



**Memorandum of Understanding  
on  
the Exchange of Information and  
Mutual Assistance on Matters of Securities Activities Regulation**

**The Banking and Finance Commission of Belgium  
and  
The Czech Republic – the Czech Securities Commission**

Considering that the development of international securities trading requires mutual assistance of the competent authorities necessary for the performance of their functions,

Considering the wish of the Czech Republic to join the European Union and the European Economic Area at earliest opportunity,

Considering that preparations for the membership of the Czech Republic in the European Union and the European Economic Area require an ever closer co-operation of the country's competent authorities with the competent authorities of the Member States,

Considering, however, that application of some of the provisions of the Memorandum of Understanding based on relevant European Directives may only take effect upon the Czech Republic's full accession to the European Union and the European Economic Area,

Have reached the following understanding:

**Article 1 – Principles**

- 1.1 The purpose of this MoU is to set up and implement a system for mutual assistance and exchange of information between the Authorities in order to facilitate the fulfilling of their supervisory functions in the field of financial markets, disclosure of financial information, investment firms and undertakings for collective investment.
- 1.2 The MoU serves as a basis for cooperation for the authorities and does not create any binding international legal obligations, nor does it modify or supersede any laws or regulations, in force or applying in the Czech Republic or Belgium. The MoU does not create any rights enforceable by third parties, nor does it affect any arrangements under other MoUs.
- 1.3 The performance of the provisions of this MoU shall be consistent with domestic laws, regulations, and conventions of the respective countries of the Authorities and within the human and material resources of the Authorities, and the performance of the provisions shall not be contrary to the public interests of the requested Authority.
- 1.4 To the extent permitted by the laws and practices of the Czech Republic and Belgium the Authorities will make reasonable efforts to provide each other with information which is gathered and which gives rise to a suspicion of a breach, or anticipated breach, of the laws, rules, or regulations of the other Authority's jurisdiction.
- 1.5 The Authorities will be sensitive and will make reasonable efforts to provide each other with information even though the requested information is not a subject of a suspicion of a breach, or anticipated breach, of the laws, rules, or regulations of the other

Authority's jurisdiction. In any case, this kind of requests will be made in order to fulfil the duties of the requesting Authority arising from the laws and regulations.

- 1.6 Authorities having believed that facilitating the sharing of core information should be viewed as an essential element of an Authority's emergency preparedness planning and of addressing a crisis, to the extent permitted by their laws and practices, each Authority will be sensitive on the events subject to its jurisdiction which may adversely affect financial markets in another jurisdiction and consider whether it could be appropriate to notify relevant Authority of such event.

## **Article 2 – Definitions**

For the purpose of this Memorandum:

- 2.1 **"Authority"** means:
  - a) the Banking and Finance Commission (CBF)
  - b) the Czech Securities Commission (CSC)
- 2.2 **"Requested Authority"** means the Authority to whom a request is made under this Memorandum of Understanding.
- 2.3 **"Requesting Authority"** means the Authority making a request under this Memorandum of Understanding.
- 2.4 **"Laws and regulations"** means the provisions of the laws, regulations and other regulatory requirements applicable in Belgium and in Czech republic.
- 2.5 **"Financial Instruments"** means shares, bonds and other forms of securitized debts, futures and derivative products, units of undertakings in collective investment and any other financial instrument within the respective competence of the authorities.
- 2.6 **"Issuer"** means a natural or legal person who issues or proposes to issue any securities.
- 2.7 **"Financial markets"** means regulated markets and any other securities and financial instruments markets recognized, regulated or supervised by the Authorities.
- 2.8 **"Investment Services"** means carrying out and executing transactions involving financial instruments for own account or on behalf and for the account of third parties, portfolios management, underwriting, placing and any other services in connection with investment services.
- 2.9 **"Investment Services Providers"** means investment firms, credit institutions and any other person as authorized to provide investment services in accordance with the laws and regulations of the authorities applicable in Czech Republic and Belgium.

## **Article 3 – Scope of Assistance**

- 3.1 The Authorities shall provide each other with the fullest mutual assistance in any matters mentioned under 1.1 falling within the competence of the Authorities.

The Requested Authority will provide access to the information it holds to the Requesting Authority and, when possessing the legal authority to do so, exercise its powers as necessary to obtain all useful information to comply with the request.

