

ORGANIC LAW OF THE CENTRAL BANK OF LUXEMBOURG

LAW OF 23 DECEMBER 1998 CONCERNING THE MONETARY STATUS AND THE CENTRAL BANK OF LUXEMBOURG AS MODIFIED BY THE LAW OF 13 JULY 2007 AND THE LAW OF 24 OCTOBER 2008¹ (CONSOLIDATED VERSION²)

The monetary status of the Grand Duchy of Luxembourg

Art. 1. The monetary status of the Grand Duchy of Luxembourg is that of a Member State of the European Community which has adopted the single currency, the euro.

Tasks and legal status of the Central Bank of Luxembourg

Art. 2. (1) The Central Bank of Luxembourg, referred to in the following provisions as the "Central Bank", forms an integral part of the European System of Central Banks, hereinafter referred to as "ESCB". It acts in compliance with the guidelines and instructions of the European Central Bank, hereinafter referred to as "ECB".

(2) The main task of the Central Bank shall be to participate in the execution of the tasks of the ESCB with a view to achieving its objectives.

(3) Subject to their compatibility with its main task and in accordance with the Treaty establishing the European Community and with the Statute of the ESCB and of the ECB, the Central Bank shall perform such duties falling outside the functions of the ESCB as are assigned to it by this law or by other legislative, regulatory or conventional texts.

(4) The Banque centrale shall be responsible for supervising the general liquidity situation on the markets as well as evaluating market operators for this purpose. The coordination and cooperation procedure for performing this task shall be subject to agreements between the Banque centrale and the Commission de surveillance du secteur financier as well as the Commissariat aux assurances in accordance with the parties' legal powers.

(5) In view of its tasks relating to monetary policy and to the promotion of the smooth functioning of payment systems, as well as contributing to the good management of policies implemented by the competent authorities concerning prudential supervision of credit institutions and the financial system's stability, while respecting its independence and the parties' legal powers, the Banque centrale shall cooperate with the Government and with prudential supervision authorities at national level, as well as with the other central banks at Community and international level, to contribute to ensuring financial stability, notably within committees set up for this purpose³.

Art. 3. (1) The Central Bank is a public institution, endowed with legal personality and financial autonomy.

(2) The seat of the Central Bank is in Luxembourg.

(3) The Central Bank is exempt from all charges, levies and taxes payable to the State and local authorities, with the exception of value added tax.

Financial bases

Art. 4. (1) The State is the sole shareholder of the Central Bank, which is fixed at twenty-five million euro. A grand-ducal regulation may increase the capital by incorporating reserves, on a proposal from the central bank⁴.

¹ Published respectively, in the original French version, in the Memorial A N°112 of 24 December 1998, A N°116 of 16 July 2007 and A N. 161 of 29 October 2008

² Consolidated version established by the BCL (Law in force on 2 November 2008)

³ Paragraphs (4) and (5) have been introduced by the law of 24 October 2008

⁴ Introduced by the law of 24 October 2008

(2) The Central Bank shall hold all the assets and liabilities of Luxembourg in respect of the International Monetary Fund by virtue of the general account and the special drawing rights account.

(3) Capital appreciation in respect of the book value which the Central Bank realizes in disposing of gold-denominated assets shall be paid directly to its reserve fund.

Central Bank bodies

Art. 5. (1) The bodies of the Central Bank shall be the Council and the Executive Board.

(2) In the exercise of the powers and in the fulfillment of the tasks and duties entrusted to them within the domain of the ESCB, neither the Central Bank nor any member of its bodies may seek or accept instructions from institutions or bodies of the European Community, governments of Member States or any other body.

The Council

Art. 6. The competences of the Council of the Central Bank shall be:

(a) To discuss the implications of monetary policy, without prejudice to its Governor's independence of all instructions in his capacity as member of the Governing Council of the ECB and without prejudice to the provisions relating to professional secrecy applicable to the ESCB.

(b) To decide the business policy of the Central Bank and establish guidelines relating to its financial situation.

(c) To approve, annually, the budget, the financial accounts and the report of the Executive Board.

(d) To give its consent, which is necessary, before the Central Bank's reserve fund can be used.

