circumstances of the case, and in particular the urgency with which these persons were confronted, the practices on the financial markets, the complexity of the case, threats for the protection of savings and the risk of damage to the national economy due to the failure of the institution concerned.

§ 6. All disputes that might arise as a result of the measures referred to in this Article, as well as the liability referred to in paragraph 5, are subject to the exclusive jurisdiction of the Belgian courts, which only apply Belgian law.

§ 7. For the purposes of applying collective labour agreement 32*bis* concluded on 7 June 1985 within the National Labour Council, concerning the safeguarding of employees' rights in the event of a change of employer as a result of a conventional company transfer and governing the rights of employees taken on in the event of a takeover of assets following bankruptcy, acts committed pursuant to paragraph 1, 1°, are considered as acts committed by the settlement institution or equivalent institution itself or by the central securities depository or the institution providing support.

§ 8. Without prejudice to the general principles of law that it could invoke, the board of directors of the institution concerned may derogate from the statutory restrictions to its management powers when one of the specific circumstances laid down in paragraph 1 is liable to affect the stability of the Belgian or international financial system. The board of directors shall draw up a special report justifying the use of this provision and setting out the decisions taken; this report shall be sent to the General Meeting within two months.

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

1° Royal Decree: the Royal Decree deliberated in the Council of Ministers that shall apply to the extent of Article 36/27, § 1;

2° transfer act: the transfer or other ownership transfer act provided for in the Royal Decree;

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

4° the owners: the natural persons or legal entities that, on the date of the Royal Decree, are the owners, or the right-holders, of the assets or shares subject to the transfer act;

5° the third-party transferee: the natural person or legal entity other than the Belgian State that, according to the Royal Decree, is called on to acquire the assets or shares, or rights, subject to the transfer act;

6° the compensation: the indemnification that the Royal Decree fixes in favour of the owners in compensation for the ownership transfer act.

§ 2. The Royal Decree shall enter into force on the day of publication in the *Moniteur belge / Belgisch Staatsblad* of the judgment referred to in paragraph 8.

§ 3. The Belgian State shall lodge with the office of the clerk of the court a petition with the purpose of stating that the ownership transfer act is in conformity with the law and that the compensation is deemed to be fair, taking account notably of the criteria referred to in paragraph 7, 4th indent.

On pain of extinction, the petition shall contain:

1° the identity of the settlement institution or equivalent institution concerned, the identity of the central securities depository or of the institution providing support concerned;

2° if necessary, the identity of the third-party transferee;

3° justification for the transfer from the point of view of the criteria laid down in Article 36/27, § 1;

4° the compensation, the bases on which this has been determined, notably as regards the variable part from which it is composed and, if necessary, the key for distribution of the capital between the owners;

5° if necessary, the authorisations required from the public authorities and all the other suspensive conditions to which the transfer act is subject;

6° if necessary, the price agreed with the third-party transferee for the assets or shares subject to the transfer act and the mechanisms for revising or adjusting this price;

7° indication of the day, month and year;

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

A copy of the Royal Decree shall be attached to the petition.

The provisions of Part IV, Book II, Title V*bis* of the Legal Code, including Articles 1034*bis* to 1034*sexies* are not applicable to the petition.

§ 4. The proceedings introduced by the petition referred to in paragraph 3 excludes all other simultaneous or future appeals or actions against the Royal Decree or against the transfer, with the exception of the request referred to in paragraph 11. By virtue of the filing of the petition, there shall be no grounds for any other proceedings, directed against the Royal Decree or the act of disposal, that may have been previously introduced and still pending before another legal or administrative jurisdiction.

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

The order shall be notified by the clerk's office by judicial letter to the Belgian State, the institution concerned as well as the third-party transferee, as the case may be. It shall be published simultaneously in the *Moniteur belge / Belgisch Staatsblad*. This publication shall qualify as notification to any possible owners other than the institution concerned.

Within twenty-four hours of the notification, the institution concerned shall also publish the order on its website.

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

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

By derogation from the provisions of Chapter II of Title III of Book II of the fourth Part of the Legal Code, no person other than those referred to in the previous paragraph may intervene in the proceedings.

After having heard the observations of the parties, the court shall verify whether the ownership transfer act is in conformity with the law and whether the compensation is deemed to be fair.

The court shall take account of the actual situation of the institution concerned at the time of the ownership transfer act, and notably of its financial situation such as it was or would have been had the public aid from which it benefited, either directly or indirectly, not been granted. For the purposes of application of this paragraph, advances of emergency liquidity and guarantees granted by a statutory corporate body shall be deemed similar to public aid.

The court shall pronounce by one and the same judgment that shall be handed down within twenty days following the hearing fixed by the president of the court.

§ 8. The judgment with which the court rules that the act of disposal is in conformity with the law and that the compensation is deemed to be fair, shall convey ownership of the assets or shares that are subject to the transfer act, albeit subject to the suspensive conditions referred to in paragraph 3, second indent, 5°.

§ 9. The judgment referred to in paragraph 8 is neither susceptible of appeal nor opposition nor third-party opposition.

It shall be notified by judicial letter to the Belgian State, the institution concerned as well as the third-party transferee, as the case may be, and shall be published

simultaneously by extract in the *Moniteur belge* / *Belgisch Staatsblad*.

This publication shall qualify as notification to any possible owners other than the institution concerned, and makes the act of disposal valid with regard to third parties, without further formalities.

Within twenty-four hours of the notification, the institution concerned shall also publish the judgment on its website.

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

The Belgian State shall take steps to have a notice confirming the fulfilment of the suspensive conditions referred to in paragraph 3, second indent, 5°, published in the *Moniteur belge* / *Belgisch Staatsblad*.

As soon as the notice referred to in paragraph 2 has been published, the Deposit and Consignment Office is required to hand over to the owners, according to the terms and conditions laid down by the King, the amount of compensation consigned, without prejudice to any possible distraints or oppositions regularly made on the sum consigned.

