LAW OF 22 FEBRUARY 1998 ESTABLISHING THE ORGANIC STATUTE OF THE NATIONAL BANK OF BELGIUM

(UNOFFICIAL COORDINATED TRANSLATION: APRIL 2016)

Article 1. - This Law shall regulate 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 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][1].

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.

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[1] 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. in so far 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)

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 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 Companies 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 abovementioned liens and whether or not

the abovementioned 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 provisions to the contrary, set-off that might result in the cancellation of all or part of the claims pledged to the National Bank of Belgium is not authorised under any circumstances.

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. - 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 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. The State shall also guarantee the Bank the repayment of any credit granted in the context of its contribution to the stability of the financial system and guarantee the Bank against any loss incurred as a result of any transaction necessary in this regard.

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.

§ 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 12bis, § 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. 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 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 determined by the governor, except for adopting regulations, it may take decisions by written procedure or by using a voice telecommunications system, 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 cognizance 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. *Repealed*.

Art. 21.

1. The Board of Censors shall be composed of ten members. It shall include an equal number of French and Dutch speakers. At least one member of the Board of Censors shall be independent as defined by Article 526ter of the Companies Code.
2. The Board of Censors shall supervise the preparation and implementation of the budget. It is the audit committee of the Bank and shall exercise in this capacity the tasks laid down by Article 21bis.
3. The censors shall receive an allowance, the amount of which shall be set by the Council of Regency.

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 12ter.

§ 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, paragraph 1, 9° and 10° shall be 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.

§ 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 of the Law of 25 April 2014 on the legal status and supervision of credit institutions 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 12bis and the tasks referred to in 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 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. 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, 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 Public Securities Regulation Fund (Fonds des Rentes - Rentenfonds), 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 and the majority of Censors 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, 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 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, jeopardize 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[2], 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;

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[2] 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)*.

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.[3]

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, the Bank and members and former members of its bodies and its staff 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 Bank, members of its organs and its staff 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;

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.

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[3] 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 in Books I and XV of the Code of Economic Law, this provision should be read as: "A*rticles 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.*".

Art. 35/1. –

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

1° received in carrying out its tasks referred to in Article 39 of the Law of 11 January 1993 on preventing the use of the financial system for purposes of money-laundering and terrorist financing,

a) to the authorities of the European Union and of other Member States of the European Economic Area as well as the authorities of third countries that exercise a competence comparable to that referred to in Articles 39 of the aforementioned Law of 11 January 1993;

b) to the competent authorities of the European Union and of other Member States of the European Economic Area and the competent authorities of third countries that 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 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;

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 consellors, 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.

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;

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;

4° "electronic money institution": any institution referred to in article 4, 31° 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, access to 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 II of the Law of 6 April 1995 on the legal status and supervision of investment 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 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, to the activity of issuing electronic money, and 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;

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 2004/39/EC;

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° "settlement institution": any institution that undertakes the settlement of orders to transfer financial instruments, or rights in respect of those financial instruments or of forward exchange transactions, whether or not settlement is in cash;

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 48 of Directive 2004/39/EC, unless otherwise mentioned in the Directive;

17° "Directive 2004/39/EC": Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;

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;

24° “non-financial counterparty”: a counterparty as defined in Article 2(9) of Regulation 648/2012.

Art. 36/2. - In accordance with Article 12bis, 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 and electronic money institutions.

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 and certain technical committees of the Industrial Accidents Fund.

By derogation from paragraph 1, supervision of mutual insurance companies referred to in Articles 43bis, § 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 and the European Insurance and Occupational Pensions Authority;
b) comply with the guidelines, recommendations, standards and other measures agreed by the European Banking Authority and by the European Insurance and Occupational Pensions 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.

Art. 36/3. -

§ 1. Without prejudice to Article 36/2, and in accordance with Articles 12 and 12bis 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 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 12bis, the Bank shall have no competence in respect of fiscal matters. However, it shall notify the judicial authorities of any special mechanisms set up by an institution falling within the scope of its prudential supervision, the aim or result of which mechanisms is to promote fraud by third parties, where it is aware of the fact that those special mechanisms constitute a fiscal offence under the Penal Code, punishable by penal sanctions for the institutions themselves as author, co-author or accessory.

