

Governance manual for the banking sector

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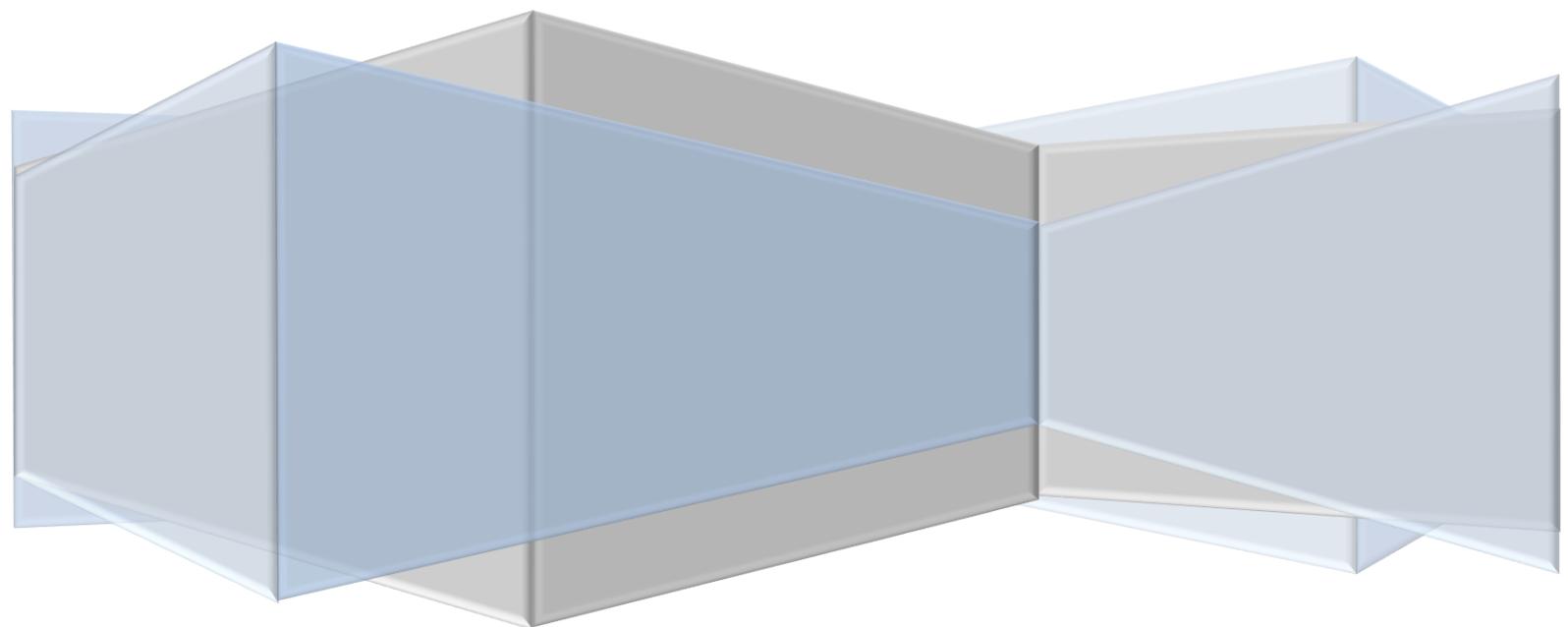