(e) To help draft the Central Bank's business reports as referred to in Article 11.

(f) To propose to the Government the appointment of the Central Bank's auditor.

(g) To approve the rules of procedure of the Executive Board.

(h) To deliver its opinion prior to any decision to dismiss a member of the Executive Board.

(i) To deliver an opinion on any Grand-Ducal regulation adopted pursuant to Article 14 of the present law concerning the staff members of the Central Bank.

(j) To give its assent prior to the application of any disciplinary action against a staff member of the Central Bank, when the preliminary opinion of the Civil Service Disciplinary Board has been requested.

Art. 7. (1) In addition to the Directors, who are ex officio members, the Council shall comprise six members appointed by the Government in Cabinet.

(2) Appointments shall be made for a six-year period and shall be renewable.

(3) No person shall be appointed to or remain a member of the Council while holding any office outside the Central Bank in conflict with the requirements of Article 5 (2) or with the professional secrecy provisions applicable to the ESCB.

(4) For deliberations relating to Article 6 (h), members of the Council who are also Directors shall not take part in any vote.

Art. 8. (1) The Council shall be chaired by the Director-General of the Central Bank or, in his absence, by the oldest member of the Executive Board present.

(2) The Government in Cabinet shall determine the emoluments payable to Council members, which shall be paid by the Central Bank.

Art. 9. (1) Meetings of the Council shall be convened by its President or, should he be unavailable, by the oldest member of the Executive Board available. A meeting may also be convened at the request of the Executive Board or four or more members of the Council.

(2) Meetings of the Council require a quorum which is achieved when the majority of its members are present.

(3) The Council shall adopt its rules of procedure by a majority of two thirds of its members.

(4) The Council shall designate a secretary from among the staff members of the Central Bank.

(5) The Minister responsible for relations with the Central Bank or his representative shall be invited to attend Council meetings. He may participate without having the right to vote.

Art. 10. Apart from official communications issued by the Council, members of the Council shall not disclose its deliberations.

The Executive Board

Art. 11. (1) The Executive Board is the highest executive authority of the Central Bank.

(2) It shall prepare the measures and take the decisions required for the fulfillment of the tasks of the Central Bank. The Central Bank shall submit an annual report to the Government and to the Chamber of Deputies on its activities and on the monetary policy of the previous year and the current year.

(3) It shall recruit and appoint and, subject to the provisions of Article 6 (j), may dismiss the staff members of the Central Bank.

Art 12. (1) The Executive Board shall comprise a Director-General and two Directors.

(2) Board members shall be appointed by the Grand Duke on a proposal by the Government in Cabinet for a six-year period. Appointments are renewable.

(3) The Government may propose to the Grand Duke, after consultation with the Council of the Central Bank, the dismissal of Board members who no longer satisfy the conditions of their employment or are guilty of serious misconduct.

(4) Board members rank as state officials in terms of their status, salary and pension scheme.

(5) Prior to taking up duties, Board members shall take the following oath before the Minister responsible for relations with the Central Bank: "I swear loyalty to the Grand Duke, obedience to the Constitution and to the laws of the State. I promise to fulfill my duties with integrity, thoroughness and impartiality and to preserve the secrecy of professional deliberations."

(6) The posts of Director-General and of Director shall be classed respectively in Grade S1 of Heading VI "fixed index functions" and Grade 18 of Heading I "General Administration" of appendix A "classification of functions" of the law of 22 June 1983 as amended, establishing civil service salary scales. The Government in Cabinet may grant Board members a special allowance for entertainment expenses.

Salaries and pensions of Board members and, where applicable, of general advisers referred to in the following paragraph, shall be paid by the Central Bank.

(7) A Board member whose appointment is not renewed or who is dismissed shall become general adviser to the Central Bank, keeping the status and basic remuneration (except entertainment allowances) applicable to his previous function. A Board member may be transferred to another administration or public institution pursuant to Article 6 of the law of 16 April 1979 as amended establishing general service regulations for civil servants.

Art. 13. Without prejudice to the independence of its President with regard to all instructions in his capacity as member of the Governing Council of the ECB and without prejudice to provisions relating to professional secrecy applicable to the ESCB, the decisions of the Board of Directors shall be taken collectively.