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 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. The member of the staff of a financial institution referred to in Article 36/2 who has informed the Bank, in good faith, of an alleged or know infringement of the laws and regulations governing the legal status and supervision of the said financial institutions, 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 supplied the said information.

Any unfavourable or discriminatory treatment of this person, as well as any severance of the employment relationship because of this person raising the alert, shall be prohibited.

In the event of any breach of paragraphs 1 and 2, the Bank may impose an administrative sanction pursuant to the provisions on administrative penalties contained in the legislation governing the legal status and supervision of the institutions referred to in Article 36/2.

Section 2 - Sanctions Committee

Art. 36/8. -

§ 1. The Sanctions Committee shall pronounce on the imposition of administrative fines laid down by the laws applicable to the institutions that it supervises and on the imposition of the administrative fines referred to in Articles 50/1 and 50/2 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, access to 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 Article 12*bis*, 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 jeopardize 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 cognizance 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 jeopardize the stability of the financial system or an ongoing criminal investigation or proceedings, or to be disproportionately detrimental to the interests of those concerned or the institutions to which they belong, 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.

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 euro nor, for the same fact or the same set of facts, more than 2,500,000 euro.

§ 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 3*bis*. – 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 addresses 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 less than 250 euro, nor more than 50,000 euro per calendar day, nor exceed the total sum of 2,000 euro.

§ 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 4. - Professional secrecy, exchange of information and cooperation with other authorities

Art. 36/13. *Repealed.*

Art. 36/14. -

§ 1. By derogation from Article 35, the Bank may also communicate confidential information:

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, 66° of the Law of 25 April 2014 on the legal status and supervision of credit institutions or of Article 95, §§ 5*bis* and 5*ter*, of the Law of 6 April 1995 on the legal status and supervision of investment 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 Directives, 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 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;

3° in compliance with European Directives, 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 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;

6° to central counterparties or to institutions for the settlement of financial instruments 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 institutions to be protected against the shortcomings – potential, even – of participants on the market in question;

7° within the limits of European Directives, 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 authorities 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° within the limits of European Directives, to the stockbroker approval board as referred to in Article 21 of the Law of 2 August 2002;

14° within the limits of European Directives, to the General Treasury Administration, in accordance with the legal and regulatory provisions laid down for the implementation of measures in respect of financial embargos;

15° within the limits of European Directives, 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 the Industrial Accidents Fund;

17° to agents 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 on the provisions of Articles XV.89, 1° to 18°, 20° and 21° of the Code of Economic Law;

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, 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;

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 Ministeries of the Member States of the European Economic Area whenever deemed necessary for the planning or execution of a resolution measure.

§ 2. The Bank may communicate confidential information in accordance with § 1 only on condition that the recipient authorities or institutions 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 of the European Economic Area may be divulged in the instances as referred to in 7°, 9°, 10°, 12° and 16° of § 1 and to the authorities or bodies of third countries as referred to in 4°, 6°, 10° of § 1 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.

§ 3. Without prejudice to the more stringent provisions of the specific laws governing them, the Belgian persons, authorities and bodies 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. - Article 35 shall apply to statutory auditors, to company auditors and to experts as regards the information of which they have become cognizant by virtue of the tasks of the Bank or by virtue of the verifications, expert appraisals or reports that the Bank, within the framework of its tasks as referred to in Articles 36/2 and 36/3, has charged them with carrying out or producing.

Paragraph 1 and Article 78 of the Law of 22 July 1953 establishing an “Institut des réviseurs d’entreprises/Instituut der Bedrijfsrevisoren” shall not apply to the communication of information to the Bank that is stipulated or authorized by the legal or regulatory provisions governing the tasks of the Bank.

Art. 36/16. -

§ 1. Without prejudice to Articles 35 and 36/13 to 36/15 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.

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 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.

§ 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, 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. *Repealed*.

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)(22) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments and in Article 4(4) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, for the purposes of meeting the obligations arising from the said Directive 2004/39/EC:

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 powers conferred upon it either by the above-mentioned Directives, or by national legislation. To this end, the Bank shall notably have the powers that are attributed to it by this Law. 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.