- 3.2 In cases where the information requested may be maintained by, or available to, another authority within the country of the Requested Authority, the Authorities will endeavour to provide full assistance in obtaining the information requested, to the extent permitted by law. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient information to establish direct contact between the Requesting Authority and the other authority.
- 3.3 Subject to the Czech Republic becoming a full member of the European Union and the European Economic Area, if the request for assistance is made on the basis of regulations under European law, it must be in line with these regulations.
- 3.4 In other cases than those referred to in 3.3 the Requested Authority may only refuse to act upon a request for assistance where:
  - a) the execution of the request would prejudice the sovereignty, the security, the fundamental economic interests or public policy of the State of the requested authority;
  - b) the request of assistance is contrary to the provisions of this Memorandum;
  - c) criminal proceeding has been already initiated or where a final criminal or administrative sanction has already been applied, in the jurisdiction of the requested authority in respect of the same facts and against the same persons.
- 3.5 The denial of assistance does not undermine the right of the authorities to consult each other. Where the requested authority does not possess the legal authority to provide the assistance requested, the requested authority and the requesting authority will consult on other possible means of dealing with the request.
- 3.6 To the extent permitted by their respective national law and procedures and without prior request, each Authority should provide any other Authority with any relevant factual information available to it and which it believes to be helpful to the other Authority for the discharge of its functions and for the purposes, which it may specify in the communication (unsolicited information).

#### **Article 4 – Requests for Assistance**

- 4.1 Requests for assistance should be made in writing and addressed to the contact person of the Requested Authority specified in Annex A. The written form shall be regarded as fulfilled when the request is communicated through electronic mail in such a manner as to enable the authentic identification of the requesting Authority (e.g. electronic signature).
- 4.2 In case of emergency, requests for information and replies to such requests may be transmitted orally provided that these requests are confirmed in the manner required in this Article unless the Requested Authority agrees to waive such requirements.
- 4.3 To the extent available to the Requesting Authority and in order to facilitate the Requested Authority's work the request should specify the following:

- a) a description of the subject matter of the request and the purpose for which the information is sought and the reasons why this information will be of assistance,
- b) subject to the Czech Republic becoming a full member of the European Union and the European Economic Area, in case of discharging their responsibilities pursuant to European directives or regulations the Requesting Authority shall also name these directives and regulations,
- c) a description of the specific information requested by the Requesting Authority,
- d) in so far as the request results from investigations of violations of any laws or regulations, a short description of the relevant provisions that may have been violated and, if known to the Requesting Authority, a list of the persons or institutions believed by the Requesting Authority to possess the information sought or the places where such information may be obtained,
- e) in so far as the request concerns information relating to transactions in specific securities
  - a description of the securities in question as precise as possible (including e.g. the securities code),
  - the names of those firms with whose dealing in the securities the Requesting Authority is concerned,
  - the dates between which transactions in the securities are considered relevant for the purposes of the request,
  - the names of any persons on whose behalf relevant transactions in the securities are believed or suspected to have been entered into,
- f) in so far as the request relates to information concerning the business or activities of any person, such precise information as the Requesting Authority is able to provide so as to enable such persons to be identified,
- g) an indication of the sensitivity of the information contained in the request and whether the Requesting Authority is content for the fact that it has made the request to be disclosed to persons whom the Requested Authority may need to approach the information,
- h) whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the state of the Requested Authority in relation to the subject matter of the request,
- i) any other Authority whom the Requesting Authority is aware has an active interest in the subject matter of the request,
- j) an indication of the urgency of the request, or the desired time period for the reply.

4.4 If the Authority requesting the information makes a request for information covered by this Memorandum of Understanding on behalf of another authority, this shall be specified in the request. The Authorities will consult to establish the subsequent procedure and the exact type of information that the Authorities may disclose.

#### **Article 5 – Execution of Requests for Assistance**

- 5.1 To the extent permitted by law, the Requested Authority shall take all reasonable steps to obtain and provide the information sought.
- 5.2 The Requested Authority shall use the relevant means at its disposal for the execution of the request. The Authorities shall consult and agree on the types of enquiry that may be necessary for the execution of a request.
- 5.3 To the extent permitted by law, the Requesting Authority shall provide the Requested Authority with such further assistance as may reasonably be required for the efficient execution of the request including the provision of further information as, in particular, to the circumstances surrounding the request.