§ 11. On pain of extinction, the owners may lodge with the court a request for review of the compensation, within a period of two months from the publication in the *Moniteur belge* / *Belgisch Staatsblad* of the judgment referred to in paragraph 8. This request shall have no effect on the transfer of ownership of the assets or shares that are subject to the transfer act.

For the rest, the request for review is provided for by the Legal Code. Paragraph 7, fourth indent, shall apply.

Art. 36/29. – With regard to central counterparties, settlement institutions, central securities depositories, institutions providing support and custodian banks, including their subsidiaries established on the territory of the European Union, the Bank shall have the following powers of investigation for the execution of its task of supervision, as referred to in Articles 36/25, 36/26 and 36/26/1 or their implementing Decrees, or for responding to requests for cooperation from competent authorities within the meaning of Article 36/14, § 1, 2° and 3°:

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

b) it may undertake on-the-spot investigations and expert appraisals, take cognisance of and copy, on the spot, any document, file, and recording, and have access to any IT system;

c) it may demand the statutory auditors or persons in charge of supervising the financial statements of these entities, to send it special reports, at these entities' expense, on subjects that it shall determine;

d) when these entities are established in Belgium, it may require them to forward to it all useful information and documentation regarding the companies that form part of the same group and are established abroad.

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

Without prejudice to the other measures provided for by law, if the central counterparty, settlement institution, institution providing support to a central securities depository or custodian bank to which it has addressed an order pursuant to paragraph 1 fails to comply by the expiry of the period specified, and provided that the central counterparty, settlement institution, institution providing support to a central securities depository or custodian bank has been heard, the Bank may:

1° make public the infringement or shortcoming concerned;

2° impose the payment of a fine which may not be higher than € 50 000 per calendar day, nor exceed € 2 500 000 in total;

3° appoint a special auditor to a central counterparty, settlement institution, institution providing support to a central securities depository or custodian bank with registered office established in Belgium whose authorisation shall be required for the acts and decisions that the Bank determines.

In urgent cases, the Bank may take the measures as referred to in paragraph 2, 1° and 3°, without prior order pursuant to paragraph 1, provided that the central counterparty, settlement institution, institution providing support to a central securities depository or custodian bank has been heard.

§ 2. Without prejudice to other measures laid down by law, the Bank may, where, pursuant to Articles 36/9 to 36/11, it establishes an infringement of the provisions laid down by or pursuant to Articles 36/25, 36/26 and 36/26/1, as well as with any provisions laid down by or pursuant to Regulation 648/2012, Regulation 909/2014 or Regulation 2015/2365, impose an administrative fine on any central counterparty, as well as any settlement institution, institution providing support to a central securities depository or any custodian bank that, for the same offence or same totality of offences, may not be less than € 2 500 and not more than € 2 500 000. Where the infringement has resulted in the offender obtaining a capital gain, that maximum shall be raised to twice the capital gain and, in the event of a repeat offence, to three times the capital gain.

§ 3. The penalties and fines imposed pursuant to § 1 or 2, shall be recovered in favour of the Treasury by the Federal Public Service Finance's General Administration of Tax Collection and Recovery.

§ 4. The amount of the fine shall notably be set in accordance with

a) the seriousness and the duration of the infringements committed;

b) the degree of responsibility of the person concerned;

c) the capital base of the person concerned, as apparent from the total turnover of the legal person in question or the annual income of the natural person concerned;

d) any benefits or profit that may have been gained from these infringements;

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

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

g) any previous infringements committed by the person concerned;

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

Art. 36/30/1. – **§ 1.** When the Bank sees one of the infringements referred to in Article 63 of Regulation 909/2014, it may impose the sanctions and other administrative measures defined in Article 63 of Regulation 909/2014 on the offender. The sanctions and other administrative measures will be applied in accordance with Article 64 of Regulation 909/2014. In particular, the Bank may impose administrative fines as referred to in Article 63, paragraph 2, e), f) and g) of Regulation 909/2014 in accordance with Articles 36/9 to 36/11. The decisions imposing a sanction or any other administrative measure will be published in keeping with Article 62 of Regulation 909/2014.

§ 2. If the central securities depository to whom the Bank has addressed an order to comply with the provisions of Regulation 909/2014 fails to do so at the end of the period specified, and provided that the central securities depository has been heard, the Bank may:

1° make public its opinion with regard to the infringement or shortcoming concerned;

2° impose the payment of a fine which may not be higher than € 50 000 per calendar day, nor exceed € 2 500 000 in total;

3° appoint a special auditor to a central securities depository with registered office established in Belgium whose authorisation shall be required for the acts and decisions that the Bank determines.

4° suspend for the duration that it shall specify the exercise, either directly or indirectly, of all or part of the central securities depository's activities or prohibit such activities.

Members of the administrative and management bodies and the persons in charge of management

who engage in conduct or take decisions that violates the suspension or prohibition shall be jointly and severally liable for any resultant damage for the establishment or third parties.

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

5° impose stricter requirements for solvency, liquidity, concentration of risk and other limitations;

6° order the replacement of the whole or part of the central securities depository's legal administrative body within a time limit that it shall determine, and, failing such replacement within this time limit, substitute all the administrative or management bodies of the central securities depository with one or several interim directors or managers who, alone or collectively, according to the individual case, have the powers of those replaced. The Bank shall publish its decision in the *Moniteur belge / Belgisch Staatsblad*.

The remuneration of the interim director(s) or manager(s) shall be set by the Bank and borne by the central securities depository.

The Bank may at any time replace the interim director(s) or manager(s), either automatically, or at the request of a majority of shareholders or members, when there is justification that the management of interested parties no longer provides the necessary guarantees.

In urgent cases, the Bank may take measures referred to in paragraphs 2, 1°, 3° and 4° to 6° without prior order pursuant to the 1st indent, provided the central securities depository has been heard.

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

§ 4. In accordance with Article 65 of Regulation 909/2014 and without prejudice to Article 36/7/1, the rules and procedures applicable to the reporting of infringements shall be set by the Bank through a Regulation pursuant to Article 12*bis*.

