NationalBank OF BELGIUM
Eurosystem

Governance manual for the banking sector

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Contents

1. INTRODUCTION

Regulatory framework:

1. Banking Law
2. EBA guidelines of 27 September 2011 on Internal Governance (EBA GL 44)
3. Corporate governance principles for banks, BCBS, July 2015 (BCBS Principles)

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.

1.1. BACKGROUND

Following the international developments in corporate governance (new guidelines issued by the Basel Committee and the EBA and new European legislation), a new Banking Law[1] 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).

1.2. METHODOLOGY

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).

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

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 on-line, 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.

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.

2. SUITABILITY OF SHAREHOLDERS OR PARTNERS

Regulatory framework:

1. Articles 18, 46 to 54 and 72,§ 2 of the Banking Law
2. Communication CBFA_2009_31 of 18 November 2009 to persons intending to acquire, increase, reduce or dispose of a qualifying holding in the capital of financial institutions
3. Circular CBFA_2009_32 of 18 November 2009 to financial institutions on acquisitions, increases, reductions and disposals of qualifying holdings
4. Guidelines for the prudential assessment of acquisition and increase of holdings in the financial sector required by Directive 2007/44/EC

2.1. PRUDENTIAL EXPECTATIONS

From a prudential point of view, it is essential that significant shareholders should have the qualities necessary to ensure that they will exercise their influence to promote a sound and prudent management of the credit institution and development on a going concern basis. They should also take into account the sound governance expectations to be met by credit institutions.

Not only is this prudential requirement a prerequisite for obtaining an authorization, but it also continues to apply afterwards. It is reflected especially in the prudential assessment which must be made of the qualities of natural or legal persons who have decided to acquire or significantly increase a qualifying holding in the capital of the credit institution.

The significant shareholders and the credit institution, as soon as it has knowledge thereof, should inform the supervisory authority of any changes (an increase or decrease above or below certain thresholds) in the credit institution's capital structure.
The credit institution should provide the supervisory authority with all relevant information on its important shareholders of which it is aware and which can have an influence on the prudential assessment of these shareholders. The shareholders concerned are subject to the same obligation.

2.2. SUITABILITY ASSESSMENT

The criteria for the prudential assessment, both in the context of the application for authorization and subsequently, are explained in the "Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC", issued jointly by CEBS, CEIOPS and CESR. Potential and existing shareholders should read this document in conjunction with Communication CBFA_2009_31; credit institutions should read it in conjunction with Circular CBFA_2009_32.

2.3. CHARTER OF THE FAMILIES/PARTNERS

Credit institutions with a family shareholding or a shareholder structure comprising a restricted number of partners would do well to draw up a charter governing the relationships between the family or partners on the one hand and the institution on the other hand, as regards its sound governance, corporate vision, financial objectives, management follow-up, careers, remuneration, ...

2.4. NO LOANS, CREDITS OR GUARANTEES TO ACQUIRE SHARES

No loans, credits or guarantees may be granted, directly or indirectly, to persons to enable them to directly or indirectly subscribe to shares or other securities that confer the right to dividends of the credit institution or of a company with which a close link exists or that confer the right to acquire such securities, or to acquire such shares or other securities. This type of transaction, where the repayment or cancellation of the resulting commitment depends to some extent on the payment of dividends by the credit institution, in fact undermines the loss absorbing capacity of the so funded capital.

3. SUITABILITY OF THE MANAGEMENT AND OF THE INDEPENDENT CONTROL FUNCTIONS

Regulatory framework:

1. Articles 19, 20, 21, 27 to 31, 60, 61, 62, 72, 73, 86 and 212 of the Banking Law; Article 526*ter* of the Company Code.
2. Circular NBB_2013_02 of 17 June 2013 on standards on expertise and professional integrity for management committee members, directors, heads of independent control functions and senior managers of financial institutions
3. External guideline on the application of Article 62 of the new Banking Law
4. EBA guidelines of 22 November 2012 on the assessment of the suitability of members of the management body and key function holders
5. BCBS Principles: principles 2 and 4

3.1. FIT & PROPER

3.1.1. GENERAL

According to Article 19 of the Banking Law, members of the management body, senior managers and persons responsible for the independent control functions of credit institutions must at all times meet the fitness and propriety criteria required for their role.

Although it is in the first place up to the institutions themselves to select suitable persons and to retain them, the fit and proper assessment is part of the prudential supervision. According to Articles 60 and 61, proposed appointments should previously be notified and submitted for approval to the supervisory authority.

Circular NBB_2013_02 indicates how the legal "fit & proper" provisions are implemented by the supervisory authority and how the fit & proper assessments will be carried out. Both content and form of the assessments are addressed.

3.1.2. SENIOR MANAGEMENT

The term "senior management" is important in the context of the legal fit & proper provisions.

"Senior management" refers to the group of persons, whether or not members of the management body, whose function within the institution implies that they have a direct and decisive influence on the activities at the highest level.

Thus the senior management consists of the members of the management committee and the persons at a hierarchical level immediately below that of the management committee (the so-called MC-1 level), as far as these persons can have a direct and decisive influence on the management of all or certain activities of the institution.

Where, in accordance with Article 26 of the Banking Law, the institution has no management committee as a result of a derogation authorized by the supervisory authority, "senior management" shall be understood to mean the persons that take part in the management of the institution at the highest level, i.e. the executive members of the management body and persons who, without having the capacity of member of the management body or administrator, are qualified as senior managers by the institution, due to the direct and decisive influence they can exercise over the management of all or certain activities of the institution.

Furthermore, the supervisory authority considers that the managers of the EEA branches of credit institutions governed by Belgian law are also part of the senior management (see Article 1, 11° of the Regulation of the National Bank of Belgium of 6 December 2011 on external functions exercised by managers of regulated undertakings). This position is enshrined in Article 86 of the Banking Law.

The persons responsible for the independent control functions are not considered to be senior managers in the exercise of these functions, because these functions require independence, and this independence is incompatible with the decision-making power which is intrinsic to the activities of the institution.

It is up to the institution itself to decide who will be part of the senior management. For some years already, the supervisory authority has been advising the management committee or, in the absence of a management committee, the management body, to draw up a list, by formal decision (that takes into account the effective decision-making concerning its activities), of the names or functions of the persons who, without being members of the management body, are qualified as senior managers.

