

**COOPERATION PROTOCOL  
BETWEEN THE NATIONAL BANK OF BELGIUM AND THE FINANCIAL SERVICES AND MARKETS  
AUTHORITY IN THE FIELD OF SUPERVISION AND OVERSIGHT OF MARKET INFRASTRUCTURES**

Between

- the National Bank of Belgium (hereinafter "the Bank"), located in Boulevard de Berlaimont 14, 1000 Brussels, represented by Luc COENE, Governor, and;
- The Financial Services and Markets Authority (hereinafter "FSMA"), located in Rue du Congrès 12-14, 1000 Brussels, represented by Jean-Paul Servais, Chairman;

hereinafter "the Signatory Authorities".

Having regard to the Organic Law of 22 February 1998, in particular Article 8 thereof;

Having regard to the Law of 2 August 2002 on the supervision of the financial sector and on financial services, in particular Article 45*bis* thereof;

The following has been agreed upon:

**Article 1 - Object**

This Protocol is intended to clarify the modalities of cooperation between the Bank and FSMA in their respective areas of responsibility in supervising and overseeing market infrastructures (settlement institutions, institutions assimilated to settlement institutions, and clearing institutions) established in Belgium or providing settlement and clearing services in Belgium out of another country in the European Economic Area.

Cooperation between the Bank and FSMA aims in particular to avoid loopholes, evitable duplication, and any unnecessary burden for the market infrastructures concerned, while ensuring efficiency of the national regulatory environment, with a particular emphasis on consistency in decisions, opinions and recommendations adopted by the Signatory Authorities in their respective areas of responsibility.

**Article 2 - Scope**

At the date of signing, this Protocol relates to the following institutions:

- CIK SA (trade name: Euroclear Belgium);
- Euroclear SA/NV (ESA);
- Euroclear Bank S.A./N.V. (EB);
- LCH Clearnet SA.

The Signatory Authorities may by mutual agreement supplement or amend this list.

For the purposes of this Protocol, the aforementioned institutions are referred to as "Market Infrastructures".

### **Article 3 - Legal framework**

Those powers of the Signatory Authorities that justify the establishment of collaboration under this Protocol are briefly described below.

#### **3.1. With regard to the Bank:**

##### 3.1.1. Oversight

Under Article 8 of the Law of 22 February 1998, the Bank shall ensure that the clearing and settlement systems operate properly and that they are sound and efficient.

##### 3.1.2. Prudential supervision

Under Article 46 of the Law of 22 March 1993 (for credit institutions that provide clearing or settlement services or services assimilated therewith), Articles 36/25 and 36/26 of the Law of 22 February 1998, and the Royal Decree of 26 September 2005, the Bank ensures prudential supervision (including authorisation) of clearing institutions, settlement institutions and institutions assimilated to settlement institutions, without prejudice to its powers of oversight over the systems operated by the aforementioned institutions.

##### 3.1.3. Approval of clearing rules

Under Article 36/25, § 3, of the Law of 22 February 1998, the Bank approves, upon the opinion of the FSMA, the initial clearing rules as well as any changes thereto.

#### **3.2. With regard to the FSMA:**

##### 3.2.1. General powers in financial markets supervision and investor protection

Under Article 45, § 1, 1°, of the Law of 2 August 2002, the duty of the FSMA is to ensure compliance with the rules on (i) protection of investors' interests in transactions on financial instruments, and (ii) proper operation, integrity and transparency of markets in financial instruments. Under Article 4, 5°, of the Law of 2 August 2002, the FSMA is competent *inter alia* to ensure that Belgian market operators use such clearing and settlement systems for transactions in financial instruments as provide adequate guarantees for the protection of the interests of participants and investors and for the proper operation of the market, and that they implement appropriate mechanisms to facilitate an efficient and timely outcome for the transactions carried out within these systems.

