

# ORGANIC ACT DD. 22 FEBRUARY 1998 OF THE NATIONAL BANK OF BELGIUM

(UNOFFICIAL COORDINATED TRANSLATION)

**Art. 1.** - This Act shall govern a matter referred to in Article 78 of the Constitution.

## FIRST CHAPTER

### 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 Act of 5 May 1850, shall form an integral part of the European System of Central Banks, hereinafter referred to as ESCB, whose Statute 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]<sup>1</sup>.

**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 bearer shares. The share capital shall be fully paid up.

## CHAPTER II

### TASKS AND TRANSACTIONS WITHIN THE DOMAIN OF THE ESCB

**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.

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<sup>1</sup> 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 abovementioned Act of 22 February 1998 or the Statutes of the National Bank of Belgium; and
2. in so far as they are not in conflict with the provisions referred to in 1.

*(Article 141 § 1 of the Act of 2 August 2002 on the supervision of the financial sector and on financial services)*

**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 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.

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 concurrence 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.

Article 8 of the Financial collateral Act of 15 December 2004 applies to the claims that the Bank takes in pledge to cover its credit operations.

**Art. 8. -** The Bank shall ensure that the clearing and payment systems operate properly and shall make certain that they are efficient and sound.

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 Community and with other countries.

**Art. 9. -** Without prejudice to the powers of the institutions and organs 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. 9bis. -** 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.

### CHAPTER III

#### TASKS WHICH ARE NOT WITHIN THE DOMAIN OF THE ESCB

**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.** - The Bank shall contribute to the stability of the financial system.

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. 13.** - The Bank may carry out all transactions and provide all services which are ancillary to or follow from the tasks referred to in Article 10.

**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 IV

**ORGANS - COMPOSITION - INCOMPATIBILITIES**

**Art. 17.** - The organs of the Bank shall be the Governor, the Board of Directors, the Council of Regency and the Board of Censors.

**Art. 18.**

1. The Governor shall direct the Bank and preside over the Board of Directors and the Council of Regency.
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 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.
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 organ by law, the Statutes or the internal regulations.
6. In accordance with Articles 49 § 6 , 3 and 85 § 6 , 3 of the Act of 2 August 2002 on the supervision of the financial sector and on financial services, depending on the case, two or three members of the Board of Directors shall, on a personal basis, have a seat in the Board of Directors of the Banking and Finance Commission, and one or two members in that of the Insurance Supervision Office.

**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 questions concerning the Bank, monetary policy and the economic situation of the country and the European Community. 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 internal regulations, containing the basic rules for the operation of the Bank's organs 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. Three regents shall, on a personal basis, have a seat in the supervisory board of the Banking and Finance Commission and in that of the Insurance Supervision Office.

**Art. 21.**

1. The Board of Censors shall be composed of ten members. It shall include an equal number of French and Dutch speakers.
2. The Board of Censors' task shall be to supervise the preparation and implementation of the budget.
3. The censors shall receive an allowance, the amount of which shall be set by the Council of Regency.

**Art. 22.**

1. Except as regards the tasks and transactions within the domain of the ESCB, 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, 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. The censors shall be elected for a three-year term by the General Meeting of Shareholders. They shall be chosen from among persons with special qualifications in the field of supervisory procedures. Their term may be renewed.

**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, 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 Public Securities Regulation Fund (Fonds des Rentes - Rentenfonds), the Fund for the Protection of Deposits and Financial Instruments (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 Ducreire - Nationale DelcredereDienst);
3. the legal entities referred to in Article 14.

The prohibitions referred to in the first paragraph shall continue to apply for one year after the Governor, Vice-Governor or other members of the Board of Directors have relinquished their office; this term shall be extended to two years in the case of an office to be held in a credit institution.

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.** Regents may not hold office as managing director, director or manager in a credit institution.

**§ 3.** Members of the Board of Directors and members of the Bank's staff must respect the code of ethics drawn up by the Council of Regency on the proposal of the Board of Directors. 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, the Council of Regency and the Board of Censors 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 Chairmen of the Chamber of Representatives and the Senate the annual report referred to in Article 109 B(3) of the Treaty establishing the European Community. The Governor may be heard by the competent committees of the Chamber of Representatives and the Senate at the request of these committees or on his own initiative.