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

1° those that, in Belgium, carry out clearing or settlement activities in respect of financial instruments, without being authorised to do so pursuant to Articles 36/25, 36/26 and 36/26/1 or where that authorisation has been withdrawn;

2° those that contravene the provisions laid down pursuant to Articles 36/25, 36/26 and 36/26/1, and indicated by the King in the relevant Decrees;

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

4° the central counterparties referred to in Article 36/25, § 4, central securities depositories, institutions providing support referred to in Article 36/26/1 which knowingly set up special mechanisms within the meaning of said provisions.

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

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

Section 1 – General provisions

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

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

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

2° "national authorities": the Belgian authorities, regardless of whether they fall under the federal State or the Regions, which, by virtue of their respective

powers, may implement the recommendations issued by the Bank pursuant to this chapter;

3° "SSM Regulation": Regulation (EU) No. 1024/2013 of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;

4° "European supervisory authorities": the European Banking Authority established by Regulation (EU) No. 1093/2010, the European Insurance and Occupational Pensions Supervisors established by Regulation (EU) No. 1094/2010 and the European Financial Markets Authority established by Regulation (EU) No. 1095/2010.

Section 2 – Detection and monitoring of factors which may affect the stability of the financial system

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

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

1° use the information available to it under its other statutory tasks, as resulting from or specified by or under other legislations, including those governing the status and supervision of the financial institutions referred to in Article 36/2 or the supervision on a consolidated basis of these institutions;

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

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

§ 3. Notwithstanding the obligation of professional secrecy to which they may be subject, the public sector entities, regardless of their level of autonomy, shall cooperate with the Bank in order to provide it with any information and any expertise which would be relevant for the exercise of its task as referred to in this Article. To this end, this information shall be made available to the Bank on the entity's own initiative or at the request of the Bank. Any confidential information communicated by the Bank to the recipient entity concerned shall be covered, with respect to the latter, by the professional secrecy regime provided for in Article 35, § 1. and may serve solely for the proper accomplishing of the collaboration referred to in this paragraph.

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

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

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

In addition to the prerogatives referred to in paragraph 1, the Bank may, in order to contribute to the stability of the financial system and without prejudice to the powers assigned to the European Central Bank, use the following instruments towards the financial institutions subject to its supervision:

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

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

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

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

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

6° imposing a total or partial retention of distributable profits;

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

8° the power to impose disclosure of information, and to set the terms thereof, which complement the terms provided by or under prudential legislation, for all institutions or per category of institutions subject to its supervision;

9° the power to communicate about the measures adopted pursuant to this Article and about the objectives of such measures, according to the procedures established by the Bank.

10° the power to enforce compliance, either on an individual basis or per category or for all credit institutions and stockbroking firms established under Belgian law, with a minimum funding requirement, which consists of:

a) core Tier 1 capital or additional Tier 1 or Tier 2 capital within the meaning of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;

b) subordinate debt;

c) debt referred to in Article 389/1, 2° of the Law of 25 April 2014;

d) if appropriate, other eligible debts within the meaning of Article 242/10° of the Law of 25 April 2014, for which the Bank shall stipulate the conditions;

The power referred to in paragraph 2, 10° also implies the power to determine:

- the method for calculating this minimum funding requirement, if appropriate as a percentage of total liabilities;
- the respective proportion of the sources of funding referred to in paragraph 2, 10°, a) to d) within this minimum funding requirement.

This power shall also apply, on an individual or consolidated basis, to financial holding companies, mixed financial holding companies and mixed-activity holding companies established under Belgian law as referred to in Article 3, 38°, 39° and 40° of the Law of 25 April 2014.

§ 2. Where the measures adopted pursuant to § 1, paragraph 2, are general and therefore regulatory, their adoption shall require compliance with the royal approval procedure laid down by Article 12*bis*, § 2, paragraph 3.

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

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

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

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

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

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

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

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

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

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

Art. 36/37. – Notwithstanding Articles 35 and 36/36 and without prejudice to paragraph 2, the Bank shall publish its recommendations. It decides on the terms of this publication.

Communications made pursuant to this Article may not, because of their contents or the circumstances, present a risk to the stability of the financial system.

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

§ 2. In particular, the King, by Royal Decree deliberated in the Council of Ministers and on the advice of the Bank, may require credit providers to comply with coefficients:

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

2° regarding the maximum total debt in relation to the income available to the borrower.

The opinion of the Bank is not required where the measure adopted by the King pursuant to this paragraph

is, in all respects, consistent with a recommendation issued by the Bank pursuant to Article 36/35.

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

Art. 36/40. – Where the relevant authorities which fall under the federal State fail to comply with the recommendations of the Bank, they shall provide to the Bank, by reasoned opinion, the reasons for departing from its recommendations. This reasoned opinion shall accompany the notification referred to in Article 36/39.

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

Section 5 – Objectives, special provisions and sanctions

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

Art. 36/43. – The Law of 11 April 1994 on open government shall not apply to the Bank in the context of its task as referred to in this chapter, nor to the national authorities, in the context of the implementation of the recommendations of the Bank in accordance with this chapter.

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

Art. 36/45. – **§ 1.** No petition for suspension or appeal for annulment may be submitted to the Council of State against the recommendations issued by the Bank pursuant to this chapter.

§ 2. To the exclusion of any other possibility of recourse, an appeal for annulment may be submitted to the Council of State against acts of a regulatory or individual nature adopted by the Bank pursuant to Article 36/34 or by the national authorities pursuant to Articles 36/38 and 36/41, according to an accelerated procedure determined by the King. This appeal is not suspensive.

Art. 36/46. – Shall be punishable by a fine of € 50 to € 10 000, any person :

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

2° who opposes the inquiries conducted by the Bank, and its findings, pursuant to Article 36/33 ;

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

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

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

Art. 36/47. – For the purposes of the Law of 7 April 2019 establishing a framework for the security

of network and information systems of general interest for public security, the Bank is designated as sectoral authority and inspection servcie for financial service providers, with the exception of trading platform operators within the meaning of Article 3, 6°, of the Law of 21 November 2017 on the market infrastructures for financial instruments and transposing Directive 2014/65/EU.

Articles 36/19 and 36/20 shall apply.