This general power as regards markets supervision and investor protection entails certain more specific powers of the FSMA with respect to clearing and settlement institutions:

##### 3.2.2. Specific powers:

###### (A) Rules of Conduct

Under Article 23 of the Law of 2 August 2002, the FSMA ensures that settlement institutions and institutions assimilated to settlement institutions take adequate organisational and administrative measures to (i) prevent any conflict of interest that would affect the interests of clients, (ii) keep a record of the services provided and of the activities carried out, so as to enable the FSMA to verify compliance with their obligations towards clients, and (iii) protect the rights of clients in case of insolvency of the institution and prevent the use by the institution, for its own account, of financial instruments belonging to clients.

As prudential supervisor and as overseer, the Bank also ensures that such measures are taken, as part of the supervision of the organisation of settlement institutions and institutions assimilated to settlement institutions.

(B) Access to clearing and settlement institutions

As supervisory authority of the Belgian regulated markets, the FSMA ensures compliance, under Article 23<sup>quater</sup> of the Law of 2 August 2002, with the rules relating to free access, for members and participants in a Belgian regulated market, to clearing and settlement facilities (including CCPs), hereby including the right of members and market participants to appoint a clearing and settlement system.

That power is without prejudice to the Bank's powers of oversight over securities clearing and settlement systems and of supervision of clearing institutions, settlement institutions and institutions assimilated to settlement institutions. In exercising its powers under Article 23<sup>quater</sup> of the Law of 2 August 2002, the FSMA shall adequately take into account the Bank's powers of supervision and oversight.

(C) Approval of settlement rules - advisory power of the FSMA

Under Article 36/25, § 3, of the Law of 22 February 1998, the Bank approves, upon the opinion of the FSMA, the initial clearing rules as well as any changes thereto.

**Article 4 - Terms of the collaboration**

**4.1. Assessment of the market infrastructures with regard to international standards**

Under Article 8 of the Law of 22 February 1998, the Bank as *overseer* is solely responsible for the overall assessment of compliance of clearing and settlement systems operated by the market infrastructures with international standards of reference, without prejudice to the powers of the FSMA with respect to such infrastructures.

For the purposes of this Protocol, the international reference standards are the *Principles for financial market infrastructures*, jointly published in April 2012 by the *Committee on Payment and Settlement Systems* (CPSS) and the *Technical Committee of the International Organization of Securities Commissions* (IOSCO).

As part of the assessment referred to in the first paragraph, the Bank strives to cooperate with the FSMA as follows:

- **Principles 1** (*Legal basis*), **2** (*Governance*) and **13** (*Participant-default Rules & Procedures*): assessment by the Bank finalised after consultation of the FSMA on aspects of these principles related to the powers of the FSMA, with regard to both Euroclear Bank and CIK SA;
- **Principles 11** (*Central Securities Depositories*) and **16** (*Custody & Investment Risks*): assessment by the Bank finalised after consultation with the FSMA, with regard to both CIK SA and Euroclear Bank and taking into account the proportionality principle for the exercise of the power of the FSMA vis-à-vis Euroclear Bank;
- **Principles 18** (*Access & Participation requirements*), **21** (*Efficiency*) and **23** (*Disclosure of Rules, Key Procedures*): assessment by the Bank finalised after consultation of the FSMA on all aspects of these principles, with regard to both for CIK SA and Euroclear Bank.

In the event of divergent opinions between the Bank and the FSMA on compliance with these principles, the opinion of the FSMA will be included in the general conclusions of the assessment, with a brief description of the reasons for the divergent opinion.

All other standards of the *CPSS & IOSCO Principles for financial market infrastructures* shall be assessed by the Bank, which will communicate to the FSMA any relevant information which may be useful to the FSMA in exercising its powers.

The FSMA for its part shall provide the Bank with any information which is relevant for its overall assessment of compliance on the part of the clearing and settlement systems operated by the market infrastructures.

#### **4.2. Exchange of information**

In order to avoid any excessive administrative burden at the level of the market infrastructures under supervision/oversight, and without prejudice to the application of other collaboration protocols related specifically to the exchange of data and information between the Signatory Authorities, the Signatory Authorities shall exchange information already collected by any one of them under its own responsibilities where it also meets the specific needs of the counterpart Authority.