The Executive Board shall adopt its rules of procedure by unanimity.

The rules of procedure shall be approved by the Council before coming into force.

Staff members of the Central Bank

Art. 14. (1) The Central Bank's Executive Board shall be assisted in its task by staff members recruited and appointed by the Board and placed under its authority.

(2) Prior to taking up their duties, each Central Bank staff member shall swear the following oath before a member of the Executive Board: "I swear loyalty to the Grand Duke, obedience to the Constitution and to the laws of the State. I promise to fulfill my duties with integrity, thoroughness and impartiality and not to disclose information which comes to my knowledge in the course of my duties."

(3) (a) Central Bank staff members who occupy the posts specified in the organisation chart referred to in Article 29 (2), and involving, either directly or indirectly, the exercise of public power and tasks safeguarding the general interests of the State or other public authorities, have a public law status consisting in the application, if necessary by analogy, of the provisions relating to officials and probationer officials, save as otherwise provided in a Grand-Ducal Regulation to be adopted in the interests of the proper functioning of the Central Bank.

(b) For posts other than those specified in Paragraph 3 (a), Central Bank staff members may include, within the framework of the organisation chart referred to in Article 29 (2):

- employees who satisfy all the conditions required to be employed by the State and whose status is treated as equivalent to the arrangements for state employees pursuant to Article 13 of the law of 27 January 1972 establishing rules for state employees; also applicable to them, if necessary by analogy, are the provisions of Article 1, paragraph 5, of the law of 16 April 1979 as amended, together with the laws and regulations establishing rules governing state employees;
- employees who fail to satisfy all the conditions for state employment and whose situation is governed by the law of 24 May 1989 on contracts of employment;
- workers whose situation is governed by the collective agreement in force for state workers.

(c) Statutory staff members and those equivalent to probationers employed at the Central Bank at the time of the entry into force of this law, and until such time as the Grand-Ducal regulation referred to in (a) above comes into force, shall, whatever post they occupy, be subject to the status defined in subparagraph (3) (a) above and shall continue to benefit from the application of the Grand-Ducal regulation of 21 June 1984 establishing service regulations for staff members of the Luxembourg Monetary Institute. The new Grand-Ducal regulation shall not make their situation less favourable. Staff members of the Central Bank who satisfy the requisite conditions at the time of the entry into force of this law shall have the status of state employees.

(4) (a) The remuneration of Central Bank staff members shall be paid by the Central Bank. The Executive Board may grant non-pensionable additional remuneration to staff members referred to in paragraph (3) (a) and the first indent of paragraph 3 (b) above, by virtue of their duties or qualifications.

(b) The statutory pension rights of each Central Bank staff member are those corresponding to his legal status, according to the categories defined in paragraph (3). The pensions of the Central Bank's staff members shall be paid by the Bank. This charge shall be financed by a Central Bank pension fund. The pension fund shall be financed on the one hand by statutory deductions from staff members' salaries in accordance with the rules governing the pension scheme corresponding to their status, and on the other hand by contributions made by the Central Bank itself. The central bank may have recourse to the decision-making bodies and services of the pension agencies following the pension regime of the agent in question⁵.

Auditing the accounts of the Central Bank

Art. 15. The Government in Cabinet shall appoint an auditor on a proposal from the Council of the Central Bank. The auditor shall be qualified to exercise the profession of corporate auditor. The auditor shall be appointed for one financial year; the appointment is renewable. His fees shall be paid by the Central Bank.

Art. 16. The auditor shall establish and certify that the accounts of the Central Bank are accurate and complete. He shall draw up, for submission to the Council, Government and Chamber of Deputies, a detailed report on the Central Bank accounts at the end of the financial year. He may be ordered by the Council to carry out specific investigations.

The issue of banknotes and coins

Art. 17. The Central Bank shall issue banknotes in compliance with the guidelines and instructions of the ECB.

Art. 18. The Central Bank shall put into circulation coinage in the form of metal coins issued for and on behalf of the Treasury, in compliance with the provisions resulting from the Treaty establishing the European Community. The Bank shall incur all costs relating to the issue of coins; it shall be reimbursed and remunerated on the monetary income resulting from the volume of coins in circulation. The implementation of this Article shall be governed by an agreement between the Central Bank and the Treasury.