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0. OVERVIEW OF CHANGES

➤ **October 2022:**

- integration of the most recent amendments to the Banking Law, particularly in relation to the Companies and Associations Code
- inclusion of references to Circular NBB_2021_28 transposing the EBA Guidelines on internal governance (EBA/GL/2021/05)
- inclusion of references to Circular NBB_2021_27 transposing Guidelines EBA/GL/2021/06 on the assessment of suitability, and to the NBB's Fit & Proper Manual
- inclusion of references to the Regulation of the NBB of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies (approved by Royal Decree of 8 February 2022) and to Communication NBB_2022_19 on the same subject
- inclusion of references to Circular NBB_2019_19 transposing Guidelines EBA/GL/2019/02 on outsourcing arrangements
- inclusion of references to Circular NBB_2021_30 transposing Guidelines EBA/GL/2021/04 on remuneration policy
- inclusion of references to Circular NBB_2021_18 transposing Guidelines EBA/GL/2020/06 on loan origination and monitoring
- inclusion of references to the EBA Guidelines on the role and responsibilities of the AMLCO (EBA/GL/2022/05)
- inclusion of references to Circular NBB_2021_16 on special mechanisms and to Circular NBB_2021_17 on fiscal prevention policy
- inclusion of references to Communication NBB_2019_15 on the NBB's expectations regarding the content of the statutory governing body's report on the assessment of the compliance function, and to Communication NBB_2019_29 on the modification of the date for the transmission of compliance reports
- inclusion of new points on IT security (including recommendations on the tasks of the Chief Security Information Officer) and on governance at group level
- clarification of prudential expectations regarding the term "independent director", the policies to be established and the role of the independent control functions
- addition of recommendations on the integration of environmental and climate risk in the training programme for directors and the tasks of the risk management function
- addition of a chapter on group context
- update of the governance memorandum outline

➤ **October 2018:**

- inclusion of references to Guidelines EBA/GL/2017/11 on internal governance
- inclusion of references to Guidelines EBA/GL/2017/12 on the assessment of the suitability of members of the management body and key function holders
- inclusion of a reference to the SSM Guide to fit and proper assessments
- replacement of references to Circular NBB_2013_02 by references to the Manual on assessment of fitness and propriety introduced by Circular NBB_2018_25
- additions relating to amendments to the Banking Law introduced by the Law of 21 November 2017 and the Law of 5 December 2017
- addition of Circulars NBB_2018_13 and NBB_2018_14 on payment services and incident reporting
- addition of Circular NBB_2018_20 on outsourcing to cloud service providers
- addition of the Regulation of the NBB of 6 February 2018 on expertise of the persons responsible for the compliance function (with accompanying explanatory note), Communication NBB_2018_05 of 8 February 2018 on the report of the statutory governing body on assessment of the compliance function, and Communication FSMA_2018_05 of 8 May 2018 on continuing training for compliance officers

➤ **September 2017:**

- addition of Circular NBB_2016_44 on remuneration policies
- addition of a point on loans to managers (Article 72 of the Banking Law)
- update of the external guidelines on the application of Article 62 of the Banking Law
- inclusion of references to the Royal Decree and the Circular on the exercise of external functions
- update of Articles 27 to 33 of the Banking Law on audit committees
- update of the title of the Banking Law (to include stockbroking firms)
- addition of Circular NBB_2017_03 and Communication NBB_2017_02 on shareholding

1. INTRODUCTION

1:1 One of the concerns triggered by the 2008 financial crisis was the need for appropriate corporate governance in financial institutions. Indeed, corporate governance is one of the cornerstones of a properly functioning corporate sector and financial and economic system.

1.1. CONTEXT

1:2 Credit institutions rely on public savings and make long-term commitments that require a high degree of confidence in their stability and solvency. Weaknesses in corporate governance in a number of institutions have contributed to excessive and imprudent risk-taking in the banking sector, which has led to the failure of individual institutions and systemic problems at European and global level. Companies must therefore commit to taking all measures necessary to ensure their business is governed well, not only in the interest of their own management but also to preserve the confidence of their customers, the public and market players in individual institutions and the financial system as a whole.

1:3 In line with international developments in the field of sound governance, both from the point of view of the supervisory authorities (new guidelines from the Basel Committee and the European Banking Authority (EBA)) and from the perspective of European regulations, Belgium in 2014 adopted a banking law¹ that specified the various rules on sound governance. These rules have since been reviewed on multiple occasions.