Although all senior managers must have the qualities laid down in Article 19 of the Banking Law, the appointment in credit institutions which have a management committee, of senior managers who are not members of the management committee or of the management body, must not be previously notified and submitted for approval to the supervisory authority. In specific terms, this concerns the persons at a hierarchical level immediately below that of the management committee, who have a direct and decisive influence over the management of all or certain activities of the institution (DC-1 level). These persons must of course have the qualities required from senior managers pursuant to Article 19 of the Banking Law and it is in the first place up to the credit institution itself to ensure that this is the case. However, compliance by these persons with the said requirements is not subject to prior approval by the supervisory authority pursuant to Article 60 of the Banking Law, but is verified in the context of the on-going supervision of the institution. This approach reflects the concern to focus the reinforcement of the supervision, as regards the managers, on the persons that take part in the management of the institution at the highest level and are members of its bodies.

3.1.3. STAFF MEMBERS OF THE INSTITUTION

Although the legal fit and proper provisions refer to individual assessments of a certain scope of persons, it is obvious that this topic should also be addressed from the point of view of the requirement of an appropriate organization and adequate internal control for the institution as a whole. For example, a proper recruitment, assessment and training policy for the entire staff of an institution is considered to be an element of sound governance.

3.2. PLURALITY OF MANDATES

According to Article 62, § 1 of the Banking Law, members of the management body must devote sufficient time to the exercise of their function in the institution. This general principle of time commitment is further detailed in the subsequent paragraphs.

For significant institutions, the Banking Law contains specific quantitative restrictions on plurality of mandates. The NBB explains how these rules are interpreted in an external guideline.

3.3. LOANS TO MANAGERS

This part is currently being prepared and will be added at a later time. The credit institutions will be notified thereof.

4. APPROPRIATE ORGANIZATION OF THE BUSINESS

4.1. GENERAL PRINCIPLES REGARDING THE ORGANIZATION OF THE BUSINESS

Regulatory framework:

1. Article 21 of the Banking Law
2. EBA GL 44
3. BCBS Principles

The requirement of sound and appropriate structures for the organization of the business to ensure effective and prudent management of the credit institution is described in general terms in Article 21 of the Banking Law. This is an essential legal requirement which is an inherent part of the legal status of credit institutions. It must necessarily be complied with. Only its scope/intensity varies according to the nature, scale and complexity of the risks inherent to the business model and operations of the credit institution (application of the principle of proportionality). The governance structure should at all times keep pace with the evolution of the business.

This requirement is illustrated in the Banking Law by a non-exhaustive, thematic list of the various aspects, which will be covered in more detail below.

4.1.1. MANAGEMENT STRUCTURE

Regulatory framework:

1. Article 21, § 1, 1° of the Banking Law
2. EBA GL 44: guidelines 8 to 10, 14

4.1.1.1. Transparent governance structure

The credit institution should have a transparent governance structure which ensures effective and prudent management in light of the nature, scale and complexity of the risks inherent to the business model and operations of the institution.

As a basic rule, there should be a division at the highest level between the functions responsible for the senior management and the functions responsible for the supervision of this management. The following functions need to be addressed:

- defining the general policy and the strategy (general policy function);
- management of the institution's activity (management function);
- supervision of the management (supervisory function);

The general policy function is entrusted to both the executive and non-executive members of the management body, the management function is entrusted to the executive members of the management body, who sit on the management committee, while the supervisory function is entrusted to the non-executive members of the management body, in particular (but not exclusively) the members of the prudentially relevant advisory committees of the management body in charge of audit, compliance, risk management, appointments, remuneration, investments, etc.
The credit institution should clearly define the responsibilities of executive and non-executive members of the management body. It should define the competences and responsibilities of each

segment of its organization, specify the procedures and reporting lines and monitor their application.

The governing bodies (management body, including any advisory committees; management committee) should draw up internal regulations.

4.1.1.2. Periodic assessment

The credit institution should at regular intervals assess the functioning of the governance structure, in particular of the governing bodies, including their competences, composition and size. External facilitators may be used to carry out the assessment.

The management body should assess the individual and collective efficiency and effectiveness of its activities, governance practices and procedures, as well as the functioning of committees, on a regular basis. The non-executive members of the management body should, at least once a year, assess the interaction with the executive members of the management body, where appropriate in the absence of the latter.

Minutes should be drawn of the conclusions of these assessments as well as of the measures taken in order to improve the functioning of the governance structure.

4.1.1.3. Delegating and outsourcing

Regulatory framework:

1. Article 21, § 1, 1° and Article 66 of the Banking Law
2. Regulation of 5 June 2007
3. Circular PPB 2004/5 of 22 June 2004 regarding sound management practices in outsourcing by credit institutions and investment firms
4. Communication NBB_2012_11 of 9 October 2012 on prudential expectations regarding cloud computing
5. EBA GL 44: guideline 18

The responsibility of the governing bodies of the credit institution, for instance for ensuring compliance with its prudential obligations, cannot be delegated or outsourced to third parties. This means that the governing bodies should continue to fully assume responsibility for shaping the general policy and supervising all outsourced activities and processes. Special care should be given to controlling the associated risks, in particular operational risk. This also means that the senior management should provide for arrangements enabling it to supervise the activities of the external service provider, and that even after a task has been outsourced, the institution should continue to possess adequate experience, knowledge and resources to monitor the proper operation and quality of outsourced activities and to rectify where necessary.

Under favourable conditions, outsourcing can, for certain functions, contribute to a better management if the third parties used have greater expertise and scale, but such outsourcing in no way reduces the responsibility of the management to observe the principles of sound management in all activities. The principles that must be observed whenever an outsourced activity can have a significant impact on the operation of the credit institution, are listed in Circular PPB 2004/5. A good measure in this respect is the impact that a possible failure or malfunction of the outsourced activity can have on compliance with the conditions for authorization which must be met by the credit institution, on its financial position, its continuity or its reputation. Credit institutions offering investment services should also observe the principles set out in Articles 17 to 22 of the Regulation of 5 June 2007.

The NBB addresses cloud computing as a form of outsourcing and therefore expects it to meet the aforementioned principles; see Communication NBB_2012_11.

Delegating and outsourcing should be without prejudice to the possibility for the supervisory authority to verify whether the institution complies with the obligations connected with its legal status.

4.1.2. ADMINISTRATIVE AND ACCOUNTING ORGANIZATION

Regulatory framework:

Article 21, § 1, 2° of the Banking Law

The institution shall have an appropriate administrative and accounting organization and internal control, especially including a control system that provides a reasonable level of assurance of the reliability of the financial reporting process.

The management body should establish in writing the competences, duties and responsibilities of all significant entities and activities of the institution, and should allocate them to the various members of the institution's staff.

