

# Protocol between the NBB and the FSMA for the exchange of personal data

## I. Identification of the parties

This Protocol is concluded between

1. The National Bank of Belgium, hereinafter referred to as “**NBB**”, a public limited company governed by Belgian law, registered with the Crossroads Bank for Enterprises under the number 0203.201.340 and having its registered office at boulevard de Berlaimont/de Berlaimontlaan 14, 1000 Brussels, represented by Mr Pierre Wunsch, Governor,

and

2. the Financial Services and Markets Authority, hereinafter referred to as “**FSMA**”, a public entity, registered with the Crossroads Bank for Enterprises under the number 0544.279.965 and having its registered office at rue du Congrès/Congresstraat 12-14, 1000 Brussels, represented by Mr Jean-Paul Servais, Chairman.

Hereinafter each individually referred to as “**the Authority**” and collectively as “**the Authorities**”.

The Authorities have agreed the following.

## II. Introductory provisions

Whereas, in accordance with Article 20 of the Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data, hereinafter referred to as “the Law of 30 July 2018”, in cases where a federal public authority transfers personal data to any other public authority or private entity on the basis of Article 6(1)(c) and (e) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, hereinafter referred to as “the GDPR”, it should, for each type of processing, formalise this transfer using a protocol negotiated between the initial controller and the recipient controller.

Whereas the Protocol shall be concluded after receiving the respective opinions of the data protection officer (DPO) of the federal public authority holding the personal data and of the data protection officer of the recipient.

Whereas the Protocol should be published on the website of the controllers concerned.

As both Authorities qualify as a public authority within the meaning of Article 5 of the Law of 30 July 2018 and mutually exchange personal data in their capacity as controllers in order to meet a legal obligation incumbent upon them and to fulfil a task carried out in the public interest or a task

which forms part of the exercise of the official authority vested in them, they shall conclude the present Protocol.

The terms used in this Protocol shall have the same meaning as in the GDPR or in the Law of 30 July 2018.

This Protocol shall apply only to the exchange of personal data and is without prejudice to the Authorities' legal obligations and to the existing cooperation protocols and agreements between the Authorities.

The Protocol received a favourable opinion from the respective data protection officers (DPOs) of both Authorities.

### **III. Controllers and data protection officers (DPOs)**

1. The National Bank of Belgium, hereinafter referred to as "NBB", a public limited company governed by Belgian law, registered with the Crossroads Bank for Enterprises under the number 0203.201.340 and having its registered office at boulevard de Berlaimont/de Berlaimontlaan 14, 1000 Brussels, and
2. the Financial Services and Markets Authority, hereinafter referred to as "FSMA", a public entity, registered with the Crossroads Bank for Enterprises under the number 0544.279.965 and having its registered office at rue du Congrès/Congresstraat 12-14, 1000 Brussels

shall be the controllers for the exchange of the personal data referred to in this Protocol. The Authorities can act as both the controller transferring personal data and the controller receiving personal data. In its capacity as controller, each Authority shall be responsible, with regard to its personal data processing operations, for complying with the obligations incumbent upon it pursuant to the GDPR and the Law of 30 July 2019.

The NBB has appointed a data protection officer, who can be contacted:

- By e-mail: [dataprotection@nbb.be](mailto:dataprotection@nbb.be)
- By post: National Bank of Belgium, Data Protection Officer, boulevard de Berlaimont/de Berlaimontlaan 14, 1000 Brussels (Belgium).

More information can be obtained from: <https://www.nbb.be/en/disclaimer-and-legal-information/privacy-statement>

The FSMA has appointed a data protection officer, who can be contacted:

- By e-mail: [dataprotection@fsma.be](mailto:dataprotection@fsma.be)
- By post: Financial Services and Markets Authority (FSMA), for the attention of the Data Protection Officer, rue du Congrès/Congresstraat 12-14, 1000 Brussels (Belgium).

More information can be obtained from: <https://www.fsma.be/en/faq/fsma-privacy-policy>

#### **IV. Purpose and legal basis of the transfer of personal data**

This Protocol shall apply to all transfers of personal data between both Authorities that are required or permitted by or pursuant to the laws governing the duties of the FSMA and the NBB. The legal duties of the Authorities in this context are described:

- for the NBB: in Article 12bis, §1 of the Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium (hereinafter referred to as the “Law of 22 February 1998”); and
- for the FSMA: in Article 45, §1 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services (hereinafter referred to as the “Law of 2 August 2002”).