#### **4.3. Crisis management**

The Signatory Authorities shall consult each other whenever this is necessary in a crisis affecting any market infrastructure covered by this Protocol. Such consultation shall apply by priority, but not exclusively, to CIK SA. A list of persons to be contacted in the event of a crisis, as well as their substitutes, shall be established.

#### **4.4. Practical details of the cooperation**

Without prejudice to any ad hoc meetings convened at the request of either Signatory Authority, coordination meetings shall be held at least twice a year. These meetings shall be held in March and October of each calendar year. The agendas of these meetings, as well as the procedures for communicating and distributing the documents, shall be established by mutual agreement.

#### **4.5. Cooperation agreements with foreign authorities**

As regards the participation of the Signatory Authorities in international cooperation agreements on supervision and oversight of market infrastructures, the following is agreed:

- the Bank and the FSMA shall participate jointly in the international (technical, high-level) working groups in charge of coordinated supervision and oversight of Euroclear SA and the ESES (Euroclear Settlement of Euronext-zone Securities) entities, in accordance with the Memorandum of Understanding on the cooperation framework for supervision/oversight of Euroclear SA/NV (ESA) and on the ESES Working Arrangements
- the Bank and the FSMA shall participate jointly in the high-level working group established under Part II of the “Coordinated Supervision and Oversight of the Clearing Activities of the Euronext Group Memorandum of Understanding”.

The NBB shall in principle sit alone in the technical working group established under said “Coordinated Supervision and Oversight of the Clearing Activities of the Euronext Group Memorandum of Understanding” and shall communicate informal minutes thereof to the FSMA. The minutes shall in particular reflect the discussions held at the level of the Technical Working Group as regards the advisory power given to the FSMA by Article 36/25 of the Law of 22 February 1998. In addition, based on the agendas of the Technical Working Group, as well as the documents exchanged by its permanent secretariat and its members, the FSMA may decide to participate in some of these meetings. The secretariat of the Banque de France, as well as the members of the working group, shall be informed of such arrangements.

### **Article 5 - Confidentiality**

5.1. Without prejudice to the legal and regulatory provisions on professional secrecy in each Signatory Authority, all non-public information shared between the Signatory Authorities under this Protocol, including the information provided by market infrastructures, must be considered confidential and must be covered by the professional secrecy provisions applicable to each Signatory Authority.

5.2. Such information as referred to in the first paragraph shall be used only for the purpose of exercising the legal duties and the responsibilities of the Signatory Authorities. They may only be disclosed to third parties with the express consent of the Signatory Authority in which the information originated and, where said Authority has expressed restrictions, solely for the purposes for which said Authority has given its consent.

### **Article 6 - General Provisions**

6.1. This Protocol, which has been established on the basis of the current state of the regulation on market infrastructures, can be modified by mutual consent expressed in writing between the signatories. The Protocol will be reviewed annually and will be amended to take account of legal and regulatory developments, including at European level (EMIR and CSDR).

6.2. This Protocol shall enter into force on the date of signature. Cooperation within the meaning of this Protocol shall continue until either of the Signatory Authorities notifies in writing, six months in advance, its intention to terminate it.

6.3. This Protocol is without prejudice to other cooperation agreements that the Bank and the FSMA may enter into under the laws and regulations governing their respective status and operation or under the laws and regulations applicable to the market infrastructures referred to in this Protocol.

6.4. This Protocol shall not confer any right to the Signatory Authorities. The Signatory Authorities agree that this Protocol does not create any obligation and cannot serve as a basis for any action for damages or any other action.

Each Signatory Authority remains solely and fully responsible for the proper execution of its powers and duties.

Date:

Signatories:

National Bank of Belgium

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Luc Coene, Governor

*Translation of the original MoU dated 18 October 2012*

Financial Services and Markets Authority

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Jean-Paul Servais, Chairman

TRADUCTION