Where possible and justified in light of the nature, size, complexity and risk profile of the institution, the tasks of staff and departments should be partitioned in order to reduce the risk of abuse or of violation of prudential rules.

The reporting lines should be clearly defined. The internal reporting should be adapted to the nature, size, complexity and risk profile of the institution, and should cover all of the institution's significant activities.

The management committee takes, under the supervision of the management body, the necessary steps to ensure that the institution has a reliable financial and prudential reporting.

4.1.3. RISK PROCEDURES

Regulatory framework:

1. Article 21, § 1, 3° of the Banking Law
2. EBA GL 44: guidelines 6 and 7
3. BCBS Principles: principles 5 and 7

4.1.3.1. Knowledge of the operational structure

The members of the management body should have a clear understanding of the institution's operational structure, of its activities and of the risks associated with the services and products it offers. The framework functions (secretary general, legal affairs, human resources, communication) and the independent control functions should be given all the specific information they need to properly fulfil their respective tasks.

Credit institutions that offer a broad range of financial services and products (banking, insurance, investment products), propose complex services and products and/or develop cross-border activities, should set up adequate structures to follow up the risks arising from these activities.

Credit institutions that are part of a group should be able to inform their supervisory authority of the structure of the group they belong to, also as regards the group's governance and control mechanisms that apply to them.

A credit institution that is itself at the head of a group should be able to give information on all the relevant entities of the group, including their possible risk impact on the group.

4.1.3.2. Policy as regards offshore centres and complex structures

Credit institutions often develop cross-border activities. The decision to develop activities in specific jurisdictions is dictated by a set of factors and circumstances relating to legitimate strategic, commercial or financial objectives. However, foreign activities, in particular in offshore financial centres or jurisdictions devoid of transparency, may lead to financial, legal and/ or reputational risks.

In addition, credit institutions increasingly make use of complex service schemes and company structures in their activities (company creation, special-purpose vehicles, trust structures), be it for own account or to propose these schemes and structures to their customers. Pressure on the demand side as well as the share that these services represent in the institution's profits should be weighed against the legal and reputational risks the institution might incur if customers were to misuse such schemes and/or structures for illegal or unethical purposes.

The members of the management body should have a clear understanding of these activities and services. According to the distribution of tasks between the management body and the management committee, they should determine the policy on the use of foreign jurisdictions and the use for own account or the sale to customers of complex structures. The management body should define the objectives to be pursued and should ensure that the activities concerned are in compliance with the relevant legal provisions. Launching activities in foreign jurisdictions and/or setting up or selling new complex structures should be subject to a process of internal approval involving the compliance function.

The internal control measures relating to these activities should be proportionate to their importance and the associated risks. The independent control functions of the institution and the statutory auditor should have free access to the information and structures, as required by their respective tasks. They should be kept informed of any significant developments in the relevant activities.

These activities are subject to periodic assessments based on the policy in place, which in turn are subject to a report to the management body.

4.1.3.3. Conflicts of interest policy

Regulatory framework:

1. EBA GL 44: guidelines 12 and 16
2. BCBS Principles: principle 3

The activity of a credit institution is characterized by a combination of various interests - often converging but just as often diverging or conflicting - which require appropriate rules.

Conflicts of interest may arise in - but are not limited to - the following relationships:

- between shareholders and the institution;

- between managers and the institution (cf the rules on personal commercial interests provided for in the Company Code);
- between staff and the institution and, by extension, also the customers of the institution;
- between the institution and its customers, as a result of the business model and/or the various services and activities offered by the institution;
- between customers;
- between the institution and its parent company, its subsidiary or other affiliated companies, in the context of intra-group transactions.

Without prejudice to the application of the provisions of the Company Code or other specific applicable regulations (investment services; market abuse), the credit institution should determine a comprehensive policy, including organizational and administrative arrangements (including records on the enforcement of the said policy) as well as adequate procedures, to identify and prevent conflicts of interest or, where this is reasonably impossible, to manage these conflicts in such a manner as not to prejudice the interests of customers, and to provide customers with appropriate information in this respect.

The resources for managing conflicts of interest differ according to the nature, scale and complexity of the institution's activity. Thus a credit institution can:

- put in place information barriers or physically separate certain departments;
- entrust conflicting activities within a chain of transactions or services to different persons;
- entrust supervisory and reporting responsibilities relating to conflicting activities to different persons;
- avoid any direct link between the remuneration of the relevant persons and the revenues generated by conflicting activities;
- avoid any situation where persons from within our outside the institution with a conflict of interests have an inappropriate influence on an activity of the institution;
- limit the external activities of relevant persons.

It is a good practice to inform interested stakeholders of the general nature and sources of conflicts of interest and of the policy applied by the institution to identify, prevent or manage these conflicts.

4.1.4. INDEPENDENT CONTROL FUNCTIONS

Regulatory framework:

1. Articles 35 to 40 of the Banking Law
2. EBA GL 44: guidelines 24 to 29
3. BCBS Principles: principles 6 to 10

For the senior management, effective and permanent independent control functions are necessary tools to fulfil its tasks in the best possible way. The senior management should translate the findings and advice of the independent control functions into measures to reinforce the governance structure, organization or internal control.

None of the credit institution's activity fields (e.g. offshore activities) may, for personal, commercial or financial reasons, fall out of the scope of the control functions.

4.1.4.1. Three lines of defence

The relationships between, on the one hand, the commercial and business units, and, on the other, the independent control functions, are sometimes referred to as the three lines of defence model:

- the commercial and business units (including the front office) are the first line of defence of the institution. This first line of defence is responsible for identifying the risks associated with each operation and must observe established procedures and limits;
- the second line of defence includes the control functions, i.e. the risk management function and the compliance function, which must ensure that the risks are identified and managed by the commercial and business units (and the front office) according to established rules and procedures;
- the third line of defence is the internal audit, which, inter alia, monitors compliance by the first and second lines of defence with the procedures.

4.1.4.2. Compliance function

Regulatory framework:

1. Articles 35, 36 and 38 of the Banking Law
2. Circular NBB_2012_14 of 4 December 2012 on the compliance function
3. EBA GL 44: guideline 28
4. BCBS Principles: principle 9

The compliance function is responsible for monitoring compliance with the legal and/or regulatory rules on integrity and conduct applicable to credit institutions. The compliance function should thus prevent the credit institution from suffering the consequences - in particular a loss of reputation or credibility, which can cause serious financial loss - of non-compliance with the legal and regulatory provisions or with the ethical rules applicable to bankers (compliance risk). The compliance function is covered in more detail in Circular NBB_2012_14.