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 believes that the acts infringing the provisions of the aforementioned Directives are being or have been committed on the territory of another Member State, or that the acts are damaging to financial instruments traded on a regulated market in another Member State, it shall inform the competent authority of this other Member State, and also the FSMA, about these 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 about this, take appropriate measures and send the authority that informed it, as well as the FSMA, the results of its intervention and notably, in so far as possible, the main provisional outcome of its action.

§ 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. As regards the competences referred to in § 1, without prejudice to the obligations that rest on it in legal proceedings of a penal nature, the Bank may only use the information that it has received from a competent authority or from the FSMA for the purposes of monitoring 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, impose sanctions, in the context of an administrative appeal or legal action taken against a decision by the Bank, in the framework of the extrajudicial mechanism for settling investors' complaints. However, if the competent authority transmitting the information agrees to this, the Bank may use this information for other purposes or pass it on to the competent authorities of other States.

§ 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 Bank is the authority that acts as point of contact in charge of receiving requests for exchange of information or cooperation in execution of § 1 for matters that come under its remit.

The Minister shall notify the European Commission as well as the other Member States of the European Economic Area of this.

Art. 36/18. - Without prejudice to Articles 35 and 36/13 to 36/15, and to the provisions of specific laws, the Bank and the FSMA 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 43bis, § 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.

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 euro nor higher than 50,000 euro per calendar day, nor exceed 2,500,000 euro 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 euro 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 Brussels Court of Appeal 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 Brussels Court of Appeal 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 Brussels Court of Appeal 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 Brussels Court of Appeal 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. Such 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, against decisions taken by the Bank pursuant to Article 86, paragraph 4, of the aforementioned Law of 25 April 2014;

3° by the credit institution, against decisions taken by the Bank pursuant to Articles 234, § 2, 1° to 10°, 236, § 1, 1° to 6, and against similar decisions taken pursuant to Articles 328 and 329, and Article 340 of the aforementioned Law of 25 April 2014. The appeal shall serve to suspend the decision and its publication save where the Bank, for reasons of serious threat to savers, has declared its decision executory notwithstanding any appeal;

3°bis by the credit institution, against decisions taken by the Resolution College pursuant to Article 232 of the aforementioned Law of 25 April 2014;

4° by the applicant, against decisions taken by the Bank regarding authorisation pursuant to Articles 50 and 51 of the Law of 6 April 1995 on the legal status and supervision of investment firms. A like appeal may be lodged by the applicant where the Bank has made no ruling within the periods laid down in paragraph 1 of the aforementioned Article 50. In the latter case, the appeal shall be handled as if the request had been rejected;

5° by the investment firm, against decisions taken by the Bank pursuant to Article 104, § 1, 1°, 1°bis, 2°, 3° and 4°, of the aforementioned Law of 6 April 1995 or decrees referring to it. The appeal shall serve to suspend the decision and its publication, save where the Bank, for reasons of serious threat to investors, has declared its decision executory notwithstanding any appeal;

6° by the applicant for registration and by the company concerned, against decisions taken by the Bank to refuse, suspend or withdraw the registration, pursuant to Article 139 of the aforementioned Law of 6 April 1995 and pursuant to its implementing measures; the appeal shall serve to suspend the decision, save where the Bank, for serious reasons, has declared its decision executory notwithstanding any appeal;

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 Article 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 56ç 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 8 of the Law of 21 December 2009 on the legal status of payment institutions, access to the activity of payment service provider 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 2 of the aforementioned Article 8. In the latter case, the appeal shall be handled as if the request had been rejected;

20° by the payment institution, against decisions taken by the Bank pursuant to Article 19, paragraph 3, of the Law of 21 December 2009 on the legal status of payment institutions, access to the activity of payment service provider and access to payment systems;

21° by the payment institution, against decisions taken by the Bank pursuant to Article 35, § 1, paragraph 2, 1°, 2°, 3°, 4° and 5° and against similar decisions taken pursuant to Article 44 of the Law of 21 December 2009 on the legal status of payment institutions, access to the activity of payment service provider 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;

