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Introduction of a governance manual for the banking sector

Scope

Credit institutions, branches established in Belgium by credit institutions governed by the law of states which are not part of the European Economic Area (EEA), settlement institutions and institutions equivalent to settlement institutions, settlement institutions and institutions equivalent to settlement institutions established in Belgium, which are branches of foreign institutions, and, finally, in the context of the consolidated supervision, the group supervision or the supplementary conglomerate supervision, financial holding companies and mixed financial holding companies.

Summary/Objectives

The cross-sectoral Circular PPB-2007-6-CPB-CPA of 30 March 2007 on the CBFA's prudential expectations on financial institutions' sound governance has been largely overtaken by the corporate governance provisions of the Banking Law. The 'governance manual', which is introduced by this circular, replaces the aforementioned circular with immediate effect, at least with regard to credit institutions. By analogy with credit institutions, the manual applies to settlement institutions and institutions assimilated to settlement institutions, insofar as it is in accordance with the legal provisions governing their respective legal statuses.

The main innovation of the manual is that it can be consulted online (see www.nbb.be/governancebanks), guiding the institutions through all policy documents in a user-friendly manner by means of interactive references (links).

Dear Madam,
Dear Sir,

One of the concerns triggered by the financial crisis was the need for appropriate corporate governance in financial institutions. Corporate governance is indeed one of the cornerstones of a properly functioning corporate sector and financial and economic system.

Following the international developments in corporate governance (new guidelines issued by the Basel Committee and the EBA and new European legislation), a new Banking Law¹ was passed in 2014, which updated and covered in more detail the various rules regarding corporate governance. Without going into exhaustive detail, the following important items can be highlighted:

- the requirements of professional integrity and appropriate expertise for members of the management body, persons tasked with the senior management and persons responsible for independent control functions;
- reinforcement of the role and responsibility of the management body (as regards composition, expertise, time commitment, ...) in terms of corporate governance in general, and risk management in particular;
- reinforcement of the role of the advisory committees set up within the management body;
- special attention to risk management and the respective roles and responsibilities of the business and the independent control functions (so-called three lines of defence model);
- detailed elaboration of the rules regarding remuneration policy;
- more transparency regarding the implementation of the principles of corporate governance.

To ensure compliance with the governance rules, the Banking Law provides the supervisory authority with a broad range of measures, from the prudential measures in the context of Pillar 2 supervision (Article 149) to recovery measures (Articles 234-238), penalties (Articles 345-346) and administrative fines (Article 347). Additionally, certain infringements are criminally sanctioned (Articles 348-352).

The manual aims to combine all governance policy documents applicable to credit institutions (Banking Law, explanatory memorandum, regulations, circulars, European legislation, international standards) and, if useful, to provide further clarifications regarding these documents. In addition, the manual also contains explanations on topics that are, as such, not covered by specific policy documents. Evidently, policy documents that are not covered by this manual, will continue to apply. Furthermore, the manual is without prejudice to the governance powers of other supervisory authorities (e.g. the FSMA).

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The manual does not replace the underlying policy documents. If the latter are amended through the usual channels, the manual will be amended accordingly. As in principle the manual will be published online, it will be a living document; its reference and title will not need to be modified with every amendment made, as is the case for instance for circulars. Any amendments made will, however, always be notified to the institutions. Additionally, they will be explained in a specific section, with an indication of the date of the amendment.

The manual follows as much as possible the structure of the Banking Law. The terms used in the manual have the same meaning as in Article 3 of the Banking Law.

It should be noted that for the purposes of the manual, the Single Supervisory Mechanism should be taken into account. In this context "supervisory authority" should be understood to mean the ECB or the NBB, depending on the circumstances. Although the ECB is competent for "important" credit institutions within the meaning of the SSM Regulation, it is the task of the national competent authorities to assist the ECB in its supervisory activities. The NBB offers this assistance in the context of the 'Joint Supervisory Teams', which are the institutions' first point of contact.

¹ Law of 25 April 2014 on the legal status and supervision of credit institutions.

The following topics are covered: (i) suitability of shareholders or partners; (ii) suitability of the management and of the independent control functions; (iii) appropriate organization of the business; (iv) public disclosure and transparency; (v) group context. The underlying policy documents can be accessed via a hyperlink in the text itself and on the web page.

For users who want to read the full manual without clicking on numerous links, a specific link to a printable version is included. Obviously, this version does not include the text of the underlying policy documents.

Yours sincerely,

Jan Smets
Governor