4.1.4.3. Risk management function

Regulatory framework:

1. Articles 35, 37 and 38 of the Banking Law
2. EBA GL 44: guidelines 25 - 27
3. BCBS Principles: principles 6 - 8

The risk management function should ensure that all significant risks are detected, measured and duly reported. It should be actively involved in elaborating the institution's risk strategy as well as in all management decisions that have a significant influence on the risks, and should be able to deliver a complete view of the whole range of risks of the institution.

The head of the risk management function is a member of the management committee who does not exercise any other function. If the credit institution is not a significant credit institution, the supervisory authority may allow this function to be exercised by a senior member of staff, provided there is no conflict of interest on the part of this person.

Subject to approval by the supervisory authority, the risk management function and the compliance function, which are the second line of defence of the credit institution, may in a consistent manner fall under the responsibility of one and the same member of the management committee of the credit institution, in this case the person responsible for the risk management function, without

resulting in any kind of hierarchy between the two functions involved. Nevertheless, it is important to ensure that each function is separated from the other functions within the institution.

4.1.4.4. Internal audit function

Regulatory framework:

1. Articles 35 and 39 of the Banking Law
2. Regulation of 19 May 2015 on the internal control and the internal audit function
3. Circular NBB_2015_21 on the internal control and the internal audit function
4. EBA GL 44: guideline 29
5. BCBS Principles: principle 10
6. The internal audit function in banks, BCBS, June 2012

An effective internal audit function should provide reasonable assurance to the management body and the management committee as regards the quality and effectiveness of the internal control, the risk management and the corporate governance systems and processes of the credit institution.

The internal audit function should report directly to the management body, where applicable through the audit committee, and should keep the management committee or the senior management informed about its findings. The internal audit function is covered in more detail in the Regulation of 19 May 2015 and in Circular NBB_2015_21.

4.1.4.5. Independence

The independence of the aforementioned three control functions should be reflected at least in the status of the function concerned within the institution (hierarchical and organizational separation), the competencies of this function (resources and access within the institution) and the regime for the remuneration of the persons responsible and the staff made available for these functions (which should pursue other than commercial objectives and should necessarily be determined without taking into account the performance of the business areas subject to supervision).

The persons responsible for the second-line functions may report directly - if necessary through the risk committee - to the management body. This direct access, which means that there is no need to first pass through the management committee, is necessary to enable the management body to exercise its supervisory function with regard to the implementation of the strategy defined and the functioning of the institution more strictly.

In its supervisory function, the management body should periodically, and at least once a year, verify whether the independent control functions operate properly. To that effect, it should regularly receive a report from the senior management, without prejudice to any direct examination of any relevant information provided by the functions concerned, where applicable through the specialized advisory committees set up for this purpose by the management body.

The persons responsible for the independent control functions may only be removed from office by the management body. The management body must be the only body authorized to remove such a person from office, as his position involves supervising the way in which the management committee carries out its tasks.

If it would be envisaged to remove a person responsible for an independent control function from office, the institution should first inform the supervisory authority, so that it can examine whether the reasons for dismissal are justified, and, where appropriate, whether or not special measures should be taken based on the institution's corporate governance.

4.1.5. INTEGRITY POLICY

Regulatory framework:

Article 21, § 1, 5° of the Banking Law

Sound governance cannot be achieved by organizational structures, procedures and control mechanisms alone, but relies to a large extent on the commitment and dedication of all members of staff of the credit institution.

Therefore it is essential that the management body should determine the strategic objectives and corporate values of the credit institution as well as internal codes of conduct or formal rules that specify the conduct of business in a spirit of integrity that also takes into account the institution's stakeholders. These objectives, values and codes should be communicated and promoted throughout the institution. It is important that in implementing these values, the management should impose upon itself strict and demanding rules of conduct and that it should set the tone at the top.

The internal codes of conduct should relate inter alia to subjects such as corruption, acceptance of unjustified gifts or advantages in cash or in kind, abuse in transactions between staff and the institution (granting of credit, preferential rates, etc.) and all sorts of other unethical or illegal behaviour in the context of internal or external activities.

It is the responsibility of the credit institution to set up an appropriate organization and adequate procedures to ensure that the members of staff of the institution are beyond reproach. Besides the usual checks at the time of recruitment, the institution should continuously take the necessary measures to ensure compliance by their members of staff with the legal and regulatory provisions regarding integrity and conduct. The compliance function has an important role to play in enforcing the policy defined by the credit institution.

4.1.6. REMUNERATION POLICY

Regulatory framework:

1. Article 21, § 1, 6°, Articles 67 to 71 and Annex II of the Banking Law
2. Regulation of 1 April 2014 on proprietary trading activities
3. Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile
4. Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014 supplementing Directive (EU) No 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration
5. Decision (EU) 2015/2218 of the European Central Bank of 20 November 2015 on the procedure to exclude staff members from the presumption of having a material impact on a supervised credit institution’s risk profile (ECB/2015/38)
6. Circular NBB_2014_08 of 1 September 2014 concerning the EBA Guidelines of 16 July 2014 on the data collection exercise regarding high earners (EBA/GL/2014/07)
7. Circular NBB_2014_09 of 1 September 2014 concerning the EBA Guidelines of 16 July 2014 on the remuneration benchmarking exercise (EBA/GL/2014/08)
8. Circular CBFA_2011_05 of 14 February 2014 on sound remuneration policies

The remuneration policy should aim to ensure that the personal objectives of the staff members are aligned with the long-term interests of the credit institution. To this end, the credit institution should establish and maintain a remuneration policy and remuneration practices that promote effective risk management.

4.1.6.1. Identified Staff

Credit institutions must identify the members of staff to whom the specific requirements on remuneration apply ("identified staff"). These include in particular the categories of staff whose professional activities have a material impact on the credit institution's risk profile.
This identification process must be carried out on the basis of the criteria set out in the regulatory technical standards adopted by the European Commission (Delegated Regulation (EU) No 604/2014). According to the 4th recital and the introductory sentence of Article 2 of this Regulation, institutions must also take account of the results of their own risk assessments so that all staff whose professional activities may have a material influence on the institution's risk profile are actually identified. In addition, pursuant to Article 9, § 2 of the Regulation of 1 April 2014, all staff members who are authorized to perform risky transactions and who are employed in trade departments should in any case be considered as Identified Staff.
According to the 14th recital in this Regulation, the identification process must be adequately documented, including in respect of staff identified solely on the basis of the level of their remuneration, but who were not ultimately included because their professional activities were considered to have no material impact on the institution's risk profile (see Decision (EU) 2015/2218 of the ECB for the procedural aspects in this regard).
The NBB requires that at least 1 % of the total number of staff is selected as Identified Staff.