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

24° by the applicant for an authorisation, against decisions taken by the Bank in respect of authorisation pursuant to Article 4 of the Royal Decree of 26 September 2005 on the legal status of settlement institutions and assimilated institutions. 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 4. In the latter case, the appeal shall be handled as if the request had been rejected;

25° by the settlement institution or assimilated institution, against decisions taken by the Bank pursuant to Article 17 of the aforementioned Royal Decree of 26 September 2005;

26° by the settlement institution or assimilated institution, against decisions taken by the Bank pursuant to Article 33, § 1, paragraph 2, 1°, 1°bis, 2° and 3°, of the aforementioned Royal Decree of 26 September 2005 and against similar decisions taken by the Bank pursuant to Article 36 of the aforementioned Royal Decree of 26 September 2005. 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 63 of the Law of 21 December 2009 on the legal status of payment institutions and electronic money institutions, and access to the activity of payment service provider, to the activity of issuing electronic money, and to payment systems. A like appeal may be lodged where the Bank has made no ruling within the periods laid down in paragraph 2 of the aforementioned Article 63. 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 75, paragraph 3, of the Law of 21 December 2009 on the legal status of payment institutions and electronic money institutions, and access to the activity of payment service provider, to the activity of issuing electronic money, and to payment systems.

34° by the electronic money institution, against decisions taken by the Bank pursuant to Article 87, § 1, paragraph 2, 1°, 2°, 3°, 4° and 5° and against similar decisions taken pursuant to Article 96 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, the activity of issuing electronic money, and to payment systems. 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;

35° any person to whom a penalty has been imposed by the Bank pursuant to Articles 36/3, § 5, 36/19, paragraph 5 and 36/30, § 1, paragraph 2, 2° of this Law, Article 109, paragraph 2 of the Law of 6 April 1995 on the legal status and supervision of investment firms, Article 603, § 2, paragraph 3 of the Law of 13 March on the legal status and supervision of insurance and reinsurance companies, Articles 50, § 2, paragraph 3 and 106, § 2, paragraph 3 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, access to the activity of issuing electronic money, and access to payment systems, Article 346, § 2 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and Article 24, 1° of the Royal Decree of 20 December 1995 on foreign investment 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 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, the Law of 6 April 1995 on the legal status and supervision of investment firms, 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 license 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, 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 euro 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, THE SUPERVISION OF FINANCIAL AND NON-FINANCIAL COUNTERPARTIES UNDER REGULATION 648/2012 AND CONCERNING THE SUPERVISION OF SETTLEMENT INSTITUTIONS AND INSTITUTIONS EQUIVALENT TO SETTLEMENT INSTITUTIONS

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.

§ 3bis. 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.

§ 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. 36/25bis. 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.

Art. 36/25ter. Non-compliance with the provisions of Regulation 648/2012 and/or its implementing provisions by a central counterparty, a financial counterparty or a non-financial counterparty which is subject to the Bank's supervision in accordance with Article 36/2 of this Law, may give rise to the application of measures by the Bank and the imposition of the administrative fines and penalties 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. -

§ 1. As settlement institutions, the following may provide clearing services in respect of transactions on a Belgian regulated market or, on Belgian territory, provide such services in respect of transactions on a foreign regulated market:

1° institutions with registered office in Belgium that are authorised as credit institutions;

2° the branches established in Belgium of foreign credit institutions

3° institutions recognised as central depositaries pursuant to Royal Decree 62 of 10 November 1967 on promotion of the circulation of securities;

4° institutions designated by the King to provide settlement services for transactions in dematerialised securities pursuant to Article 468 of the Company Code;

5° institutions not established in Belgium that, in their home country, are subject to a legal status and supervision deemed equivalent by the FSMA and the Bank.

§ 2. The Bank is charged with the prudential supervision of the settlement institution designated in Article 4 of the Law of 2 January 1991 on the national debt securities market and monetary policy instruments, and its implementing decrees, of settlement institutions that are recognised as central depositaries pursuant to the aforementioned Royal Decree 62 of 10 November 1967 as well as of those designated by the King to provide settlement services in respect of transactions in dematerialised securities pursuant to Article 468 of the Company Code. Upon recommendation of the Bank, the King may determine:

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

2° the minimum requirements in respect of organisation, operation, financial position, internal control and risk management applicable to institutions as referred to in § 1 that are not credit institutions established in Belgium.