The aforementioned duties are further specified in special sector-specific laws that are also published on the Authorities’ websites.

In the exercise of their legal duties, the Authorities are required to exchange information. This is either information that must be exchanged by law or information that is exchanged on the basis of the principle of collaboration between the Authorities as determined in their General Memorandum of Understanding (General Memorandum of Understanding of 14 March 2013 for collaboration between the NBB and the FSMA to ensure the coordination of the supervision of the institutions under their respective supervision) or on the basis of specific cooperation protocols (see below).

These information exchanges may include personal data. This Protocol shall supplement the existing protocols with regard to those exchanges of personal data.

##### *Exchange imposed by law*

In a number of cases, the legislation governing the Authorities’ duties provides for specific procedures for information exchange, consultation and deliberation between the two Authorities. This Protocol shall thus concern the transfer of personal data wherever the law provides for an opinion, consultation, information or other type of contact between the two Authorities, for example in the context of the fit and proper assessment of natural persons exercising a regulated function, or where consultation between both Authorities is necessary to ensure a uniform application of the legislation. Personal data, and no more personal data than necessary, shall be transferred only if, depending on the specific file, this is necessary for achieving the legally defined purpose.

##### *Exchange in accordance with Article 45bis of the Law of 2 August 2002*

Additionally, the FSMA and the NBB may, in accordance with Article 45bis of the Law of 2 August 2002, agree on terms of their voluntary collaboration in the areas determined by them.

Such a collaboration between the Authorities can take the form of, inter alia, an exchange of structured financial, accounting, statistic and/or prudential data that each Authority collects from companies or persons that are under supervision or subject to reporting requirements, in order to fulfil its own legal duties and tasks, and that prove necessary or useful for the exercise of the legal duties and tasks of the other Authority. The purpose of such a periodic exchange is, among other

things, to increase efficiency in the exercise of the Authorities' legal duties and to reduce the administrative burden for supervised persons by avoiding double collection of the same data.

Pursuant to the aforementioned Article 45bis of the Law of 2 August 2002, the Authorities concluded a general memorandum of understanding ("General Memorandum of Understanding for collaboration between the NBB and the FSMA to ensure the coordination of the supervision of the institutions under their respective supervision" of 14/03/2013, [https://www.nbb.be/doc/cp/eng/vi/accord\\_collaboration/accord/pdf/nbb\\_fsma\\_2013\\_03\\_14.pdf](https://www.nbb.be/doc/cp/eng/vi/accord_collaboration/accord/pdf/nbb_fsma_2013_03_14.pdf)) which defines the general principle of collaboration between the Authorities in the exercise of their respective supervisory duties. Additionally, the following specific or technical cooperation agreements have been concluded:

- 18/10/2012: Cooperation protocol between the NBB and the FSMA in the field of supervision and oversight of market infrastructures  
[https://www.nbb.be/doc/cp/eng/vi/accord\\_collaboration/accord/pdf/protocole\\_nbb\\_fsma.pdf](https://www.nbb.be/doc/cp/eng/vi/accord_collaboration/accord/pdf/protocole_nbb_fsma.pdf)
- 01/02/2013: Addendum to the cooperation protocol between the NBB and the FSMA in the field of supervision and oversight of market infrastructures  
<https://www.nbb.be/en/financial-oversight/prudential-supervision/cooperation/cooperation-agreements-belgium-0>
- 13/05/2014: Cooperation protocol between the NBB and the FSMA on foreign investment firms  
[https://www.nbb.be/doc/cp/nl/vi/accord\\_collaboration/accord/pdf/nbb\\_fsma\\_2014\\_05\\_13protocol.pdf](https://www.nbb.be/doc/cp/nl/vi/accord_collaboration/accord/pdf/nbb_fsma_2014_05_13protocol.pdf)
- 01/03/2019: Framework agreement on the collaboration between the NBB and the FSMA relating to the periodic electronic exchange of structured data.  
[not published on the website]

To the extent that personal data are exchanged between the NBB and the FSMA on the basis of these cooperation agreements, this Protocol shall also apply to those exchanges of personal data.