4.1.6.2. EBA Guidelines

According to Article 75(2) of CRD IV, the EBA must issue guidelines on sound remuneration policies which comply with the principles set out in Articles 92 to 95 of CRD IV. These guidelines are currently being developed and will replace the CEBS Guidelines on Remuneration Policies and Practices of 10 December 2010. In its actual monitoring of the remuneration policies and practices of credit institutions, the NBB will be guided by these guidelines, as it was previously guided by the CEBS Guidelines. Credit institutions should therefore, in addition to the statutory provisions on sound remuneration policies, implement these guidelines and comply with them. This is covered in more detail in Circular CBFA_2011_05.

4.1.6.3. Financial instruments

The Bank expects every credit institution to examine how it will comply with the requirement of Article II.6 of the Banking Law pursuant to which at least 50 % of all variable remuneration must comprise an appropriate balance between shares or equivalent instruments and, if possible, other capital instruments mentioned in the law. The conditions under which the said capital instruments can be used for variable remuneration are listed in the regulatory technical standards adopted by the European Commission (Commission Delegated Regulation (EU) No 527/2014)

4.1.6.4. Data collection

According to Article 450 of Regulation No 575/2013, institutions shall disclose certain quantitative information regarding the remuneration policy and practices. The NBB uses the collected information to benchmark remuneration trends and practices. Institutions selected by the NBB for this purpose should report on a yearly basis, pursuant to Circular NBB_2014_09 of 1 September 2014.
Furthermore, by virtue of Article II.20 of the Banking Law, institutions should provide the NBB with information on the number of persons in the institution that benefit from remuneration of at least EUR 1 million per financial year, in remuneration tranches of EUR 1 million, and on their job description, the financial sector concerned, and the primary elements of remuneration, including

bonuses, long-term benefits and pension contributions. The reporting methods are discussed in Circular NBB_2014_08 of 1 September 2014.

4.1.7. IT

Regulatory framework:

1. Article 21, § 1, 7° of the Banking Law
2. Communication NBB_2011_05 of 27 October 2011 on the NBB's prudential expectations on sound management of operational risk
3. Circular CBFA_2009_17 of 7 April 2009 on financial services via the Internet: prudential requirements
4. EBA Guidelines of 19 December 2014 on the security of internet payments
5. Principles for effective risk data aggregation and risk reporting, BCBS, January 2013
6. Principles for the Sound Management of Operational Risk, BCBS, June 2011

Credit institutions should have in place IT control and security measures that are appropriate to their activities.

In addition to areas such as outsourcing and business continuity, which are covered elsewhere in this manual, this also applies to financial services which are offered via the Internet. In this respect, Circular NBB_2009_17 makes a series of recommendations and provides guidance on the main provisions of the existing regulatory and prudential framework. These recommendations are inter alia inspired by a number of international risk management standards, which may serve as a frame of reference for the Belgian practice. The EBA Guidelines of 19 December 2014 on the security of internet payments offer useful guidance in this context.

Please also refer to the document entitled *Principles for the Sound Management of Operational Risk*, which was published by the Basel Committee on Banking Supervision at the end of 2011. In exercising its supervision, the NBB takes into account the guidelines contained in this reference document; see, in this respect, Communication NBB_2011_05.

In January 2013 the same Basel Committee published the document entitled *Principles for effective risk data aggregation and risk reporting*. The implementation of these principles should reinforce the risk management and decision-making processes in credit institutions.

4.1.8. WHISTLEBLOWING

Regulatory framework:

1. Article 21, § 1, 8° of the Banking Law
2. EBA GL 44: guideline 17

Compliance with the corporate values and the internal codes of conduct and the efficiency of a credit institution's internal controls are enhanced where channels are provided which enable staff in good faith to internally express legitimate concerns on significate infringements of these corporate values and codes or on unethical or illegal behaviour, regarding aspects that fall within the credit institution's competence and under its supervision.

The institution should in this respect establish a policy and procedures that make it possible to submit any complaints directly or indirectly (through a mediator, the compliance function or the

internal audit function) to the management (for instance through the audit committee) without resorting to the normal hierarchical channels. Whistle-blowers in good faith should be protected against any direct or indirect disciplinary measures or equivalent decisions.

The proper operation of the whistleblowing process depends on clear rules and procedures that precisely indicate what the complaints can relate to and specify the various steps and degrees of the procedure. The company officers should see to it that the information communicated by whistle-blowers is effectively examined and that the necessary measures are taken to rectify any dysfunction.

The rules provided should be in compliance with the legislation on privacy. Institutions can usefully resort to the advice of the authorities in charge of these matters in order to assess their own rules on the basis of the applicable provisions.

4.1.9. BUSINESS CONTINUITY

Regulatory framework:

1. Article 21, § 1, 9° of the Banking Law
2. Circular PPB 2005/2 of 10 March 2005 on sound management practices aimed at ensuring the business continuity of financial institutions
3. EBA GL 44: guideline 31

Taking into account the nature, scale and complexity of their activity, credit institutions should set up their organization so that, in the case of a major, unscheduled business interruption, their critical functions can be preserved or restored as quickly as possible and the normal provision of services and activity can be resumed within a reasonable period of time. Circular PPB 2005/2 addresses a number of criteria - translated as sound management practices - for the assessment by the supervisory authority of the credit institution's business continuity policy.

4.2. GOVERNANCE MEMORANDUM

Regulatory framework:

Article 21, § 3 of the Banking Law

4.2.1. GOVERNANCE MEMORANDUM AT COMPANY LEVEL

Each credit institution should describe and document its entire internal governance structure in a governance memorandum. The management body should approve the governance memorandum.

The governance memorandum is a prudential document that is an integral part of the authorization dossier and is, as such, confidential.

The memorandum is primarily the responsibility of the credit institution. It should be updated whenever significant changes occur that affect the governance structure and organization of the credit institution. It should be assessed at least once a year by the management body. The credit institution should provide a detailed explanation if it does not comply with a best practice as provided for in circulars or international guidelines (comply or explain approach).

A governance memorandum outline is annexed to this manual. The use of this outline is optional.

4.2.2. GROUP GOVERNANCE MEMORANDUM

Where the credit institution is part of a group that falls under the supervision of the supervisory authority, the governance memorandum drawn up for the credit institution may be part of the group memorandum. Where this governance memorandum is integrated into a group memorandum, the management body of each institution subject to supervision to which the memorandum applies should approve the said memorandum.