Art. 19. The legal status of banknotes and coins denominated in euro and which are legal tender in the European Community is determined by the Community rules applicable to those banknotes and coins.

Art. 20. Without prejudice to compliance with the rules referred to in Articles 17 and 18, the legal status of banknotes and coins denominated in francs and which are legal tender in the Grand Duchy of Luxembourg is subject to the following provisions:

a. Banknotes issued by the Central Bank and denominated in francs are legal tender without limitation.

b. Coins circulated by the Central Bank and denominated in francs are for each denomination legal tender for up to one hundred times their face value.

c. The Central Bank is not obliged to replace or exchange banknotes and coins denominated in francs which have been destroyed, lost, counterfeited or falsified. The Central Bank shall replace its damaged banknotes denominated in francs, if the bearer is able to present part or parts of the note accounting for more than one half of the note or can prove that the rest of the note, of which less than half is presented, has been destroyed.

d. A Grand-Ducal Regulation may set the date, between 1 January 2002 and 1 July 2002, with effect from which the banknotes and coins denominated in francs will cease to be legal tender, draw up rules on the use of banknotes and coins denominated in francs between 1 January 2002 and that date and determine measures necessary to facilitate their withdrawal from circulation.

⁵ Introduced by the law of 24 October 2008

e. A Grand-Ducal Regulation may set dates with effect from which the Central Bank and the Treasury will no longer be obliged to exchange banknotes and coins respectively denominated in francs and demonetized in accordance with the previous subparagraph.

Operations of the Central Bank

Art. 21. To enable it to carry out its tasks, the Central Bank may open accounts with credit institutions, public bodies and other market participants and accept assets, including book-entry securities, as guarantees.

Art. 22. To enable it to achieve its objectives and fulfill its tasks, the Central Bank may:

- operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments denominated in all monetary units as well as precious metals;
- conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

Art. 22-1. (1) The Central Bank shall define the conditions which claims must satisfy in order to serve as security for its loans.

(2) The Central Bank shall keep a register of contracts for pledges of claims which it accepts. It shall lay down both the operational rules and rules for the coverage of expenses. The register shall be accessible to third parties who envisage having recourse to the pledging of claims under the conditions laid down by the Central Bank.

(3) Pledges of claims in favour of the Central Bank shall be enforceable vis-à-vis third parties as soon as the pledge is entered in the register referred to in the foregoing paragraph.

(4) A guarantee in the form of a pledge in favour of the Central Bank shall have priority over any subsequent guarantee concerning the pledged claims, regardless of the conditions for notification to the debtor or acceptance by the latter. If a third party who has become the beneficiary of a guarantee covering these claims receives a payment relating thereto, including a payment in the context of insolvency proceedings of the debtor, the third party shall be required to transfer it to the Central Bank. The Central Bank may claim such payment ex officio, without prejudice to its right to be indemnified. No set-off may have the effect of undermining the guarantee in favour of the Central Bank in respect of its claims.

(5) This article applies also when the Central Bank acts on behalf of the ECB or other national central banks forming an integral part of the ESCB for the cross-border creation of guarantees within the context of the credit operations by these central banks and in favour of them⁶.

Art. 23. The Banque centrale is the depository for amounts that credit institutions are obliged to maintain by monetary control measures based on Article 19 of the Statute of the European System of Central Banks and of the European Central Bank⁷.

Art. 24. (1) The Central Bank is prohibited from granting overdrafts or any other type of credit facility to European Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States of the European Community; the direct purchase by the Central Bank of debt instruments from Member States of the European Community is likewise prohibited.

(2) The Central Bank may act as fiscal agent on behalf of the entities referred to in the previous paragraph.

(3) This article does not apply to publicly-owned credit institutions which, within the context of the supply of reserves by central banks, shall be given the same treatment as private credit institutions.

⁶ Article 22-1 has been introduced by the law of 13 July 2007

⁷ Provision amended by the law of 24 October 2008

Art. 25. The Central Bank may provide facilities to ensure efficient and sound clearing and payment systems.