#### **V. Categories of personal data transferred**

Depending on the purposes of the processing and on the specific file, the following categories of personal data may be transferred insofar as necessary:

- Name and first name
- Date of birth
- Contact details
- Information on past and current employment and on professional activities
- Information on fitness and propriety (where appropriate including data relating to criminal convictions and offences within the meaning of Article 10 of the GDPR)
- Information on shareholding
- Financial information

If circumstances require, other personal data may also be transferred to the extent permitted by law.

#### **VI. Modalities of communication**

For the exchange of personal data, the Authorities shall only use channels that provide sufficient guarantees for the protection of the personal data exchanged.

More specifically, the same channels shall be used for these exchanges of personal data as for the exchange of other information covered by the obligation of professional secrecy, i.e. in principle a secure transmission channel for automated data exchange and encryption techniques for e-mail traffic.

#### **VII. Security of personal data**

The Authorities shall ensure the confidentiality and integrity of the personal data.

Without prejudice to any specific security measures that might result from the law or from the cooperation agreements between the Authorities, each Authority shall be responsible, in accordance with Articles 32 to 34 of the GDPR, for implementing technical and organisational security measures to protect the data communicated against any unauthorised or unlawful processing and against accidental loss, destruction or damage.

The Authorities and those who process the personal data received shall all be bound by a legal obligation of professional secrecy (the FSMA pursuant to Article 74 of the Law of 2 August 2002, the NBB pursuant to Article 35 of the Law of 22 February 1998) or by equivalent confidentiality clauses relating to the personal data received.

#### **VIII. Legal restrictions on the rights of data subjects whose personal data are exchanged**

The rights of data subjects with regard to their personal data, as conferred by the GDPR, shall be limited by the following legal provisions:

- With regard to the NBB: Article 12quater of the Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium.

*§ 1. In addition to the exceptions provided for in Articles 14(5), points (c) and (d), 17(3), point (b), 18(2), and 20(3) of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, to safeguard the objectives of Article 23(1), points (d), (e) and (h), of the aforementioned Regulation, the exercise of the rights referred to in Articles 12 (transparent information, communication and modalities for the exercise of the rights of the data subject), 13 (information to be provided where personal data are collected from the data subject), 15 (right of access), 16 (right to rectification), 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing), 21 (right to object) and 34 (communication of a personal data breach to the data subject) of this Regulation shall be*

*completely restricted for the processing of personal data as referred to in Article 4(1) of the same Regulation by the Bank in its capacity as controller responsible for the performance of tasks carried out in the public interest, tasks relating to the prevention and detection of criminal offences, and a monitoring, inspection or regulatory function connected to the exercise of official authority:*

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

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

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

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

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

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

- With regard to the FSMA: Article 46bis of the Law of 2 August 2002 on the supervision of the financial sector and on financial services

*§ 1. In addition to the exceptions provided for in Articles 14(5), in particular points (c) and (d), 17(3), point (b), 18(2), and 20(3) of Regulation 2016/679, to safeguard the objectives of Article 23(1), points (d), (e), (g) and (h), of the aforementioned Regulation, the exercise of the rights referred to in Articles 12 (transparent information, communication and modalities for the exercise of the rights of the data subject), 13 (information to be provided where personal data are collected from the data subject), 15 (right of access), 16 (right to rectification), 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing), 21 (right to object) and 34 (communication of a personal data breach to the data subject) of this Regulation shall be completely restricted for the processing of personal data as referred to in Article 4(1) of the same Regulation by the FSMA in its capacity as controller responsible for the performance of tasks carried out in the public interest, tasks relating to the prevention and detection of criminal offences, and monitoring, inspection or regulatory tasks connected to the exercise of official authority:*  
*1° with a view to carrying out its tasks listed in Article 45, § 1 of this Law or any other task assigned to the FSMA by any other provision of national or European law, where such data have not been obtained from the data subject;*

*2° in the context of the exercise of its powers as referred to in Article 87quinquies of this Law, where such data have been obtained from the data subject in accordance with the conditions laid down in that Article;*

*3° in the context of the procedures for imposing administrative fines by the FSMA in the areas referred to in Article 45 of this Law, and with a view to imposing the administrative measures and penalties referred to in Article 59 of the Law of 7 December 2016 on the organisation of the profession and on the public supervision of auditors, implemented in accordance with Section 5 of Chapter III of this Law, insofar as the personal data concerned are linked to the subject of the investigation or the supervision.*

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

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

The Authorities shall each be responsible for fulfilling their obligations arising from the exercise of the rights of the data subject and shall, where necessary, cooperate effectively in fulfilling those obligations.