Besides any aspects of relevance relating to the subsidiaries which are part of the group, the group memorandum should cover the situation of the parent holding company and of the group as such, such as:

i. a description of the objectives and interests of the group versus the areas of activity and interests of the subsidiaries;

ii. determination of the steering of the group and of the organization of the group supervision of the subsidiaries;

iii. the concrete distribution of tasks between the parent company and the subsidiaries, including a demarcation of the subsidiaries' own competences;

iv. an organization chart including all corporate bodies and/or persons which carry responsibility for the policy and strategy, the operational management of the group and its entities, for the business lines and centralized services and all prudentially relevant functions within the parent company and the subsidiaries (internal audit, compliance, risk management, appointed actuary, accounting, ...);

v. the policy and rules taken into consideration by the group as regards intragroup outsourcing, management of diverging interests, ...

4.2.3. ASSESSMENT BY THE SUPERVISORY AUTHORITY

The memorandum and any significant changes in it should be communicated to the supervisory authority.

After a dialogue with the credit institution, the supervisory authority should assess the memorandum in the light of the mandatory provisions of the supervision status of the credit institution and of the prudential conditions to which its authorization and operations are subject.

Where the credit institution's governance structure is inadequate, the supervisory authority will use its powers as determined by the Banking Law to induce that credit institution to set up an appropriate organization.

4.3. MANAGEMENT BODY

Regulatory framework:

1. Articles 23, 56 to 58 and 60, § 3 of the Banking Law
2. EBA GL 44: guidelines 8 to 10
3. BCBS Principles: principles 1 to 3

The management body has overall responsibility for the credit institution. The institution should inform the supervisory authority of any distribution of tasks between the members of the management body.

4.3.1. GENERAL POLICY FUNCTION

The management body is expected to set the strategy and orientation of the activities, inter alia as regards commercial policy and structures, risk profile, risk policy and risk management, capital adequacy, outsourcing, business continuity, integrity, customer acceptance, conflicts of interest and protection of the rights of customers on their assets held by the institution.

The management body determines the risk tolerance of the credit institution for all its activities. It should be primarily responsible for taking strategic decisions with regard to risks and should be closely involved in the ongoing monitoring of the development of the risk profile of the institution. Therefore, the management body, where appropriate through the audit and risk committee, should at all times possesses relevant and comprehensive information on the risks of the institution.

Furthermore, when setting out its risk management policy, the management body should formally establish the (qualitative and/or quantitative) criteria that determine whether or not transactions, in particular credit transactions, constitute a credit and counterparty risk that should be deemed major. The management body should be notified of these transactions and the associated major decisions (e.g. an extension or a modification of essential contractual credit terms) in a timely manner, allowing it, where applicable, to oppose them beforehand. The management body may not delegate this power to a specialized committee.

The management body should also approve the liquidity recovery plan.

4.3.2. SUPERVISORY FUNCTION

The supervision of the business and the regular assessment of the governance structure, the organization and the internal control mechanisms of the credit institution are the second important pillar of the responsibilities of the management body. This supervision should cover all the activities of the credit institution.

The responsibility for the supervision of the institution's operations lies with the non-executive members of the management body. This supervision also covers the members of the management committee and the senior managers, as the management body makes effective use of the investigative powers available to the members of the management body and as the management committee reports to the management body on developments in the institution's activity.

The management body should also verify periodically and at least once a year whether the independent control functions are exercised correctly. In addition to the assessment that it can perform based on its regular contacts and the information provided to it by these three functions, the management body should rely in particular on the periodic report of the management committee. It should also ensure that the management committee takes the necessary measures to remedy any shortcomings.

The individual and collective expertise of the members of the committees which are compulsory by law should be documented in the annual report of the management body.

Furthermore, the management body has final responsibility for the remuneration policy of the institution. To this end, it may rely on the help of the independent control functions, if necessary through the remuneration committee.

The management body should also ensure that the governance memorandum is updated and that the updated version is forwarded to the supervisory authority.

Finally, the reliability and integrity of a number of aspects relating to the internal functioning of the credit institution also are the responsibility of the management body, particularly with regard to IT(reporting) and publication.

4.3.3. COMPOSITION

To strengthen the supervisory and control functions, the non-executive members of the management body, who are not members of the management committee, should form the majority of the management body, and the chairman of the management body and that of the management committee may not be one and the same person.

4.4. MANAGEMENT COMMITTEE

Regulatory framework:

1. Articles 24 to 26, 59 and 60, § 3 of the Banking Law
2. Circular NBB_2011_09 of 20 December 2011 on the report of the senior management on the assessment of the internal control, the report of the senior management on the assessment of the internal control as regards investment services and activities and the declaration of the senior management on periodical prudential reporting
3. BCBS Principles: principle 4

4.4.1. PLURAL AND COLLEGIAL DECISION-MAKING

Every credit institution should, regardless of its legal form, set up a management committee within the management body. The size of the management committee should always be adapted to the complexity of the institution (beyond the minimum required by law). The management committee should enhance the efficiency of plural supervision and of collegial decision-making on the conduct of the institution’s activity.

The members are loyally bound by the decisions taken. These decisions should be recorded in the minutes and communicated internally to the institution's staff, insofar as this is necessary either for the performance of the tasks entrusted to them or for the smooth functioning of the institution.

Collegial decision-making should not stand in the way of a proper allocation of specific - though not exclusive - competences to the members. This internal allocation of tasks allows the institution to adequately manage conflicts of interest arising from the institution's various areas of activity.

This allocation of responsibilities as well as any subsequent changes thereto should be notified to the supervisory authority and included in the governance memorandum.

4.4.2. COMPOSITION

All the executive members of the management body, and they alone, should be members of the management committee. Each member of the management body to whom the daily management of the institution is delegated, should thus be on the management committee. Thus, a clear distinction is made within the management body between the supervisory and control functions of the institution, on the one hand, and the management function on the other.

According to Article 12 of the Banking Law, the composition of the management committee of a (mixed) financial holding company may be mixed (executive and non-executive members of the management body), on the condition that at least three members of the management committee are members of the management body. This variation is motivated by the fact that the tasks and profiles of the managers, and the debates and decision-making process within the management body of the group, differ to such an extent, in terms of nature and technicity, from those of the management committee of the group, that at group level - in contrast with the situation in the operational entities -, it is not necessary to include all the members of the management committee of the group in the management body.

Moreover, for these holdings it is not required that the majority of the members of the management body are not members of the management committee.

