



(Translation)

General Memorandum of Understanding for collaboration between the National Bank of Belgium and the Financial Services and Markets Authority to ensure the coordination of the supervision of the institutions under their respective supervision

*The National Bank of Belgium (hereinafter referred to as the 'Bank'), located at 14, Boulevard de Berlaimont, 1000 Brussels, represented by its Governor, Mr. Luc Coene; and*

*The Financial Services and Markets Authority (hereinafter referred to as the 'FSMA'), located at 12-14 Rue du Congrès, 1000 Brussels, represented by its Chairman, Mr. Jean-Paul Servais;*

*hereinafter referred to individually as the 'Authority' and collectively as the 'Authorities',*

Whereas

The legislature has introduced the model referred to as 'Twin Peaks' for the supervisory architecture of the Belgian financial sector by way of the Law of 2 July 2010 and the Royal Decree of 3 March 2011 (hereinafter referred to as 'RD 2011'), confirmed by the Law of 3 August 2012;

The intention of the legislature is thereby to specialize the tasks of the two supervisory Authorities;

It is the remit of each Authority to exercise its statutory tasks with full autonomy and responsibility;

Both Authorities supervising the Belgian financial sector from their own perspective, there is a need for co-operation and the sharing of information between the two Authorities in order to ensure the highest level of efficiency in the exercise of their supervision;

The principle of specialization may not lead to information in the possession of one Authority being unknown to the other if it is useful for the exercise of the latter Authority's tasks;

In this context, as soon as information appears to be of significant importance and relevance for the other Authority in the exercise of its tasks, efficient coordination requires such information to be communicated spontaneously to the other Authority;

In addition, each Authority must be able to request information from the other Authority if the first Authority deems this information useful for the exercise of its supervisory tasks;

The law provides for information sharing procedures in a series of circumstances as well as consultation and dialogue between the two Authorities;

The law also provides for a Memorandum of Understanding to be entered into by the Authorities with a view to determining the terms of collaboration between the Authorities in all cases in which the law provides for an opinion, a consultation, an item of information, or any other contact between the two Authorities, as well as in the cases in which dialogue is necessary between the two Authorities to ensure uniform application of the legislation;

The law also provides that the Authorities may agree upon terms of co-operation in the areas which they determine;

There is therefore the need to establish general provisions for co-operation and particularly for the sharing of information in addition to the procedures for the sharing of information, consultation and dialogue provided for by law;

In this context, the Authorities intend to proceed to sharing information, whether this is on their own initiative or following a request, diligently and as expeditiously as possible. Without prejudice to this principle, the establishment of specific deadlines within the context of this Memorandum of Understanding only constitutes a maximum limit that the Authorities intend not to exceed;

In order to avoid unnecessarily incrementing the transfer of information and thereby disrupting the proper functioning of the Authorities, it is necessary to specify that in this context, the only information that shall be forwarded is the information that appears to be of significant importance and relevance for the exercise of the tasks of the other Authority;

This Memorandum of Understanding is without prejudice to any Memoranda of Understanding on specific and more technical subjects concluded between the Authorities;

This Memorandum of Understanding must not be considered a restriction or a constraint in any way to the informal collaboration and sharing of information as a preparatory step between the members of the governing bodies and members of staff of each Authority; such sharing is vital to the prompt and efficient accomplishment of each Authority's supervisory tasks;

Have agreed as follows

## I. Purpose and scope

Article 1.- The purpose of this Memorandum of Understanding (hereinafter referred to as 'MoU') is to define the areas of co-operation between the two Authorities in the exercise of their respective supervision, and to specify the terms thereof, in application of Article 45*bis* 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 2002'). Its purpose is also to specify the terms of co-operation where this is the subject of specific provisions in the applicable sectoral regulations.