- 5.4 Subject to the Czech Republic becoming a full member of the European Union and the European Economic Area and without prejudice to the provisions set forth by the EU legislation relating to the inspection of branches, the Authorities will consider (to the extent permitted by law) conducting joint investigations in cases where the request for assistance concerns violations of laws or regulations, where it would assist in the effective investigation of the alleged violations. The Authorities should consult to define the procedures to be adopted for conducting any joint investigation, the sharing of work and responsibilities and the follow up actions to such investigations.
- 5.5 Subject to Articles 1, 3 and 4 of this Memorandum, the requested authority will provide to the requesting authority the information that it holds or it may obtain by its own means, in accordance with the laws and regulations applicable to the requested authority.
- 5.6 The information should be transmitted to the person listed in Appendix A.

#### **Article 6 – Permissible Uses of the Information Exchanged and Confidentiality**

- 6.1 Subject to the Czech Republic becoming a full member of the European Union and the European Economic Area if the information is exchanged pursuant to the provisions of any of the relevant European Directives, the Requesting Authority shall observe the requirements of the Directives.
- 6.2 In all other cases the Authorities shall use the information exchanged solely for the purposes of:
- a) securing compliance with or enforcement of the domestic laws or regulations specified in the request,
  - b) initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from the violation of the laws or regulations specified in the request,
  - c) any of the particular supervisory functions specified in 1.1 to the extent that they are administered by the Requesting Authority.
- 6.3 The Authorities to which unsolicited information is supplied will use this information solely for the purposes stated in the transmission letter or for the purposes of criminal or administrative proceedings or for the discharge of the obligation to report to judicial authorities
- 6.4 To the extent permitted by law, each Authority will keep confidential any request for assistance made under this Memorandum of Understanding, the contents of such requests and the information received under this Memorandum of Understanding as well as the matter arising in the course of its operation, in particular consultations between Authorities.
- 6.5 If any Authority intends to use or disclose information furnished under this Memorandum of Understanding for any purpose other than those stated in this Article and in the request, including the transmission of the information to other competent authorities in the field of financial markets supervision, it must obtain the prior written consent of the Authority which provided the information. Article 4.2 may apply accordingly. If the Requested Authority consents to the use of the information for purposes other than those stated, it may subject it to certain conditions.
- 6.6 Subject to the Czech Republic becoming a full member of the European Union and the European Economic Area nothing in paragraphs 6.2 to 6.5 of this Article shall prevent

an Authority from using or disclosing information in circumstances where such use or disclosure is required in order to comply with the obligations under European Directives.

- 6.7 If an Authority decides to make public an administrative or a disciplinary sanction within the course of its duties it may, with the written consent of the Authority providing the information, indicate that the successful outcome of the case has been achieved with the aid of the bilateral cooperation mechanisms provided for in this Memorandum of Understanding.

#### **Article 7 – Consultations**

- 7.1 The Authorities will review the implementation of this Memorandum of Understanding regularly and conduct consultations in order to improve its operation and to resolve possible difficulties.
- 7.2 The Authorities may jointly agree on such practical measures as may be necessary to facilitate the implementation of this Memorandum of Understanding.
- 7.3 The Authorities will inform each other on relevant changes in legislation including relevant changes in their respective legal missions and competencies.
- 7.4 In the event of a dispute over the interpretation or enforcement of this Memorandum of Understanding, the Authorities will conduct consultations in order to agree on a common interpretation.

#### **Article 8 – Cost sharing**

If it appears to the Requested Authority that the response to a request for assistance under this Memorandum of Understanding will incur substantial costs, the authorities will consult about the handling of costs.

#### **Article 9 – Amendments to the Memorandum of Understanding**

The Authorities may by common consent make written amendments and add further Annexes to the Memorandum of Understanding they consider necessary.

#### **Article 10 – Publication**

The Authorities agree that this Memorandum of Understanding may be published in a manner common in the respective state.

#### **Article 11 – Entry into Effect and Termination**

- 11.1 This Memorandum of Understanding shall be effective at the day set out below.
- 11.2. This Memorandum of Understanding shall be concluded for an unlimited period of time and may be denounced by any of the Authorities at any time by giving, at least, thirty days prior written notice to the other Authority, provided that the Authorities have consulted this matter in advance. If the Requested Authority undertakes to denounce

the Memorandum of Understanding, requests for information communicated before the effective date of denunciation will still be processed under this Memorandum of Understanding.

In accordance with Belgian law, this Memorandum will only take effect upon approval by the Belgian Minister of Finance.

Done in Brussels on the 28<sup>th</sup> day of March 2002, in English language in duplicate.

In witness thereof the Undersigned have signed this Memorandum of Understanding.

For the Banking and Finance Commission



Eddy Wymeersch  
Chairman

For the Czech Securities Commission



František Jakub  
Chairman