#### **IX. Categories of recipients and transfer to third parties**

Within the controller receiving the data, the personal data shall only be transferred to the persons for whom the processing of such data is necessary for the exercise of their functions. Depending on the area of supervision and insofar as required by the concrete circumstances of the case ("need-to-know principle"), these persons are the following:

- For the NBB: persons who are members of the board of directors, the Secretariat General, the Legal Service, the Prudential Supervision of Banks and Stockbroking Firms department, the Prudential Supervision of Insurance and Reinsurance Companies department, the Resolution Unit, and the Surveillance of financial market infrastructures, payment services and cyber risks department;
- For the FSMA: staff of the departments responsible for the operational supervision of the markets and market operators, the operational supervision of products and pensions, the operational supervision of intermediaries and conduct of business rules and Central inspection team, the Policy, Legal services and International relations department, the Enforcement department and members of the management committee.

Personal data may be transferred to individuals outside the controller receiving the data, where this is required to achieve the purposes of the processing (e.g. to service providers required for the performance of the Authority's tasks, such as a lawyer representing the interests of the Authority). If circumstances so require, the Authority and the third-party recipient shall, pursuant to Article 28 of the GDPR, conclude a processing contract prior to the transfer of the personal data.

The personal data may also be transferred to individuals outside the controller receiving the data, where their transfer is required or permitted by or pursuant to the laws governing the duties of the

Authority concerned (e.g. to other public or judicial authorities). For the NBB, the transfers referred to will in principle be transfers carried out in accordance with Articles 35/1 and 36/14 of the Law of 22 February 1998, and, for the FSMA, transfers carried out in accordance with Articles 74 and 75 of the Law of 2 August 2002.

The foregoing shall be without prejudice to any specific conditions or restrictions applying to transfers, as laid down by European or national legislation or by applicable cooperation agreements.

#### **X. Processors**

Each Authority shall be responsible for the choice of its own processors and for complying with Article 28 of the GDPR when processing is carried out by a processor.

#### **XI. Periodicity of the transfer**

The periodicity of the transfer of the personal data shall depend on what is provided for in the law or in the applicable cooperation protocol on the basis of which the transfer is carried out.

Apart from ad hoc data exchanges, certain data shall also be exchanged periodically. These periodic transfers can take the form of daily transmissions aimed at updating signalling information<sup>1</sup> or periodic transmissions, depending on the availability of the information (of a financial, accounting, prudential or statistical nature) communicated by the companies under supervision or by other companies subject to statutory reporting obligations.

#### **XII. Infringements and sanctions**

Where an Authority finds that the other Authority infringes the obligations of this Protocol, it shall immediately inform the other Authority and request it to take the necessary measures to bring such infringement to an end. As long as the infringement persists, it may suspend or restrict the transfer of personal data to that other Authority to the extent legally possible and taking into account the principle of proportionality and the purpose of the transfer.

#### **XIII. Amendments to the Protocol**

The Protocol may be amended in writing at any time, by mutual consent between the Authorities.

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<sup>1</sup> This is understood to mean standardised information on supervised companies, such as name, address, nationality, authorisations, activities, branches, persons performing regulated functions within the company, etc.



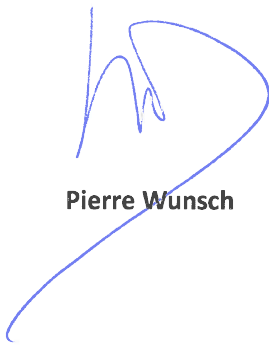
**XIV. Entry into force and duration of the Protocol**

This Protocol shall enter into force on 3 February 2020 and shall be concluded for an unlimited period.

Done at Brussels in duplicate, on .....7.....February 2020

**For the National Bank of Belgium**

**The Governor**



**Pierre Wunsch**

**For the Financial Services and Markets Authority**

**The Chairman**



**Jean-Paul Servais**