## II. Co-operation

### a) General principle of co-operation

Article 2.- The Authorities commit to co-operating to the best of their ability to ensure the exercise of their respective supervisory powers. This co-operation in good faith implies in particular that the Authorities, in addition to the cases provided for by law:

- shall proceed to share information, either on their own initiative, or upon request, in the exercise of their supervision, in accordance with the terms specified hereinafter;
- shall consult each other when drawing up a draft regulation, circular or communication, the subject of which enters the area of supervision of the other Authority;
- shall discuss with each other matters for which the banking and financial regulations do not clearly determine under which Authority a specific competence should fall; and
- shall proceed to the necessary sharing of information, consultations and dialogue in order to ensure the harmonized application of the different applicable regulations where these regulations concern the exercise of each Authority's supervision.

### b) Own-initiative provision of information

Article 3.- Each Authority shall communicate on its own initiative to the other Authority any information held by itself within the context of the exercise of its statutory tasks if it is deemed by the first Authority to be of significant importance and relevance for the exercise of the other Authority's supervision.

This information can relate to, but is not limited to, specific risks in the financial structure of an institution subject to supervision or a group which includes institutions subject to supervision, shortcomings in their accounting, organization, internal audit, risk management, integrity policy, gaps or difficulties in their governance, elements that could cast doubt on the fitness and propriety of the management or the qualities required of shareholders, breaches in the exercise of the role of accredited statutory auditor and, more generally, information that could lead to a decision as referred to in Article 4 below.

Article 4.- In addition, the Authorities agree to consider the following non-exhaustive list of decisions and information as constituting information of significant importance and relevance from now on:

1° where this information concerns an institution or the branch of an institution subject to the supervision of the FSMA, or a member of the management or significant shareholder of such an institution:

- a) the referral to the Bank's Investigation Officer with a view to investigating the facts that could lead to the imposition of an administrative fine, as well as the legal or regulatory provision to which the breach is likely to relate;
- b) once the aforementioned investigation is complete, the decision made by the Board of Directors of the Bank regarding the action to be taken as a result of the Investigation Officer's report i.e.:
  - either referral to the Sanctions Committee (as well as the notification of grievances, without the investigation report, addressed to the persons concerned in application of Article 36/10, § 4 of the Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium, hereinafter the 'Organic Law');
  - or the settlement agreed upon in application of Article 36/10 of the Organic Law;
  - or the closure of the dossier without further action (as well as a summary of facts that have led to the aforementioned investigation);

The FSMA shall keep any information provided by the Bank in application of point a) above strictly confidential with regard to the persons concerned until the communication has been made in application of point b) unless the Investigation Officer of the Bank expressly agrees otherwise.

- c) where applicable, the decision by the Sanctions Committee which has been notified to the Board of Directors of the Bank in application of Article 36/11, final paragraph, of the Organic Law and where applicable any appeal filed against this decision.

2° where this information concerns an institution or the branch of an institution under the supervision of the Bank, or a member of the management or significant shareholder of such an institution:

- a) the decision by the Investigation Officer of the FSMA which has been notified to the Chairman of the Management Committee to open an investigation of facts that could lead to the imposition of an administrative fine, as well as the legal or regulatory provision to which the breach is likely to relate;
- b) once the aforementioned investigation is complete, the decision made by the Management Committee of the FSMA regarding the action to be taken as a result of the Investigation Officer's report i.e.:
- either referral to the Sanctions Committee (as well as the notification of grievances, without the investigation report, addressed to the persons concerned in application of Article 71, § 2 of the Law of 2002);
  - or the settlement agreed upon in application of Article 71, § 3, of the Law of 2002;
  - or the closure of the dossier without further action (as well as a summary of facts that have led to the aforementioned investigation);

The Bank shall keep any information provided by the FSMA in application of point a) above strictly confidential with regard to the persons concerned until the communication has been made in application of point b) unless the Investigation Officer of the FSMA expressly agrees otherwise.

- c) if applicable, the decision of the Sanctions Committee which has been notified to the Management Committee of the FSMA in application of Article 72, final paragraph of the Law of 2002, and where applicable any appeal filed against this decision.