The Sanctions Committee shall pronounce on the imposition of administrative fines laid down by Article 52 of the above-mentioned Law of 7 April 2019. Articles 36/8 to 36/12/3 and Article 36/21 shall apply.

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

Art. 36/48. – The Bank shall carry out the tasks assigned to it as sectoral authority for the finance sector by virtue of the Law of 1 July 2011 on security and protection of critical infrastructures.

Art. 36/49. – The Bank shall be designated as an administrative authority within the meaning of article 22*quinquies* of the law of 11 December 1998 on security classification, security clearance, security certificates and security advisory notices. The Bank shall have competence for the financial sector entities that it identifies as critical infrastructures by virtue of the law of 1 July 2011 on security and protection of critical infrastructures.

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

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

Chapter V – Transitional and repealing provisions – entry into force

Art. 37. – The capital gain made from the transfer of assets in gold with regard to the issuing by the State of numismatic or commemorative coins, shall be allotted to the State to the extent of the unused balance of the 2.75 % of the weight of gold which appeared in the Bank's assets on 1 January 1987, and which could be used by the State, particularly for issuing coins, by virtue of Article 20*bis* (2) of the Law of 24 August 1939 on the National Bank of Belgium.

Art. 38. – *p.m.*

Annex 2 Corporate Governance Charter [1]

1. Introduction

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

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

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

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

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

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

1 Latest amendments: January 2021.

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

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

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

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

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

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

2. Organisation, governance and supervision of the Bank

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

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

2.2 Presentation of the Bank's organs and other institutions

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

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

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

2.3 Organs of the Bank

2.3.1 Governor

Powers

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

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

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

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

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

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

He represents the Bank in legal proceedings

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

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

Appointment

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

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

2.3.2 Board of Directors

Powers

The Governor and the Directors jointly exercise their powers as members of the Board of Directors.

The Board of Directors is a collegiate body, responsible for the administration and management of the Bank in accordance with the Organic Law, the Statutes and the Rules of Procedure, and is in charge of the direction of its policy.

The Governor and the Directors each have authority over one or more of the Bank's departments and services. They ensure that the latter implement, within the framework of their respective duties, the decisions taken by the organs.

The Board of Directors appoints and dismisses the members of staff and determines their salaries.

It has the right to make settlements and compromises. It exercises regulatory power in the cases laid down by law.

In Circulars or Recommendations, it lays down all measures with a view to clarifying the application of the legal or regulatory provisions whose application the Bank supervises. It provides opinions to the various authorities that exercise legal or regulatory power on all draft legislative or regulatory acts relating to the supervisory tasks with which the Bank is or may be charged.

It pronounces on all matters which are not expressly reserved for another organ by law, the Bank's Statutes or Rules of Procedure.

It draws up the budget and prepares the Annual Report and the annual accounts, which it submits to the Council of Regency for approval.

It decides on the investment of the capital, the reserves and the amortisation accounts after consultation with the Council of Regency and without prejudice to the regulations adopted by the ECB.

It proposes the Bank's Rules of Procedure for the approval of the Council of Regency.

The Bank's Board of Directors therefore exercises the powers of administration, management and strategic direction of the enterprise which are delegated to the administrative board in public limited liability companies governed by ordinary law, as well as the actual management powers.

It is not accountable for its activities to the General Meeting, which has no power to give it a discharge; instead, it is accountable to the Council of Regency to which it submits the Annual Report and the annual accounts. The approval of the annual accounts by the Council of Regency constitutes a discharge for the members of the Board of Directors.

Composition

The Board of Directors is composed of the Governor and a maximum of five Directors. It includes an equal number of French and Dutch speakers. The members of the Board of Directors must be Belgians.

The Directors are appointed by the King, on the proposal of the Council of Regency. The method of nominating the Directors was specifically designed by law in 1948 to emphasise the character of the Bank's activities as tasks performed in the public interest.

The Directors are appointed for a renewable term of six years.

The King confers the title of Vice-Governor on one of the Directors. The Vice-Governor replaces the Governor if the latter is unable to perform his duties, without prejudice to Article 10.2. of the Statute of the ESCB.

In order to avoid any conflict of interests, the Organic Law stipulates that, except in a limited number of specified instances, the members of the Board of Directors may not perform duties in commercial companies or companies which are commercial in form, or in public institutions engaged in industrial, commercial or financial activities. They are also prohibited from taking on certain political posts (as members of a parliament, government or ministerial cabinet).

The members of the Board of Directors may be removed from office by the King only if they have been guilty of serious misconduct or if they no longer fulfil the conditions required for the performance of their duties.

Thus, the Organic Law ensures the personal independence of the members of the Board of Directors, both by the length of their term of office and by the restrictions on their removal from office.

Functioning

The functioning of the Board of Directors is governed by the Organic Law, the Statutes and the Rules of Procedure.

The Board of Directors meets whenever circumstances dictate, and at least once a week. In urgent cases determined by the Governor, except for adopting regulations, it may take decisions by written procedure or by using a voice telecommunications system.

If a member of the Board of Directors has, directly or indirectly, an interest relating to proprietary rights which conflicts with a decision or transaction within the sphere of competence of the Board of Directors, he informs the other members before the Board deliberates. He does not attend discussions concerning that transaction or decision and does not take part in the voting. His declaration and the reasons underlying the conflicting interest are entered in the minutes of the meeting. The Board of Directors describes in the minutes the nature of the decision or transaction, justifies the decision taken and specifies the implications in terms of proprietary rights of that decision for the Bank. Those minutes are included in the Annual Report for the year in question.

The Director concerned also informs the auditor of his conflicting interest. The auditor's report must contain a separate description of the implications in terms of proprietary rights for the Bank resulting from Board of Directors decisions involving a conflicting interest within the meaning of the previous paragraph.

2.3.3 Council of Regency

Powers

The Council of Regency exchanges views on general issues relating to the Bank, monetary policy and the economic situation of the country and the European Union, supervisory policy with regard to each of the sectors subject to the Bank's supervision, Belgian, European and international developments in the field of supervision, as well as, in general, any development concerning the financial system subject to the Bank's supervision; without however having any competence to intervene at operational level or take note of individual dossiers. Every month it takes note of the institution's situation.