1:4 This Manual has two objectives: on the one hand, to bring together in a single text the legal and regulatory texts on sound governance that underpin the prudential supervision of credit institutions and (mixed) financial holding companies in Belgium (without replacing the underlying documents) and, on the other hand, to specify the NBB's prudential expectations regarding governance by highlighting new elements resulting from the latest regulatory developments in this area.

1:5 To ensure compliance with the governance rules, the Banking Law grants the supervisory authority a broad range of measures: prudential measures in the context of Pillar 2 supervision (Article 149), 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. SCOPE

1:6 This Manual applies to the following institutions²:

- credit institutions established in Belgium³;
- branches established in Belgium of credit institutions governed by the law of a non-Member State of the European Economic Area⁴; and
- financial holding companies and mixed financial holding companies governed by Belgian law⁵.

1.3. METHODOLOGY

1:7 This Manual aims to list all texts containing governance requirements (the Banking Law and its explanatory memorandum, regulations, royal implementing decrees, circulars, communications, European legislation and EBA guidelines) and, where appropriate, to provide further clarifications

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

² The governance manual also applies by analogy to custodian banks and institutions supporting a central securities depository, insofar as the prudential expectations specified in the manual correspond to the legal provisions governing their respective statutes.

³ Whether they are subject to the direct supervision of the ECB or the NBB, and whether or not they are considered significant within the meaning of Article 3, 30° of the Banking Law (see point 1:10 below).

⁴ Taking into account Article 333 of the Banking Law.

⁵ The governance rules for financial holding companies and mixed financial holding companies are set out in chapter 5 "Governance at group level" of this Manual.

regarding these documents. This Manual, which was initially introduced via Circular NBB_2015_19, thus aims to specify the NBB's prudential expectations regarding governance for a series of subjects. In addition, the Manual also addresses 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).

- 1:8 The Manual does not replace the relevant policy documents. If such a policy document is amended, the Manual will be adapted and should be interpreted in a dynamic manner in the interim. As the Manual is in principle an online publication, it is intended to be a living document that remains applicable without every amendment requiring a change in its title or reference, as is the case for example with circulars that are not published in a web format. 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.
- 1:9 Insofar as possible, the structure of the Manual follows that of the Banking Law and of the EBA Guidelines of 2 July 2021 on internal governance (EBA/GL/2021/05).
- 1:10 It should be noted that for the purposes of the Manual, the Single Supervisory Mechanism should also be taken into account⁶. In this respect, "supervisory authority" should be understood to mean either the ECB or the NBB, depending on the circumstances. Although the ECB is competent for "important"⁷ 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 such assistance in the context of the 'Joint Supervisory Teams', which are the institutions' first point of contact.
- 1:11 The Manual covers the following topics: (i) qualities required of shareholders or partners; (ii) suitability of the management and of the independent control functions; (iii) appropriate organisation of the business; (iv) governance at group level; and (v) prudential reporting and transparency.

1.4. PROPORTIONALITY

- 1:12 Article 21, § 2 of the Banking Law provides that institutions' internal governance arrangements must be proportionate to the nature, scale and complexity of the risks inherent in the institution's business model and operations.
- 1:13 Under the principle of proportionality, the institutions falling within the scope of this Manual may take into account criteria such as the nature, scale and complexity of the risks inherent in the institution's business model and operations in order to determine the level of governance requirements applicable to them. For the purpose of proportionality, it is also allowed to adjust the reporting frequency, as is the case for the senior management's report on the assessment of internal control (transmission every 2 years for credit institutions not subject to direct supervision by the ECB and every year for institutions subject to direct supervision by the ECB, pursuant to Article 59 of the Banking Law).
- 1:14 For more information on proportionality and the criteria to be taken into account, please refer to paragraphs 16 to 18 of Guidelines EBA/GL/2021/05.

⁶ Pursuant to Article 6(4) and (5), point (b) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (Single Supervisory Mechanism Regulation or SSM Regulation), important credit institutions as defined in that Regulation are subject to the direct supervision of the ECB.