4.4.3. DEROGATIONS

Based on the scale and the risk profile of a credit institution, the supervisory authority may authorize derogation from the requirement to set up a management committee, or, where applicable, a derogation as regards the composition of such a body, for example by allowing one or more persons who are not members of the management body to become members of it.

The credit institution's governance model should in any case meet the following general qualitative sound governance criteria:

- there is an appropriate separation between the function in charge of managing the institution's activity and the function that supervises this management function;
- the management function is entrusted to at least two persons who, without prejudice to an adequate distribution of tasks, should act as a college; any delegation of competences relating to the management function should be subject to a clear legal framework (e.g. the articles of association);
- there is a structured dialogue between the function in charge of defining the general policy, the function responsible for managing the institution's activity and the function that supervises the management function.

4.4.4. TASKS

The following tasks are the responsibility of the executive members of the management body who participate in the management committee:

- management of the credit institution's activity and development of the governance structure;
- supervision of the line management, monitoring of compliance with the allocated competences and responsibilities, and overseeing of financial reporting;
- making suggestions and giving advice to the management body regarding the definition of the institution's general policy and strategy, and communication of all relevant information and data to enable the management body to take informed decisions;
- organizing, steering and assessing the internal control mechanisms and procedures, in particular as regards the independent control functions, without prejudice to the supervision carried out by the management body;
- ensuring that the remuneration policy established by the management body is correctly implemented;
- taking the necessary measures to ensure that the credit institution controls the risks;

- organizing an internal control system that provides reasonable assurance on the reliability of internal reporting and financial disclosure, in order to ensure that the annual accounts are in compliance with the applicable accounting regulations;
- reporting to the management body on the institution's financial position and on all aspects required to enable the latter to fulfil its tasks correctly.

The management committee should report at least once a year to the management body, the accredited statutory auditor and the supervisory authority on the assessment of the effectiveness of the organizational requirements imposed by law and on any measures taken to tackle shortcomings. In accordance with Circular NBB_2011_09, two reports must be submitted by the management committee: a report on the assessment of the internal control and a report on the assessment of the internal control as regards investment services and activities. Both reports must allow the management body to verify whether the legal requirements are fulfilled.

The accredited statutory auditor should assess the internal control measures taken by the institution and share his/her findings with the supervisory authority. The aforementioned reports are central to such an assessment. The accredited statutory auditor should examine in particular whether the aforementioned reports reflect how the management committee has proceeded in preparing the reports and whether they are supported by adequate documentation.

Furthermore, the management committee should declare to the supervisory authority every six months that the periodic statements are in compliance with the accounting records and inventories ("declaration on prudential reporting"). A copy of the declaration is submitted to the management body and the accredited statutory auditor.

4.5. COMMITTEES + DEROGATIONS

Regulatory framework:

1. Articles 27 to 34 of the Banking Law
2. Communication CBFA_2009_22 of 25 May 2009 on derogation policies for audit committees
3. EBA GL 44: guideline 14
4. BCBS Principles: principle 3

4.5.1. GENERAL

Where necessary, the management body should set up specialized advisory committees to analyze specific issues and advise the management body on these issues. The creation of such committees may not undermine the role of the management body: the decisions are taken by the management body, which fulfils its tasks acting as a college.

In order to reinforce the effectiveness of the supervision and monitoring of the activities, the operation and the risk profile of the credit institution by the management body, four specialized committees should be set up within the management body: an audit committee, a risk committee, a remuneration committee and a nomination committee. These committees are responsible for preparing the decisions of the management body in their respective areas of competence.

Only the non-executive members of the management body, who do not participate in the senior management of the institution, may logically participate in these committees which strengthen the control function of the management body. At least one member is independent within the meaning of Article 526ter of the Company Code.

The number of committees where the same (non-executive) member of the management body may serve is limited to two, for reasons associated with the availability of the members of the management body and with a balanced division of responsibilities between the various non-executive members of the management body.

The following measures contribute to a proper operation of the committees:

- the chairman of a committee is not the chairman of the management body;
- the management body should draw up an internal regulation for each committee, detailing the role, composition and operation of each committee (including minutes of the discussions and of the decisions taken);
- for reasons of effectiveness, external persons, such as the chairman or a member of the management committee, the internal auditor, the accredited statutory auditor, etc., may participate in some or all of the meetings;
- the members have collective expertise regarding the specific tasks of the committee and carry out their duties with the necessary objectivity and independence from the senior management.

Besides the committees which are compulsory by law, in practice, a large variety of committees exists in the financial sector, such as a compliance committee, a strategic committee, an investment committee, ...

4.5.2. AUDIT COMMITTEE

The audit committee plays an essential role regarding the supervisory function of the management body. The audit committee generally carries out the following tasks:

- supervising the financial reporting process and the integrity thereof;
- verifying the effectiveness of the internal control procedures and the independent control functions;
- following up the internal audit's activities, inter alia confirming the audit plan and the resources used, examining the activity reports and the audit reports (or summaries thereof), and ensuring that the executive members of the management body take adequate measures in order to remedy any deficiencies observed by the internal auditors;
- monitoring the statutory audits of the annual accounts and consolidated accounts;
- discussing matters relating to the supervision with the statutory auditor, and examining any important issues that may have arisen as part of the statutory auditor's legal audit tasks;
- assessing and supervising the independence of the statutory auditor;
- addressing recommendations to the management body on the appointment and renewal of the statutory auditor, his/her independence and his/her remuneration.

The members of the audit committee should have collective expertise regarding the credit institution’s operations as well as in the area of accounting and audit, and at least one member of the audit committee should be an expert in the field of accounting and/or audit. As part of its prudential supervision task, the supervisory authority should assess the knowledge and experience of prospective members of the audit committee and should also examine whether the composition and procedures of the audit committee offer sufficient guarantees that the audit committee will be able to carry out its task properly.

4.5.3. RISK COMMITTEE

Each credit institution should fully control its risks, in particular at the level of the management body. In this context, it is essential that each member of the risk committee has a very good understanding of the relevant matters, which can sometimes be highly complex. This requirement cannot lead to the exclusion of certain types of training or professional background but implies that the members have the necessary professional or academic baggage to challenge the subjects covered by the said committee.

Thus, the management body will be able to define the risk strategy and risk tolerance of the institution in full knowledge of the facts and to thoroughly monitor the implementation of and compliance with this strategy by the senior management of the institution.

In addition, the risk committee should examine the pricing policy and ensure that the prices of the products offered reflect the risks that these products may present for the institution, based on the risk strategy of the credit institution, without the need to consider each product separately. On the other hand, the risk committee examines whether the incentives in terms of variable remuneration are coherent with the management of the risks (i.e. whether they do not increase the risks), of the own funds requirements (including the combined requirement for a common equity tier 1 capital buffer) and of liquidity, taking into account the profitability prospects.