It has power to lay down the accounting rules for all aspects of the annual accounts which are not covered by the provisions of the Bank's Organic Law and are not mandatory for the compilation of the consolidated balance sheet of the Eurosystem. It approves the expenditure budget and the annual accounts. It has the power, as an independent body, to set the Bank's reserve and dividend policy. It determines the final distribution of the profits proposed by the Board of

Directors and ensures that the financial interests of the Bank, its shareholders and the State, as a sovereign State, are taken into account in a balanced manner.

It approves the Annual Report.

It amends the Statutes of the Bank in order to bring them into line with the Organic Law and the international obligations which are binding on Belgium.

On a proposal from the Board of Directors, it lays down the Rules of Procedure, containing the basic rules for the operation of the Bank's organs and the organisation of its departments, services and outside offices, and the code of conduct which must be respected by the members of the Board of Directors and the staff.

It appoints and dismisses the Secretary and the Treasurer.

The Council of Regency has the power to set remuneration policy and fix the salaries of the members of the Board of Directors, including the Governor, and of the Council of Regency. More detailed information about the remuneration policy and salaries is provided on an annual basis in the remuneration report which forms part of the Governance Statement included in the Annual Report.

The Council of Regency therefore exercises certain powers which, in companies governed by ordinary law, are reserved for the Board of Directors, and others reserved for the General Meeting of Shareholders. This is a very special organ which introduces an element of duality into the Bank's governance structure. Composed predominantly of non-executive members, the Council of Regency plays a key role in the appointment of Directors, remuneration and supervision, and does so on a more continuous basis than the special committees of ordinary companies, in view of the frequency of its meetings.

In regard to the budget, the Council of Regency is assisted by the Audit Committee, which has the power to examine the Bank's budget before it is submitted for approval to the Council of Regency.

The Audit Committee is established within the Council of Regency and is composed of three Regents appointed by the Council of Regency. The chair of the Audit Committee is appointed by the Council of Regency. The Audit Committee exercises the advisory powers referred to in Article 21*bis* of the Organic Law (specified in the Audit Committee Regulations) and supervises the preparation and implementation of the Bank's budget. The Audit Committee Regulations further define the powers, composition and functioning of that committee.

In the performance of its duties in relation to remuneration and appointments, the Council of Regency is assisted by the Remuneration and Appointments Committee, which comprises three Regents appointed by the Council of Regency. The Governor attends the meetings of this committee in an advisory capacity. The Remuneration and Appointments Committee Regulations define the powers, composition and functioning of that committee.

Composition

The Council of Regency is composed of the Governor, the Directors and fourteen Regents. It includes an equal number of French- and Dutch-speaking Regents.

At least one third of the members of the Council of Regency are of a different gender than the other members.

The Regents are elected by the General Meeting for a renewable term of three years, on the basis of dual lists of candidates. Two Regents are chosen on the proposal of the most representative labour organisations, three on the proposal of the most representative organisations from industry and commerce, from agriculture and from small and medium-sized enterprises and traders, and nine on the proposal of the Minister of Finance.

The method of appointing the Regents has been organised in a special way. In the preparations for the Law of 28 July 1948 which amended the Organic Law and reorganised the Bank, the legislator expressed its desire that the method of appointing the Directors and Regents should ensure both the Bank's total independence vis-à-vis individual interests and the technical competence of the candidates. The procedure for proposing the Regents was designed to ensure that the various Belgian socio-economic interests were fairly represented.

In order to avoid any conflict of interests, the Organic Law stipulates that the Regents may not be members of the administrative, management or supervisory bodies of an institution subject to the supervision of the Bank, a Belgian institution or institution established in Belgium subject to the supervision of the ECB or a subsidiary of one of these institutions subject to the supervision of the ECB, nor may they perform management duties in such an institution or take on certain political posts (as members of a parliament, government or ministerial cabinet).

The Regents may be dismissed by the General Meeting of Shareholders deciding by a majority of three-quarters of the votes of the shareholders present, holding at least three-fifths of the shares.

One of the Regents is appointed President of the Council of Regency by the King. The President of the Council of Regency is independent within the meaning of Article 7:78, first paragraph of the Companies and Associations Code, comes from a different linguistic group than the Governor and is of a different gender than the Governor. The President of the Council of Regency presides over the meetings of the Council of Regency except when it exchanges views on the general issues referred to in Article 20, point 2 of the Organic Law. These exchanges of views are presided over by the Governor.

Functioning

The functioning of the Council of Regency is governed by the Organic Law, the Statutes and the Rules of Procedure.

The Council of Regency meets at least twenty times a year and passes its decisions by a majority of the votes. In urgent cases determined by the Governor, the Council of Regency may take decisions by written procedure or by using a voice telecommunications system.

If a member of the Council of Regency has, directly or indirectly, an interest relating to proprietary rights which conflicts with a decision within the sphere of competence of the Council of Regency, he informs the other members before the Council deliberates. He must not attend discussions concerning that decision, or take part in the voting. In particular, the Governor and the Directors are not permitted to attend the discussions and take part in the voting concerning the approval of the annual accounts.

2.3.4 Sanctions Committee

Powers

The Sanctions Committee pronounces on the imposition by the Bank of administrative fines laid down by the laws applicable to the institutions that it supervises. The rules of procedure for the imposition of administrative fines are set out in the Organic Law.

Composition

The Sanctions Committee is composed of six members appointed by the King:

1° a State counsellor or honorary State counsellor, appointed on a proposal from the First President of the Council of State;

2° a counsellor at the Court of Cassation or honorary counsellor at the Court of Cassation, appointed on a proposal from the First President of the Court of Cassation;

3° two magistrates who are neither counsellors at the Court of Cassation, nor at the Brussels Court of Appeal;

4° two other members.

The chairman is elected by the members of the Sanctions Committee from among the persons mentioned in 1°, 2° and 3°.