3° the imposition of exceptional corrective measures, reorganization measures, or penalties to an institution or a branch that also falls within the competence of the other Authority or that forms part of a group to which an institution or a branch belongs that falls within the competence of the other Authority, including a summary of the facts that have led to these measures, and the legal or regulatory provisions relating to the breach(es) at the source of these measures;

4° the prohibition imposed by the FSMA in application of Article 23<sup>quater</sup> of the Law of 2002;

5° the decision made by the FSMA pursuant to its powers in the area of supervision of information disclosure of listed companies, to impose the publication of a press release to an institution supervised by the Bank;

6° the decision made by the FSMA to suspend or prohibit trading in a financial instrument issued by an institution supervised by the Bank;

7° the decision made by the FSMA to refuse approval of a prospectus for an issue planned by an institution supervised by the Bank, under Articles 32, § 3, or 52, § 3, of the Law of 16 June 2006 concerning public offers of investment instruments and the admission of investment instruments to trading on regulated markets (hereinafter the 'Prospectus

Law'), as well as any request for approval of such a prospectus considered rejected in application of Article 32, § 4, or Article 52, § 4, of this same Law;

8° the decision made by the FSMA under Article 67, § 1, points d) to h), m) and n) of the Prospectus Law, imposing measures to an issuer or an offeror which is supervised by the Bank;

9° information obtained by the Bank from a credit institution, a stockbroking firm, or an insurance company according to which an intermediary in banking and investment services or in insurance and reinsurance is in severe breach of his/her obligations insofar as it does not appear from the dossier that the FSMA is aware of this breach;

10° discovery by the FSMA that an institution supervised by the Bank uses the services of an intermediary in banking and investment services or in insurance and reinsurance who is not duly registered in accordance with the applicable regulations;

11° the decision by the FSMA, in accordance with Article 87*bis* of the Law of 2002 to refuse to grant authorization to a compliance officer or to proceed to revoke the authorization of a compliance officer appointed to an institution supervised by the Bank;

12° the decision by the FSMA in accordance with Article 36, § 1, 1° of the Law of 2002 to publish its viewpoint with respect to an infringement or failure by an institution supervised by the Bank;

13° a request for a ruling submitted to one of the Authorities in accordance with Article 63 of the Law of 2002 or Article 36/5 of the Organic Law where the subject of the request enters the area of supervision of the Authority to which the request for a ruling has not been addressed;

14° the decision on the establishment of a deadline by which the institution to which the decision is directed must remedy a situation which does not comply with Articles 14*bis* of the Law of 9 July 1975 on the supervision of insurance undertakings (hereinafter the 'Insurance Law'), 20 and 20*bis* of the Law of 22 March 1993 on the legal status and supervision of credit institutions (hereinafter the 'Banking Law'), or 62 and 62*bis* of the Law of 6 April 1995 on the legal status and supervision of investment firms (hereinafter the 'Law of 1995'), insofar as the decision in question enters the area of supervision of the other Authority.

Article 5.- The Authorities agree that where the banking and financial regulations use the expression 'make available', this means 'own-initiative provision'.

Article 6. The Authorities agree to communicate to each other via the Liaison Committee established by the MoU, the schedule for - and the subject of - the anticipated inspections that they intend to carry out. The Authorities shall discuss with each other in order to optimize as much as possible the programming of these inspections if they concern the same institutions. The Authorities shall inform each other *ex post* of the other types of inspections as soon as possible via the members of the Liaison Committee.

### c) Sharing of information upon request

Article 7.- In addition to the cases provided for by law, each Authority can request information from the other Authority if it thinks that the other Authority is likely to hold information that is relevant for the exercise of its supervisory tasks. The Authority which receives such a request shall respond to it. If the latter Authority considers itself unable to supply the information requested, it shall provide reasons for this.

### d) Specific cases for dialogue

Article 8.- The Authorities agree that it is necessary to discuss with each other in accordance with the methods provided for in Article 21, in the cases provided for by law for the evaluation of shareholders and where, in accordance with Articles 36/25 and 36/26 of the Organic Law, they evaluate the equivalent nature of the status and the supervision to which foreign clearing and settlement institutions are subject. Within this context, they shall mutually communicate any relevant information they possess.

## III. Terms of co-operation

### a) Terms inherent to cases of consultation and dialogue

Article 9.- Each Authority that submits a request for an opinion or for dialogue to the other Authority shall supply all useful items to the latter to enable it to provide its opinion with full knowledge of all the facts.