§ 3. The provisions of the present article and of the decrees issued implementing them shall not impair the competence 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 settlement systems;

2° the obligation on the settlement institution to disclose information requested by the Bank;

3° coercive measures where the settlement institution no longer satisfies the standards laid down or where the obligation to disclose has not been observed.

§ 4. With the agreement of the Minister, the Bank may conclude agreements with competent foreign supervisory authorities, on the basis of reciprocity, on more detailed rules for cooperation in respect of supervision and the mutual exchange of information.

§ 5. The King may extend the application of the present article to the settlement of transactions on other organised markets.

§ 6. Before any decision is taken on the opening of bankruptcy proceedings or on a provisional removal of a case within the meaning of Article 8 of the Law of 8 August on bankruptcies with respect to a settlement institution as referred to in § 1, 3° or 4°, the president of the Commercial 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 with fifteen days from the date of receipt of the request for an opinion. In the event of a procedure relating to a settlement institution 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 that the Bank has in which to hand down its opinion shall serve to suspend the period in which the 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 Commercial Court and the Crown prosecutor. The opinion shall be annexed to the dossier.

§ 7. As regards the application of §§ 2 to 6, shall be deemed equivalent to settlement institutions any institutions established in Belgium whose business consists in providing full or partial operational management of services provided by settlement institutions as referred to in § 1, including when the latter are credit institutions established in Belgium. The Bank shall designate the institutions that fall within the scope of this paragraph.

The institutions referred to in paragraph 1 are required to be authorised by the Bank. 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 these institutions by the Bank, including the conditions that persons who are in charge of the actual management and persons who hold a major stake, must meet.

Upon the recommendation of the Bank, the King may, in compliance with Belgium's international obligations, apply totally or partially the rules referred to in paragraphs 1 and 2 to institutions established abroad whose business consists in providing full or partial operational management of services provided by settlement institutions as referred to in § 1 which are established in Belgium, including when the latter are credit institutions established in Belgium.

§ 8. The present article shall not apply to the Eurosystem central banks, nor to the settlement institutions or to institutions equivalent to settlement institutions that they manage.

Art. 36/27. -

§ 1. When an institution as referred to in Article 36/26, § 1, 3°, or an equivalent institution as referred to in Article 36/26, § 7, 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 17, 18 or 20 of the Law of 8 August 1997 on bankruptcies.

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 32bis 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.

§ 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 (hereafter "the institution 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 Vbis of the Legal Code, including Articles 1034bis to 1034sexies 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 or equivalent institutions, the Bank shall have the following powers of investigation for the execution of its task of supervision, as referred to in Articles 36/25 and 36/26 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, settlement institution or equivalent institution to comply with the provisions of Articles 36/25 and 36/26 or with the implementing decrees thereof, within a period the Bank specifies.

Without prejudice to the other measures provided for by law, if the central counterparty, settlement institution or equivalent institution to which it has addressed an order pursuant to paragraph 1 fails to comply at the end of the period specified, and provided that that person has been heard:

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

2° impose the payment of a fine which may not be less than 250 euro nor higher than 50,000 euro per calendar day, nor exceed 2,500,000 euro in total;

3° appoint a special auditor to a central counterparty, settlement institution or equivalent institution 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 institution 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 of Articles 36/25 and 36/26 or the implementing decrees thereof, impose an administrative fine on the offender that, for the same offence or same totality of offences, shall not be less than 2,500 euro and not more than 2,500,000 euro. 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.

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 euro 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 and 36/26 or where that authorisation has been withdrawn;

2° those that contravene the provisions laid down pursuant to Articles 36/25 and 36/26, 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.

§ 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 avalaible 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 authorized 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 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.

§ 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 it.

§ 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 12bis, § 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 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 decide 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 euro, 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 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 20bis (2) of the Law of 24 August 1939 on the National Bank of Belgium.

Art. 38. - p.m.