For the three years preceding their appointment, the members of the Sanctions Committee may not have been on either the Board of Directors of the Bank or the Resolution College of the Bank, or a member of the Bank's staff.

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

They are also prohibited from taking on certain political posts (as members of a parliament, government or ministerial cabinet).

The mandate of the members of the Sanctions Committee is six years and renewable. Members may be removed from office by the King only if they no longer fulfil the conditions for the performance of their duties or if they have been guilty of serious misconduct.

Functioning

The functioning of the Sanctions Committee is governed by the Organic Law, the Statutes and the Rules of Procedure which it has adopted.

The Sanctions Committee meets whenever the chairman deems necessary. Its decisions are passed by a majority of the votes.

Members of the Sanctions Committee may not deliberate in a case in which they have a personal interest that may influence their opinion.

2.3.5 Resolution College

Powers

The Resolution College is the body competent to perform the tasks of the resolution authority authorised to apply the resolution instruments and to exercise the resolution powers in accordance with the legislation on the status and supervision of credit institutions.

Composition

The Resolution College is composed of the following persons:

1° the Governor;

2° the Vice-Governor;

3° the Director of the Department in charge of the prudential supervision of banks and stockbroking firms;

4° the Director of the Department in charge of prudential policy and financial stability;

5° the Director designated by the Bank as the person responsible for resolution of credit institutions;

6° the President of the Management Committee of the Federal Public Service Finance;

7° the official in charge of the Resolution Fund;

8° four members designated by the King by Royal Decree deliberated in the Council of Ministers; and appointed in view of their particular expertise in banking and financial analysis; and

9° a magistrate designated by the King.

The Chairman of the Financial Services and Markets Authority attends Resolution College meetings in an advisory capacity.

The persons referred to in 8° and 9° are appointed for a renewable term of four years. These persons can be relieved of their duties by the authorities which have appointed them only if they no longer fulfil the conditions necessary for their role or in the event of serious misconduct.

Members of the Resolution College may not take on certain political posts (as members of a parliament, government or ministerial cabinet).

Functioning

The functioning of the Resolution College is governed by the Organic Law, the Royal Decree of 22 February 2015 and the Rules of Procedure which it has adopted.

Unless it is unable to do so, the Resolution College meets at least four times a year and whenever circumstances dictate or whenever three of its members request a meeting. Its decisions are passed by a majority of the votes. In urgent cases determined by its chairman, the Resolution College may take decisions by written procedure or by using a voice telecommunications system.

In the event of a conflict of interests, the member concerned refrains from taking part in the deliberations and the voting on the agenda items in question.

2.4 Other institutions of the Bank

2.4.1 General Meeting

Powers

The Ordinary General Meeting hears the Annual Report on the past year and elects the Regents for

the offices which have become vacant, in accordance with the stipulations of the Organic Law. It appoints the external auditor. It amends the Statutes in cases where that power is not reserved for the Council of Regency.

The General Meeting deliberates concerning the matters mentioned in the convening notice and those submitted to it by the Council of Regency.

The Organic Law does not confer organ status on the General Meeting, whose powers are limited.

Composition

The General Meeting is composed of the shareholders who have fulfilled the legal formalities for admission to the general meeting of a listed company.

The General Meeting represents the totality of the shareholders.

Functioning

The General Meeting is chaired by the Governor. The Ordinary General Meeting is held on the third Monday in May or, if that is a public holiday, on the next bank working day. An Extraordinary General Meeting may be convened whenever the Council of Regency deems fit. A meeting must be convened if the number of Regents falls below the absolute majority or if it is requested by shareholders representing one tenth of the capital stock.

Before the meeting is opened, the shareholders sign the attendance register.

The function of scrutineers shall be performed by the two shareholders present who own the largest number of shares, who do not form part of the administration and who accept this duty.

Each share confers entitlement to one vote.

All resolutions are passed by an absolute majority of the votes. If the votes are equally divided, the proposal is rejected. Voting will take place either electronically, by roll call, by a show of hands, or by ballot papers. Elections or dismissals take place by secret ballot.

Decisions passed in accordance with the rules are binding on all the shareholders.

Minutes are drawn up in respect of each meeting. They are signed by the tellers, the chairman and the other members of the bureau. They are published on the Bank's website. Exemplified copies and extracts to be issued to third parties are signed by the Secretary.

2.4.2 Representative of the Minister of Finance

Except as regards the tasks and operations within the domain of the ESCB, the tasks of prudential supervision and the tasks of the Bank in contributing to the stability of the financial system, the representative of the Minister of Finance supervises the Bank's operations, and suspends and brings to the attention of the Minister of Finance any decision which is contrary to the law, the Statutes or the interests of the State. If the Minister of Finance has not given a decision within one week of the suspension, the decision may be implemented.

The representative of the Minister of Finance attends, ex officio, in an advisory capacity, the meetings of the Council of Regency, the Audit Committee and the Remuneration and Appointments Committee.

He attends the General Meetings when he deems fit.

He reports to the Minister of Finance each year on the performance of his duties.

Via his representative, the Minister of Finance thus exercises, on behalf of the sovereign State, supervision over the Bank's activities in regard to tasks in the national interest.

The salary of the representative of the Minister of Finance is set by the said Minister in consultation with the management of the Bank, and is paid by the Bank.

2.4.3 Auditor

The auditor performs the auditing functions prescribed by Article 27.1 of the Protocol on the Statute of the ESCB and of the ECB, and reports to the Council of Regency on those activities. He certifies the annual accounts. He also performs certification functions for the attention of the ECB auditor.

He reports to the Works Council once a year on the annual accounts and the Annual Report. He certifies the accuracy and completeness of the information supplied

by the Board of Directors. He analyses and explains, particularly for the members of the Works Council appointed by the employees, the economic and financial information submitted to this Council, in terms of its significance in relation to the financial structure and the assessment of the Bank's financial position.

The auditor is appointed on the basis of a procedure in accordance with the public procurement legislation to which the Bank is subject. He is then appointed by the General Meeting of the Bank on the proposal of the Works Council. He must be approved by the EU Council of Ministers, on the recommendation of the ECB.