### b) Deadlines

#### *Principle*

Article 10.- Except in cases where another deadline is specified in the banking and finance regulations or in the MoU, all the information to be supplied spontaneously or upon request in application of the banking and finance regulations or of this MoU, shall be transmitted to the other Authority diligently and as expeditiously as possible. In the case of requests for information, the Authority which has received the request shall ensure not to exceed a deadline of 10 days from the date of receipt of the request for information unless the subject of the request or the circumstances justify a longer period of time. In the latter case it shall inform the requesting authority accordingly.

Article 11.- Except in cases where another deadline is specified in the banking and finance regulations or in the MoU, where an Authority consults the other, the latter shall communicate its opinion diligently and as expeditiously as possible, at the latest within one month of the date on which it has received the request for an opinion.

## *Special cases*

Article 12.- The FSMA shall inform the Bank immediately where it lodges an appeal with the Minister in accordance with Article 36*bis*, §5, of the Law of 2002, and where it makes a decision such as referred to in Article 348 of the Royal Decree of 2011.

Article 13.- Where the Bank requests information to the FSMA in accordance with Article 36/3, § 6 of the Organic Law, the latter shall communicate the information requested within 7 days from the date of receipt of the request for information.

Article 14.- In the case referred to in Article 21*octies*, § 2, paragraph 2, of the Insurance Law, the FSMA shall forward its opinion at the latest within one month from the date of receipt of the request for an opinion, accompanied by all useful items from the dossier.

Article 15.- In the case referred to in Article 42 of the Insurance Law, the FSMA shall forward its opinion at the latest within 20 days from the date of receipt of the request for an opinion, accompanied by all useful items from the dossier.

Article 16.- Where an Authority is consulted on the appointment of a person who is nominated for the first time to form part of the Board or the executive management of an institution subject to the supervision of the other Authority, failure to respond within the deadline established by law shall be interpreted as though the Authority to which the question was directed had no observation to make. Prior to the expiry of the deadline established by law, either Authority may however inform the other Authority that it will communicate its opinion at the latest within 10 days after the expiry of the said deadline established by law. After this final deadline, failure to respond shall be interpreted as though the Authority to which the question was addressed had no observation to make.

Article 17.- The FSMA shall render the opinion referred to in Article 49*bis* of the Law of 1995 and in Article 9*bis* of the Banking Law at the latest within a month of the date of receipt of the request for an opinion accompanied by all useful items from the institution which requested the authorization. The Authorities agree that the absence of an opinion by that deadline shall be considered a positive opinion. Prior to the expiry of the deadline of one month, the FSMA may however inform the Bank that it will communicate its opinion at the latest within 15 days from the expiry of the said deadline.



### c) Calculation of deadlines

Article 18.- Except in cases where the applicable regulations specify otherwise, all the deadlines expressed in days in the applicable regulations and in the MoU shall be calculated as calendar days. Where a deadline is expressed in weeks, a week shall be equivalent to 7 calendar days. The deadlines expressed in months in the applicable regulations and in the MoU shall be counted from the date itself up to and including the day before the same date of the following month.

### d) Practical arrangements for communication

Article 19.- Unless provisions have been made to the contrary, any sharing of information or any communication covered by the MoU, whether provided for in the banking and finance regulations or in the MoU, shall be recorded in a letter signed, according to the case, by the Governor, the Chairman, or a member of the Board of Directors or of the Management Committee, of the respective Authority. This letter shall be sent in the form of an electronic file to an e-mail address specified by each Authority and provided to the other Authority.

The receipt of these letters at the e-mail address mentioned in the previous paragraph shall begin the process of counting down the days for the deadline established by law or the MoU. The date of receipt of the e-mail shall be deemed to be the date on which said e-mail has been sent.

### e) Procedural rules for specific cases of dialogue

Article 20.- The Authorities agree that the discussions referred to in Article 8 mean a written and verbal exchange of points of view in order to enable the Authority that has to make the final decision to make an informed decision. The latter shall remain solely responsible for its decision.