Art. 26. The Central Bank may:

- establish relations with central banks and financial institutions of non-member countries of the European Community and, where necessary, with international organisations;
- acquire and sell spot and forward all types of foreign reserve assets and precious metals. The term "foreign reserve asset" shall include securities and all other assets in the currency of any third country or units of account and in whatever form they are held;
- hold and manage the assets referred to in this article;
- conduct all types of banking transactions with third countries and international organisations, including borrowing and lending operations.

Art. 26-1. Within its powers and tasks, the Banque centrale may take and dispose of participations in public institutions, undertakings or public or private associations⁸.

Art. 27. In addition to operations arising from its tasks, the Central Bank may enter into transactions for its administrative purposes or for the benefit of its staff.

Art. 27-1. (1) The claims of the Central Bank as well as of the ECB or of another national central bank forming an integral part of the ESCB, deriving from operations in the context of common monetary or exchange policies, shall be secured by a lien on all the assets held by the debtor either with the Central Bank or within a system for the settlement of securities transactions or with another counterparty in Luxembourg. Such lien shall have the same rank as the charge of the pledgee.

(2) No account with the Central Bank intended to be used in the context of common monetary or exchange policies or in the context of the management of foreign reserve assets held for foreign central banks or foreign States may be subjected to any seizure, sequestration or blocking order⁹.

Art. 27-2. The Banque centrale may, in exceptional circumstances, grant short-term loans to its counterparts while respecting its independence and the provisions prohibiting monetary financing. It shall grant loans on the basis of adequate collateral which may consist of a State guarantee under the conditions previously agreed between the State and the Banque centrale. The Banque centrale's privilege in Article 27-1(1) shall apply to these loans¹⁰.

Rendering of accounts

Art. 28. The financial year of the Central Bank shall be the calendar year.

Art. 29. (1) No later than 31 March of each year the Executive Board shall submit to the Council for approval the balance sheet and profit-and-loss account closed on 31 December of the previous year, together with the Board's report and the auditor's report.

(2) No later than the end of each financial year the Executive Board shall submit to the Council for approval the income and expenditure budget for the forthcoming year. An opinion of the staff representatives shall be appended to the budget and form an integral part of it together with the organisation chart including tables showing the number of staff both current and as planned, according to the categories defined in Article 14 (3), and, also, guidelines, where appropriate, on remuneration supplements pursuant to Article 14 (4) (a).

Art. 30. The budget, annual accounts and reports approved by the Council shall be sent to the Government and the Chamber of Deputies. The Government in Cabinet shall decide whether the Central Bank bodies be granted discharge. Such a decision is taken without prejudice to the provisions of Article 5 (2) and without calling into question the obligations of the Central Bank within

⁸ Article 26-1 has been introduced by the law of 24 October 2008

⁹ Article 27-1 has been introduced by the law of 13 July 2007

¹⁰ Article 27-2 has been introduced by the law of 24 October 2008

the framework of the ESCB. The decision granting discharge to the bodies of the Central Bank shall be published together with the Central Bank's annual accounts in the Mémorial (Official Gazette).

Art. 31. The profits of the Central Bank, as shown in the accounts approved at the end of the financial year, and after deduction of any loss carried forward from previous accounts, shall be paid to the Treasury. The Government in Cabinet may, when it is called on to grant discharge to the Central Bank bodies, decide on the basis of a reasoned proposal by the Central Bank to allocate all or part of the profits to the Central Bank's reserve fund. However, the allocation of the profit to the Central Bank's reserve fund shall be compulsory so long as the total of the capital and the reserve fund falls short of the total of the Central Bank's assets which do not yield freely-available income, after deduction of liabilities which form the direct counterpart of such assets.

Compilation of statistics

Art. 32. (1) So as to fulfill its tasks, the Central Bank shall be empowered to collect the necessary statistical data, either from the competent national authorities or directly from economic agents. It may likewise perform spot checks of the data from these authorities and economic agents, in accordance with relevant Community law provisions and within the competences of the ESCB and the ECB.

(2) Individual data thus collected are subject to professional secrecy on the part of Central Bank bodies and staff members, as defined in Article 33 of this law.

(3) The Central Bank is, however, authorised to publish the statistics that it has compiled provided that the publication neither contains nor permits the inference of individual data and that it complies with the provisions of professional secrecy applicable to the ESCB.