4.5.4. REMUNERATION COMMITTEE

The remuneration committee examines whether the incentives created by the remuneration policy, including the promotion system, are not such as to encourage excessive risk-taking within the institution or promote behaviour which pursues interests other than those of the institution and its stakeholders. Nor may a remuneration policy give rise to conflicts of interest, in particular to the detriment of clients to whom certain products are offered. On the other hand, the remuneration committee may rely on information provided by the risk committee to propose changes to the decision of the management body relating to the variable remuneration.

4.5.5. NOMINATION COMMITTEE

The task and responsibilities expected of a member of the management body of an institution have increased considerably due to the financial crises and the risks that these institutions may create for the stability of the financial system. This goes hand in hand with an unprecedented increase of the technical level and the variety of matters dealt with in the decision-making process of the banking industry.

This professionalization of the management bodies should be reflected not only in the profiles of its members, but also in their level of involvement and independence in the exercise of their mandate. Each member of the management body should reflect on the way in which he or she exercises his or her mandate and on the acts he or she commits in the exercise of it. Against this background the remuneration committee should assess, both for the management body as a whole and for each member of it, the required level of knowledge, commitment, availability and independence of mind, taking into account the characteristics of the credit institution.

Depending on the development of the institution and its environment, the nomination committee should identify the needs of the management body and determine the appropriate profile that should be sought in order to meet these needs.

4.5.6. EXEMPTIONS FOR NON-SIGNIFICANT INSTITUTIONS

The legal obligation to set up the above-mentioned four committees within the management body, which are composed of non-executive members of the management body exclusively, is not justified for credit institutions with a reduced risk profile, taking into account their size or the nature of their activity. Thus, credit institutions that are not significant within the meaning of Article 3, 30° of the Banking Law, are exempt from the obligation to set up a nomination committee and a remuneration committee. If a credit institution does not qualify as a significant credit institution because its balance sheet total does not exceed EUR 3 billion, this institution may also merge the audit committee with the risk committee.

In the absence of one or more committees, the management body as a whole is responsible for exercising the functions assigned to the various committees. In that case, the standards laid down in the Banking Law for each of the committees concerned, apply to the management body, regardless of the internal structure set up by this body.

4.5.7. GROUP CONTEXT

Article 33, § 2 of the Banking Law authorizes the supervisory authority to take into account the group context when authorizing a credit institution, where appropriate, not to set up one or more of the four committees which are compulsory by law. In that case, one or more committees the responsibilities of which cover the institution and which meet the requirements of the Banking law, should be set up within the relevant groups or subgroups.

Communication CBFA_2009_22 concerning audit committees will apply *mutatis mutandis* to the derogation policy for the establishment of the other committees, provided that account is taken of the specific tasks of each committee.

5. PUBLIC DISCLOSURE AND TRANSPARENCY

Regulatory framework:

1. Article 75 of the Banking Law
2. Articles 435 and 450 of the CRR
3. EBA GL 44: guidelines 32 and 33
4. BCBS Principles: principle 12

In accordance with Article 75 of the Banking Law, credit institutions should publish the relevant information from the governance memorandum on their website. The said information should at least contain the shareholder structure and the supervisory structure of the institution or the structure of the group to which it belongs, its governing bodies, its organizational structure, including the independent operational control functions, as well as the institution's objectives and company values, the key aspects of its policy as regards risk management and prevention of conflicts of interest and of its integrity and business continuity policy, and information on its remuneration policy and practices.

The disclosure of the risk management objectives and policies is regulated in Article 435 of Regulation No 575/2013. For each separate category of risk, the institution should publish a minimum of information. Furthermore, the article indicates which information should be made public regarding governance arrangements.
The disclosure of information on the remuneration policy and practices is governed by Article 450 of Regulation No 575/2013. This involves a mix of qualitative and quantitative information regarding the remuneration policy, which should be updated annually by the institution.

In addition, the institution should inform the relevant members of staff in a clear and coherent manner and provide recent information on the strategies and policies, at least to the extent necessary for the staff to perform their tasks. The information may be provided in written guidelines, manuals or by any other means or channels.

6. GROUP CONTEXT

This part is currently being prepared and will be added at a later time. The credit institutions will be notified thereof.

ANNEX: GOVERNANCE MEMORANDUM OUTLINE

1. Shareholder structure
2. Group structure if applicable (legal and functional structure; organization chart;)
3. Policy as regards composition and functioning of the governing bodies (with impact on the group, if applicable)
   (a) number, length of mandate, rotation, age, follow-up, ...
   (b) selection criteria;
   (c) nomination procedure (new mandates/renewal) and termination/non-renewal;
   (d) independent members of the management body;
   (e) remuneration policy
      i. executive members of the management body
      ii. non-executive members of the management body
4. Governance structure and organization chart (with impact on the group, if applicable)
   (a) management body (the board of directors)
      i. composition
      ii. functioning (internal regulation)
      iii. internal division of tasks, if applicable
      iv. specialized committees
         - composition
         - functioning
   (b) management committee
      i. composition
      ii. functioning (internal regulation)
      iii. internal division of tasks between the members
   (c) senior management (DC-1 level)
      i. composition
      ii. internal division of tasks between senior managers
   (d) other committees
5. Key functions (with group impact, if applicable)
   (a) Framework functions (secretary general, legal affairs, human resources, communication)
   (b) independent control functions
      i. internal audit
      ii. compliance
      iii. risk management
      iv. appointed actuary
6. Organizational structure (with group impact, if applicable)
   (a) operational structure, business lines, matrix management and allocation of competences and responsibilities
   (b) outsourcing
   (c) range of products and services
   (d) geographical scope of business
      i. free provision of services
      ii. branches
      iii. subsidiaries, joint ventures, ...
   (e) use of off-shore centres
7. Remuneration policy
   (a) Governance
   (b) Global policy for all members of staff
   (c) Identified Staff
      i. Selection process
      ii. Specific rules (risk alignment, deferral, instruments, …)
8. Integrity policy (with group impact, if applicable)

   (a) strategic objectives and company values
   (b) internal codes and regulations, prevention policy
   (c) conflicts of interest policy
   (d) whistleblowing
   (e) handling of complaints received by customers
9. Policy as regards publication of the principles applied
10. Status governance memorandum with date
   (a) drafting
   (b) last amendment
   (c) last assessment
   (d) approval by the management body