Article 21.- In the cases provided for in Article 8 of the MoU, the Authorities shall discuss with each other in accordance with the following procedure:

1° The Authority which has to make the final decision shall proceed to evaluate the question that will form the subject of the dialogue and communicate the result of this to the other Authority for its opinion. The Authority which has been asked for an opinion shall provide it to the other Authority within 14 days of the date of receipt of the result of the evaluation from the latter. In the event that the latter Authority has specified that the matter is urgent, the other Authority shall communicate its opinion as quickly as possible, without exceeding the aforementioned deadline of 14 days.

2° If the Authorities do not share the same point of view, they shall organize a meeting within 7 days of receipt of the opinion referred to in point 1°, with a view to clarifying their opinions. In the event that the matter has been specified as urgent, the meeting shall be organized as quickly as possible, without exceeding the aforementioned deadline of 7 days.

3° After the meeting referred to in point 2° above, the first Authority shall make its decision. The decision shall mention any opinions or reservations expressed by the Authority to which the question was directed, and, if the Authority which has made the decision has not taken into account these opinions or reservations, the reasons for this.

#### IV. Co-operation at a European Union level

Article 22.- Where an Authority takes part in the Board of Supervisors of ESMA, EBA or EIOPA and establishes that the question which will be examined by this Board enters the area of supervision of the other Authority, it shall make use of the options provided for in the relevant provisions of Regulations 1095/2010, 1093/2010, and 1094/2010 of 24 November 2010.

#### V. Periodic meetings and committees

Article 23.- The Governor of the National Bank of Belgium and the Chairman of the FSMA shall meet regularly and at least every three months to exchange views on the supervision of the Belgian financial sector, to review the collaboration between the Authorities, and agree, where applicable, on new initiatives to embark upon.

Article 24.- The Authorities agree to put in place a Liaison Committee to monitor the implementation of the MoU, resolve any questions of interpretation that may arise, evaluate whether the MoU needs adapting - especially in order to take into account any potential legislative changes at a European Union level - and endorse the templates to use for letters for the implementation of the MoU.

The Liaison Committee shall consist of four members of at least management level, with each Authority designating two members. The Committee shall meet as necessary and at least twice a year. The agenda for the meetings and the procedures for communicating and distributing documents shall be determined by mutual agreement.

Article 25.- The Authorities agree to put in place a joint committee for supervision policies with a view to coordinating their respective supervision policies.

The joint committee for supervision policies shall consist of the heads of the 'Prudential Policy and Financial Stability' and the 'Policy' departments of the Bank and the FSMA respectively. Other people may join on a case-by-case basis. The Committee shall meet at least twice a year and as necessary. The agenda for the meetings and the procedures for communicating and distributing documents shall be determined by mutual agreement.

## VI. Final provisions

### a) Professional secrecy

Article 26.- All information received by the Authorities pursuant to the law or in application of the MoU is subject to the legal provisions relating to professional secrecy that apply to the Authorities.

### b) Dynamic interpretation

Article 27.- Reference made in the MoU to provisions of the financial and banking regulations should be understood as relating to the content of these provisions insofar as the subject of these has not been amended since the date of entry into force of the MoU.

### c) Various

Article 28.- Inasmuch as the sole aim of the MoU is to ensure the coordinated supervision of the institutions subject to supervision by the Authorities, based on their best possible efforts, the Authorities accept that the MoU may not form the basis of any claim for liability or any other dispute before the courts. The MoU does not give rise to any rights in favour of third parties.

Article 29. No Article in the MoU may be interpreted as a derogation from the law, or as giving rise to any obligations contrary to the law.

Article 30. The MoU may be amended by the Authorities by mutual written agreement.

This Agreement shall enter into force on the date on which it is signed, for an indefinite term. Either Authority may put an end to the MoU by giving its notice in writing to the other Authority six months in advance.

*(The Chairman of the FSMA*

*Jean-Paul SERVAIS*

*The Governor*

*of the National Bank of Belgium*

*Luc COENE)*

Signed in Brussels, on 14 March 2013.

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