Professional secrecy

Art. 33. (1) Any member of the bodies of the Central Bank, its auditor and staff members who, even after the termination of their functions, disclose information acquired in the course of those duties, shall be liable to the penalties provided for in Article 458 of the Criminal Code.

(2) Without prejudice to the rules of professional secrecy applicable to the ESCB, the foregoing paragraph shall not preclude exchanges of information required in the context of the ESCB or prevent the Central Bank from exchanging information, to the extent necessary for the performance of its tasks and subject to reciprocity, with the Commission de surveillance du secteur financier (Commission for Supervision of the Financial Sector), the Commissariat aux assurances (Insurance Commission) and the Service central de la statistique et des études économiques (Central Service for Statistics and Economic Studies (STATEC)).

(3) Paragraph (1) shall not apply where the persons concerned are called upon to give evidence in judicial proceedings or where the law authorises or requires them to disclose certain facts¹¹.

Article 23 of the Code of Criminal Procedure shall apply to Board members and Central Bank staff members.

Power of enforcement and of sanction

Art. 34. (1) Within the limits imposed on its powers and tasks, the central bank may adopt regulations. The central bank's regulations shall be published in the Mémorial¹².

(2) The Executive Board shall be authorised, within the framework of the tasks of the ESCB, to enforce the decisions of the ECB and to implement the sanctions imposed by the ECB.

¹¹ Paragraphs (2) and (3) have been introduced by the law of 13 July 2007

¹² Article 34 (1) has been introduced by the law of 24 October 2008

Transitional provisions

Art. 35. (1) The various reserve headings shown in the balance sheet of the Central Bank at the time this law comes into force shall be consolidated into a single reserve fund.

(2) The difference between the former capital of the Central Bank, totaling one thousand million francs, and the new capital of twenty-five million euro, is offset by a credit or a debit of the Central Bank reserve fund.

(3) The balance of the loan by the Central Bank to the State, referred to in Article III (2) of the law of 22 April 1998 amending the laws relating to the Luxembourg Monetary Institute and the monetary status of the Grand Duchy of Luxembourg, as decided on the date on which this law comes into force, shall be repaid by a revaluation at the appropriate level of the gold assets of the Central Bank. In the event that, between 1 June 1998 and the date on which this law enters into force, the Central Bank should pay to the Treasury the profits drawn from the disposal of gold, the amount of the sums thus paid to the Treasury will be repaid by the Treasury to the Central Bank.

(4) (a) Luxembourg pension funds which have received contributions on behalf of persons who are or become staff members of the Central Bank on the day on which this law enters into force, shall pay those contributions to the Central Bank pension fund. The contribution periods of those staff members to these pension funds are validated as of right as contribution periods with the Central Bank.

(b) The State is not obliged to reimburse the Central Bank for amounts paid to it in the past with a view to contributing to the share of Central Bank staff pensions for which the State was previously responsible.

(c) Having regarded to subparagraphs (a) and (b) above, the Central Bank shall be authorised to bring its pension fund to the requisite size, subsequent to the entry into force of this law, by a single withdrawal from its reserve fund. The auditor shall, in a special report, check and certify the accurate implementation of the present paragraph (Article 35 para. 4).

Repeal of other provisions

Art. 36. (1) The law of 15 March 1979 as amended relating to the monetary status of the Grand Duchy of Luxembourg and the law of 20 May 1983 as amended creating a Luxembourg Monetary Institute, together with the regulations adopted for their enforcement are hereby repealed, without prejudice to Article 14 (3) (c) of the present law.

(2) All statutory and regulatory provisions conferring the status of legal tender on notes issued by the Banque Internationale à Luxembourg and in return subjecting the statutes and activity of that bank to the approval and monitoring of the Government are repealed. Operations resulting from the expiry of the right to issue notes with the status of legal tender, as granted by the State, shall be conducted in compliance with the statutes of the Bank and under the supervision of the Government Commissioner.

(3) Art. 1 of the law of 12 July 1895 on the payment of workers' salaries is hereby repealed. At the beginning of Article 2 of the same law, the word "However" is deleted.