⁷ The term "important" as used in the SSM Regulation should not be confused with the notion of "significant" as referred to in Article 3, 30° of the Banking Law, which aims to formalise the application of the principle of proportionality with regard to governance requirements.

1.5. DEFINITIONS

- 1:15 The terms used in this Manual have the same meaning as in Article 3 of the Banking Law or in Guidelines EBA/GL/2021/05. For the purposes of this Manual, the following definitions apply:
- 1:16 “**Directors**”: all members of the statutory governing body of an institution falling within the scope of this Manual, both the executive and non-executive directors.
- 1:17 “**ECB**”: the European Central Bank.
- 1:18 “**NBB**”: the National Bank of Belgium.
- 1:19 “**CAC**”: the Companies and Associations Code, as introduced by the Law of 23 March 2019.
- 1:20 “**Senior managers**”: the persons who take part in the institution’s senior management⁸, i.e.:
a) where a management committee is set up, the members of the management committee and any other person whose position is at the next lower hierarchical level, insofar as that person can have a direct and decisive influence on the management of all or some of the institution’s activities, including the managers of foreign branches;
b) where such a committee is not established, any persons who can have a direct and decisive influence on the management of all or some of the institution’s activities.
In this manual, for institutions where no management committee has been established, the term “management committee” should be read as “senior management”
- 1:21 “**Institution responsible for the group**”: a parent credit institution, a designated credit institution or an approved or designated (mixed) financial holding company responsible for ensuring compliance with prudential requirements on a consolidated basis.
- 1:22 “**Diversity**”: the situation whereby the characteristics of the members of the statutory governing body, including their age, gender, geographical provenance⁹ and educational and professional background, are different to an extent that allows a variety of views within the statutory governing body.
- 1:23 “**Independent control functions**”: the risk management function, the compliance function and the internal audit function¹⁰.
- 1:24 “**Banking Law**”: the Law of 25 April 2014 on the legal status and supervision of credit institutions.
- 1:25 Furthermore, where the Manual uses the term “**institution**”, it should be read as referring to the institutions falling within the scope described above. Similarly, the term “**supervisory authority**” should be understood to mean either the ECB or the NBB, as the case may be.

⁸ See the definition of “senior management” in the Regulation of the NBB of 9 November 2021 on the exercise of external functions.

⁹ The term “geographical provenance” refers to the region where a person has gained a cultural, educational or professional background. This aspect is particularly important for institutions that are active internationally.

¹⁰ In Belgium, these three mandatory independent control functions constitute “key functions” as referred to in Guidelines EBA/2021/05.

2. QUALITIES REQUIRED OF SIGNIFICANT SHAREHOLDERS

Legal and regulatory framework:

1. Banking Law: Articles 18, 46-54 and 72/1
2. Relevant thematic NBB circulars:
 - Communication NBB_2021_19 of 1 September 2021 on the ECB IMAS Portal and the digitalisation of forms related to qualifying holdings and the freedom to provide services and the freedom of establishment
 - Communication NBB_2017_22 of 14 September 2017 to candidate shareholders and assigning shareholders
 - Circular NBB_2017_23 of 14 September 2017 to financial institutions on acquisitions, increases, reductions and transfers of qualifying holdings
3. International reference documents:
Joint Guidelines of EBA, EIOPA and ESMA of 5 May 2017 on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector

2.1. PRUDENTIAL EXPECTATIONS

- 2:1 From a prudential point of view, it is essential that the significant shareholder(s) should have the qualities necessary to ensure that they will exercise their influence to promote sound and prudent management and continuity-oriented development of the institution. They should also take into account the sound governance expectations to be met by institutions.
- 2:2 Not only is this prudential requirement a prerequisite for obtaining an authorisation, but it also continues to apply in the course of the business operations of the institution. 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 institution.
- 2:3 Any changes in the institution's capital structure (an increase above or decrease below certain thresholds) should be reported by the significant shareholders and the institution - as soon as it becomes aware - to the supervisory authority.
- 2:4 The institution should provide the supervisory authority with all relevant information on its significant shareholders of which it is aware and which can have an influence on the prudential assessment of these shareholders. This obligation also applies to the shareholders concerned.