## CHAPTER V

**FINANCIAL PROVISIONS AND REVISION OF THE STATUTES**

**Art. 29.** - The net financial proceeds in excess of 3% of the difference between the average amount, calculated on an annual basis, of the Bank's profit-earning assets and remunerated liabilities shall be assigned to the State. For the purposes of this provision, net financial proceeds shall mean :

- 1° the share of the monetary income allocated to the Bank in implementation of Article 32.5 of the Statute of the ESCB;
- 2° the share of the ECB's net profit allocated to the Bank in implementation of Article 33.1 of the Statute of the ESCB;
- 3° the proceeds of the Bank's profit-earning assets and its financial management transactions, less the financial charges in respect of the remunerated liabilities and the financial management transactions, not connected with the asset and liability items forming the basis for calculation of the proceeds referred to in 1. and 2. above.

If the amount of the net productive assets does not reflect the Bank's share in the monetary base of the System, i.e. the sum of the notes in circulation and the liabilities resulting from the deposits made by credit institutions, this amount shall be adapted accordingly for the implementation of this article.

This provision shall not apply to the bills and securities acquired in representation of the capital, reserves and depreciation accounts whose proceeds are at the Bank's free disposal.

The terms and conditions for application of the provisions of this article 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. 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 arbitrated 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 Act.

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<sup>1</sup>, 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.

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<sup>1</sup> The right of issue shall include the right which the Bank may exercise pursuant to Article 106 (1) of the Treaty establishing the European Community (*art. 141 § 9 of the Act of 2 August 2002 on the supervision of the financial sector and on financial services*).

**Art. 32.** - The annual profit shall be distributed as follows :

1. A first dividend of six per cent to the shareholders;
2. Of the remainder :
  - a) ten per cent to reserve;
  - b) eight per cent to the staff or to institutions in its favour;
- 3° From the surplus, the following allocations shall be made :
  - a) one fifth to the State;
  - b) an amount to the shareholders making it possible to allocate to them a second dividend to be determined by the Council of Regency;
  - c) the balance to reserve.

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

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

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

**Art. 35.** - Except when called upon to give evidence in court in a criminal case, members of the Bank's organs and members of its staff shall be subject to professional secrecy and may not divulge :

- 1° to any person or authority whatsoever not qualified to have knowledge thereof, the confidential information which has to be communicated to the Bank by virtue of statutory provisions or regulations, or similar information received from foreign authorities;
- 2° to any person or authority whatsoever, the confidential information which is communicated to the Bank by the European Monetary Institute, the ECB, other central banks or monetary institutions, other public authorities entrusted with the oversight of payment systems as well as Belgian or foreign authorities responsible for the supervision of credit institutions, investment firms, undertakings for collective investment in transferable securities, insurance companies and financial markets.

The members of the Bank's organs and its members of staff shall be exempt from the obligation contained in Article 29 of the Code of Criminal Procedure if the information received by the Bank originates from authorities or institutions which are themselves not subject to or exempt from this obligation.

Paragraph 1 shall not preclude the communication of such information :

1. to the European Monetary Institute, the ECB, other central banks or monetary institutions when such communication is necessary for their function as monetary authorities, including the oversight of payment systems;
2. to the authorities responsible for supervising credit institutions, investment firms, undertakings for collective investment in transferable securities and insurance enterprises when such information is necessary for their supervisory function;
3. to the authorities responsible for supervising financial markets when such information is necessary to take a decision concerning the application of sanctions to participants on the market in question;
4. to other public authorities charged with the oversight of payment systems, in so far as the recipients of the information are subject to an equivalent obligation to maintain professional secrecy.

Contraventions of this article shall incur the penalties laid down by Article 458 of the Penal Code.



The provisions of Book I of the Penal Code, including Chapter VII and Article 85, shall be applicable to contraventions of this article.

The first and the second paragraph do not at all prevent the observance, by the members of the bodies of the Bank and its staff, of more restrictive provisions as to professional secrecy when the Bank, pursuant to article 12, is charged with collecting statistical information.

**Art. 36.** - The Council of Regency shall amend the Statutes in order to bring them into conformity with this Act 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 VI

### 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 Act of 24 August 1939 on the National Bank of Belgium.

**Art. 38.** - p.m.