2.4.4 Works Council

Pursuant to the Law of 20 September 1948 on the organisation of the economy, the Bank has a Works Council, a joint consultation body composed of representatives of the employer and representatives of the staff, elected every four years.

The main function of the Works Council is to give its opinion and formulate any suggestions or objections in regard to all measures which could change the working arrangements, working conditions and efficiency of the enterprise.

Specific economic and financial information is made available by the Board of Directors, in accordance with the law.

2.5 Mechanisms for controlling the activities

A series of control mechanisms ranging from operational to external controls govern the Bank's activities and operations, ensuring that they proceed smoothly with due regard for the set objectives and in accordance with the dual concern for security and the economical use of resources.

The control requirements applicable to the Bank on account of its tasks as the country's central bank and its membership of the ESCB differ from, and extend beyond, those laid down in the Belgian corporate governance code recommended for public limited liability companies governed by ordinary law.

From the point of view of the general management of the enterprise, the Board of Directors is responsible for establishing an internal control system and for ensuring its adequacy.

This internal control system is based on the concept of three lines of defence.

The departments and autonomous services take on *primary responsibility* for the actual operation of the internal control system. That involves:

- identifying, assessing and attenuating the risks of their entities;
- establishing adequate internal control and management systems in order to control the risks of their entities within the risk tolerance limits set by the Board of Directors;
- ensuring that their entities respect the objectives, policies and internal control.

Secondary responsibility for the actual operation of the internal control system rests with the members of the Board of Directors designated for this purpose:

- as regards financial risks, the Director-Treasurer is responsible for the Middle Office, which is in charge of identifying, assessing, managing and reporting on the risks resulting from the Bank's portfolio management activities. The Middle Office reports monthly and quarterly to the Board of Directors via the Director-Treasurer.
- as regards non-financial risks, the member of the Board of Directors designated for this purpose is responsible for Operational Risk Management (ORM), Business Continuity Management (BCM), the compliance function, information security, secondary aspects of physical security and of activities concerning banknotes.

The Internal Audit Service takes on *tertiary responsibility* for the actual operation of the internal control system.

The Internal Audit Service is tasked with giving the Board of Directors additional assurance, based on the highest degree of organisational independence and objectivity, concerning the effectiveness of the Bank's governance, risk management and internal control, including the attainment of the risk management and control objectives by the first and second lines of defence.

In order to guarantee its independence vis-à-vis the Departments and Services, the Internal Audit Service comes directly under the Governor and does not carry any direct operational responsibility. It reports to the Board of Directors and the Audit Committee.

The head of the Internal Audit Service is a member of the Internal Auditors Committee (IAC) of the ESCB. The Internal Audit Service conforms to the methodology, objectives, responsibilities and reporting procedure laid down within the ESCB, including those in the Eurosystem/ESCB Audit Charter approved by the ECB Governing Council. An Internal Audit Charter, approved by the Board of Directors and the Council of Regency on the proposal of the Audit Committee, describes the role of the audit function, its responsibilities and the powers conferred on it for the performance of its tasks.

Certain control functions are performed by specific administrative entities (e.g. the management of access to computer systems), while structural conflicts of interest are resolved by segregating the activities concerned (system of Chinese walls): thus, for example, the operation and oversight of the payment systems are entrusted to two different departments.

The Audit Committee supervises the preparation and implementation of the budget and takes note of the activities of the Internal Audit Service. Every year, its chair informs the Council of Regency and answers its questions.

The Audit Committee is responsible, in an advisory capacity, for the monitoring of the effectiveness of the internal control and risk management systems and the monitoring of the Bank's internal audit.

To that end, the Audit Committee periodically examines, in accordance with a plan which it draws up, the internal control and risk management systems set up by the various Departments and Services. It ensures that the main risks, including the risks relating to compliance with the current legislation and rules, are correctly identified, managed and drawn to its own attention and to that of the Board of Directors. The Audit Committee also examines the notes contained in the Annual Report concerning internal control and risk management.

The Audit Committee examines the effectiveness of the internal audit. It examines the internal audit charter and verifies whether the Internal Audit Service has the resources and expertise appropriate to the nature, size and complexity of the Bank. Where appropriate, it makes recommendations on this subject to the Board of Directors. Before the internal audit's programme of work is approved by the Board of Directors, the Audit Committee examines that programme, taking account of the complementarity with the work of the statutory auditor. The Audit Committee receives the periodic internal audit reports. It examines the extent to which the Departments and Services take account of the internal audit's findings and recommendations. At the request of the Board of Directors, the Audit Committee gives its opinion concerning the profile of the internal audit officer.

The Audit Committee also assesses the relevance and consistency of the accounting rules drawn up by the Council of Regency.

The Council of Regency approves the annual accounts, the annual budget, the accounting rules and the rules on the Bank's internal organisation. It consults the Audit Committee before approving the annual accounts, and may ask this committee to examine specific questions on that subject and report back to it.

The Bank is also subject to various external controls.

The first form of control is provided by the auditor, who verifies and certifies the Bank's accounts.

Except as regards the tasks and operations within the domain of the ESCB, the tasks of prudential supervision and the tasks of the Bank in contributing to the stability of the financial system, the representative of the Minister of Finance supervises the Bank's operations on the behalf of the Minister. The latter in fact has the right to monitor those operations and to oppose the implementation of any measure which would be contrary to the law, the Statutes or the interests of the State.

In addition, the Governor may be heard by the competent committees of the Chamber of Representatives and of the Senate, at the request of those committees or on his own initiative.

Finally, pursuant to the Statute of the ESCB and of the ECB, the Bank acts in accordance with the directions

and instructions of the ECB. The Governing Council takes the necessary measures to ensure compliance with those directions and instructions, and requires all necessary information to be supplied to it.

2.6 Rules of conduct

A code of conduct imposes strict rules of behaviour on the members of the Board of Directors and on the Bank's employees.

The members of the Board of Directors maintain the highest standards of professional ethics.