2.2. SUITABILITY ASSESSMENT

- 2:5 The criteria for the prudential assessment, both in the context of the application for authorisation and subsequently, are explained in the Joint Guidelines of EBA, EIOPA and ESMA on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector. Existing and potential shareholders should read these Guidelines in conjunction with Communication NBB_2017_22 and Communication NBB_2021_19. The rules applicable to institutions are specified in Circular NBB_2017_23.

2.3. CHARTER OF THE FAMILIES/PARTNERS

- 2:6 Institutions with a family shareholding or a shareholder structure comprising a restricted number of partners are recommended 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 the latter's sound governance, corporate vision, financial objectives, monitoring of managers, careers, remuneration, etc.

2.4. PROHIBITION ON GRANTING LOANS, CREDITS OR GUARANTEES TO ACQUIRE SHARES

- 2:7 No loans, credits or guarantees may be granted, directly or indirectly, to persons to enable them to directly or indirectly acquire or subscribe to shares or other securities that confer the right to dividends of the institution or of a company with which a close link exists, or that confer the right to acquire such 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 institution, undermines the loss-absorbing capacity of the capital thus financed.

3. SUITABILITY OF DIRECTORS, SENIOR MANAGERS AND PERSONS RESPONSIBLE FOR INDEPENDENT CONTROL FUNCTIONS

Legal and regulatory framework:

1. Banking Law: Articles 3, 83°, 19, 20, 21, 27-31, 60, 61, 62, 62/1, 72, 73, 86, 212 and 335, § 1, 3°
2. NBB Regulation:
 - Royal Decree of 8 February 2022 approving the Regulation of the NBB of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - Circular NBB_2021_27 of 16 November 2021 transposing Guidelines EBA/GL/2021/06 of 2 July 2021 on the assessment of the suitability of members of the management body and key function holders
 - Communication NBB_2022_19 of 12 July 2022 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
 - Circular NBB_2018_25 of 18 September 2018 on the suitability of directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions (circular introducing the NBB's Fit & Proper Manual)
 - Circular NBB_2017_21 of 7 July 2017 on loans, credits and guarantees to managers, shareholders and related persons
4. International reference documents:
 - SSM Guide to fit and proper assessments of December 2021
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - Guidelines EBA/GL/2021/06 of 2 July 2021 on the assessment of the suitability of members of the management body and key function holders
 - Basel Committee on Banking Supervision (BCBS) Principles: principles 2 and 4

3.1. FIT & PROPER

3.1.1. GENERAL

- 3:1 According to Article 19 of the Banking Law, the directors, senior managers and persons responsible for the independent control functions of institutions must at all times meet the fitness and propriety criteria required for their role. The assessment of these persons' suitability is often referred to as their "fit & proper" assessment.
- 3:2 The fit & proper assessment is primarily the responsibility of the institution itself, but the supervisory authority is also competent to assess whether candidates possess the qualities required. Pursuant to Articles 60 and 61 of the Banking Law, proposed appointments must be notified and submitted for prior approval to the supervisory authority.
- 3:3 The NBB's Fit & Proper Manual clarifies the assessment criteria to be used for the fit & proper assessment, specifies what is expected of the institutions in this regard, and sets out the fit & proper policy implemented by the supervisory authority in terms of both the content and procedure.

