

Circular

Brussels, 16 November 2021

Reference: NBB_2021_28

Contact person:

Catherine Terrier

Phone +32 2 221 45 32

catherine.terrier@nbb.be

EBA Guidelines of 2 July 2021 on internal governance under Directive 2013/36/EU (EBA/GL/2021/05)

Scope

- *credit institutions and their branches abroad,*
- *stockbroking firms within the meaning of Article 1(2) and (5) of Regulation 2019/2033¹ (hereinafter “large stockbroking firms”), and their branches abroad,*
- *branches established in Belgium of credit institutions and large stockbroking firms governed by the law of States that are not members of the European Economic Area,*
- *in the context of consolidated supervision, approved or designated financial holding companies and mixed financial holding companies under Belgian law.*

Summary/Objectives

This Circular transposes the Guidelines of the European Banking Authority (EBA) of 2 July 2021 on internal governance under Directive 2013/36/EU (EBA/GL/2021/05) into the Belgian prudential framework.

These Guidelines were published on 2 July 2021 and replace, for the financial institutions within their scope, Guidelines EBA/GL/2017/11 of 26 September 2017 with effect from 31 December 2021. The revised Guidelines EBA/GL/2021/05, like their previous version, constitute a reference framework. They accompany and supplement the legal provisions on governance and should be applied and complied with by the financial institutions within their scope, as explained in this Circular.

This Circular is applicable from 31 December 2021 and replaces, for the institutions within its scope, Circular NBB_2018_28, which concerns the same subject.

¹ Regulation (EU) 2019/2013 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.

Dear Sir,
Dear Madam,

In recent years, the attention paid to the governance of financial institutions has further increased. For example, in Directive 2013/36/EU² ("CRD"), a number of governance aspects were further developed, and Directive 2019/2034/EU ("IFD")³ was issued. Consequently, the existing EBA Guidelines on internal governance had to be adapted.

As regards the scope *ratione personae*, the recent revision of the EBA Guidelines takes into account the fact that the CRD and the IFD each have their own governance framework. In terms of content, the novelties are mainly in the area of gender diversity and the management of conflicts of interest, and certain governance aspects related to the prevention of money laundering and terrorist financing are further clarified.

For example, the revised Guidelines on internal governance under the CRD now explicitly state that an adequate and effective internal governance and internal control framework should ensure compliance with applicable regulatory requirements in the context of the prevention of money laundering and terrorism financing.

Furthermore, these Guidelines reinforce the framework for loans and other transactions with members of the management body and their related parties, as such loans and transactions may constitute a source of conflict of interest.

Finally, the new EBA Guidelines also contain new provisions to promote gender-neutral policies.

The revised Guidelines EBA/GL/2021/05 enter into application on 31 December 2021 and replace, for the financial institutions within their scope, Guidelines EBA/GL/2017/11 of 26 September 2017.

The new EBA Guidelines, like their previous version, provide guidance for the actual monitoring of the internal governance of all financial institutions within their scope. These Guidelines, which accompany and supplement the legal provisions on governance, should therefore be applied and complied with in full by the institutions within their scope. However, the specific provisions of Paragraphs 52 and 54 of the EBA Guidelines, which provide that the nomination and risk committees should include a majority of members who are independent and be chaired by an independent member, should be considered as recommended good practices that, in accordance with the provisions of Article 21, § 1, 1° of the Banking Law, can be taken into consideration in the overall assessment of the organisation and functioning of the governance framework of the institution. For example, if an institution, either on its own initiative or following a recommendation or measure imposed by the supervisor, wishes or is required to strengthen the role of the advisory committees and their independent directors, the implementation of the aforementioned Paragraphs 52 and 54 of the Guidelines could constitute an important step towards improving the overall governance framework.

Specifically for credit institutions, certain aspects of the aforementioned EBA Guidelines will be further clarified or explained in the coming months in the [Governance Manual for the Banking Sector](#), introduced by Circular NBB_2015_29. However, this further clarification is without prejudice to the fact that institutions should apply the EBA Guidelines in their entirety as from the date of entry into force of this Circular.

This Circular is applicable from 31 December 2021 and replaces, for the institutions within its scope, Circular NBB_2018_28, which concerns the same subject.

² Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

³ Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU.

A copy of this Circular will be sent to your institution's accredited statutory auditor(s).

Yours faithfully,

Pierre Wunsch
Governor

Annex - only available through www.nbb.be:

- EBA Guidelines of 2 July 2021 on internal governance under Directive 2013/36/EU (EBA/GL/2021/05)