The members of the Bank's organs and staff are subject to strict professional secrecy pursuant to Article 35 of the Organic Law. They are also subject to the legal rules on insider trading and market manipulation.

The members of the Council of Regency – namely, the Directors and the Regents – have a legal obligation to submit an annual list of their mandates, duties and occupations to the Court of Auditors. In addition, they are bound to make an annual wealth declaration, unless there have been no appointments, terminations or renewals in the past year with regard to the mandates, duties and occupations that they have to declare.

The Bank's code of conduct lays down rules for members of the Board of Directors and of its staff on the holding of and transactions in the Bank's shares and shares or parts issued by certain enterprises subject to supervision by the Bank or the ECB, and rules on urgent withdrawals concerning certain enterprises subject to supervision by the Bank or the ECB. The Chairman of the Sanctions Committee and the competent Director exercise supervision over compliance with these provisions, respectively by the members of the Board of Directors and by the members of staff.

The Regents do not effect any transactions, for their own account or on behalf of a third party, in shares of the Bank or financial instruments relating to those shares during the annual closed period of thirty calendar days before publication of the annual accounts. Outside of those fixed closed periods, they exercise prudence in trading in the Bank's shares and refrain at all times from any speculative transaction in those shares. They also respect the closed periods fixed ad hoc by the Board of Directors.

2.7 The Secretary and the Treasurer

The Secretary draws up the minutes and the records of the meetings of the Board of Directors and of the Council of Regency. He draws up the minutes of the General Meeting of Shareholders and has them signed by the chairman of the General Meeting, the scrutineers and the other members of the bureau. He certifies copies conforming to the original. He deals with changes to the Bank's Rules of Procedure.

Under the Bank's internal control system based on the concept of three lines of defence, the Treasurer carries secondary responsibility for the management of all financial risks.

3. Shareholders

3.1 Capital and shares

The Bank's share capital totals ten million euro. It is represented by four hundred thousand shares of no face value. Two hundred thousand registered, non-transferable shares are held by the Belgian State. The two hundred thousand other registered, bearer or dematerialised shares are held by the public and listed on Euronext Brussels.

The share capital is fully paid up.

Except for those belonging to the State, the shares can be converted to registered or dematerialised shares, free of charge, at the owner's request.

Ownership of the registered shares is established by entry in the Bank's shareholders register. The registered shareholder receives a certificate which does not constitute a transferable instrument. Dematerialised shares are represented by an account entry in the name of their owner or holder with an authorised intermediary or with the settlement institution, S.A. Euroclear Belgium.

3.2 Shareholder structure

Since 1948, and pursuant to the Organic Law, the Belgian State has held two hundred thousand of the Bank's shares, or 50% of the total voting rights.

The Bank has no knowledge of other holdings of 5% or more of the voting rights.

3.3 Dividends

The setting of the dividends is organised by the Organic Law. A first dividend of 6% of the capital is guaranteed by all reserves. The second dividend corresponds to 50% of the net proceeds from the portfolio which the Bank holds as a counterpart to its total reserves. The second dividend is guaranteed by the available reserve, unless the level of the reserves were to fall too low as a result.

In view of the special nature of the Bank and its tasks in the public interest, including the primary objective of maintaining price stability, the dividend is largely dissociated from profit or loss. In this way, the shareholder is protected against the volatility of the Bank's results, which are influenced by the monetary policy of the Eurosystem and exogenous factors such as demand for banknotes or exchange rate movements.

4. Communication with shareholders and the public

4.1 Principles

As the country's central bank, the Bank performs special tasks in the public interest, on which it has to render account to the democratic institutions and to the public in general, and not only to its shareholders and employees.

4.2 Reports

Every year, the Bank publishes a Report providing the public with extensive information on recent economic and financial developments in Belgium and abroad. The summary presented by the Governor on behalf of the Council of Regency focuses on key events in the past year and delivers the Bank's main messages concerning economic policy.

Each year, the Bank also publishes a report on its activities in the field of prudential supervision, as well as a Corporate Report presenting for the shareholders' and the public's attention the Annual Report and the annual accounts for the preceding year and explaining the organisation and governance of the Bank.

These Reports are made available in printed form to the shareholders and the public. They are also published on the Bank's website, which offers all the Annual Reports issued since 1998.

The Bank is not subject to the rules governing the drawing up and issuing of periodical information.

4.3 Relations with parliament

Pursuant to the Organic Law and the Statutes, the Governor may be heard by the competent committees of the Chamber of Representatives and of the Senate, at their request or on his own initiative. He shall send to the Chairmen of the Chamber of Representatives and the Senate the Annual Report on the activities of the Bank in the field of prudential supervision.

4.4 General Meetings

The Bank's Ordinary General Meeting provides an opportunity for shareholders and the Bank's management to meet. Every year at the meeting, the Board of Directors presents the Annual Report and the annual accounts for the past financial year.

4.5 Website

On its website, the Bank offers the public and the shareholders a large quantity of regularly updated information on its activities and operations, available at all times.

The Rules of Procedure, Audit Committee Regulations and Remuneration and Appointments Committee Regulations are available on the Bank's website.

5. Representation of the Bank and signing of acts

5.1 Representation of the Bank

The Governor represents the Bank in legal proceedings.

The Governor and the Board of Directors may expressly or tacitly grant special authority to represent the Bank.

5.2 Signing of acts

All acts which are binding upon the Bank may be signed either by the Governor, or, in the absence of the latter, by the Vice-Governor, either by a majority

of the members of the Board of Directors or by a Director together with the Secretary, without any need to substantiate their authority to third parties. They may also be signed by one or two persons mandated either by the Governor or by a majority of the members of the Board of Directors or by a Director together with the Secretary.

Moreover, routine administrative acts may be signed either by the Vice-Governor or a Director, or by the Secretary or the Treasurer or by one or two members of the staff mandated by the Board of Directors.

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Pierre Wunsch
Governor

National Bank of Belgium
Boulevard de Berlaimont 14 – BE-1000 Brussels

Contact for the publication

Dominique Servais
Head of the Secretariat General Department

Tel. +32 2 221 21 07
dominique.servais@nbb.be

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