3.1.2. SENIOR MANAGEMENT

- 3:4 In the context of the legal fit & proper provisions, the notion of “senior management” plays an important role. It is defined in Article 1, 11° of the Regulation of the NBB of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies.
- 3:5 According to this definition, a senior manager is a person who takes part in the institution’s senior management, i.e.:
- a) where a management committee is set up, a member of the management committee and any other person whose position is at the next lower hierarchical level, insofar as that person can have a direct and decisive influence on the management of all or some of the institution’s activities, including the managers of foreign branches;
 - b) where such a committee is not established, any persons who can have a direct and decisive influence on the management of all or some of the institution’s activities.
- 3:6 The senior management thus 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), insofar as these persons can have a direct and decisive influence on the management of all or some of the institution’s activities.
- 3:7 Where, in accordance with Article 26 of the Banking Law, the institution has not set up a management committee as a result of a derogation authorised by the supervisory authority, “senior management” is understood to mean the executive directors and the persons who, without having the capacity of director, are qualified as senior managers by the institution due to the direct and decisive influence they can exercise over the management of all or some of the institution’s activities.
- 3:8 Furthermore, pursuant to Article 86 of the Banking Law, the managers of foreign branches (within the EEA or in a third country) are also part of the senior management.
- 3:9 Persons responsible for independent control functions are not considered to be senior managers in the exercise of these functions, as they require an independence that is incompatible with the decision-making power which is intrinsic to the activities of the institution.
- 3:10 The institution itself must decide who will be part of the senior management. For several years now, the supervisory authority has recommended that the management committee or, in the absence of a management committee, the statutory governing body draw up a list, by formal decision, of the names and/or functions of the persons who, without being directors, are qualified as senior managers.
- 3:11 Although all senior managers must possess the qualities listed in Article 19 of the Banking Law, the appointment - in institutions which have a management committee - of senior managers who are not members of the management committee or of the statutory governing body, must not be notified in advance nor submitted for approval to the supervisory authority. This concerns in particular 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 some of the institution’s activities (MC-1 level). These persons must have the qualities required of senior managers pursuant to Article 19 of the Banking Law. It is in the first place the institution itself that should ensure this is the case. However, as clarified in the NBB’s Fit & Proper Manual, the supervisory authority does not verify in advance whether these persons meet the said requirements pursuant to Article 60 of the Banking Law. Instead, this verification is part of the ongoing supervision of the institution.

3.1.3. STAFF MEMBERS OF THE INSTITUTION

- 3:12 Although the fit & proper assessment provided for in the Banking Law has a limited scope *ratione personae*, it is obvious that the prudential expectations regarding fit & proper assessment specified in the NBB’s Fit & Proper Manual should also be taken into account in the recruitment, assessment

and training of the entire staff of the institution. This subject is part of the ongoing governance monitoring (see the points “Organisational set-up” and “Internal control framework” in this Manual).

3.2. PLURALITY OF MANDATES

- 3:13 According to Articles 61 and 62, § 1 of the Banking Law, members of the statutory governing body, members of the management committee, senior managers and persons responsible for independent control functions must devote sufficient time to the exercise of their functions in the institution. This general availability principle is specified in §§ 1 to 9 of Article 62 of the Banking Law and in the Regulation of the NBB of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies.
- 3:14 In summary, institutions should adopt and comply with internal rules on external functions with a threefold objective: (i) to safeguard availability, (ii) to prevent conflicts of interest, and (iii) to ensure disclosure of the external functions. Institutions should carry out an assessment *in concreto* of the impact of the external functions on the function/mandates performed by managers and the persons responsible for independent control functions. In this context, prior approval must be granted by the statutory governing body or the management committee on the basis of a dossier of which the minimum content is laid down in the Regulation of 9 November 2021. Institutions are obligated to disclose external functions (except those exercised by the persons responsible for independent control functions) through their annual report or on their website, and should notify the NBB through the fit & proper forms “New appointment” or “New elements”¹¹.
- 3:15 For significant institutions within the meaning of Article 3, 30° of the Banking Law, the said Law also contains specific quantitative restrictions on plurality of mandates. For more information on the application of these quantitative restrictions and on the method for calculating mandates, please refer to point 2.1.2. of Communication NBB_2022_19 of 12 July 2022.
- 3:16 For the other rules on the exercise of external functions, please refer to the Regulation of the NBB of 9 November 2021 and to Communication NBB_2022_19 of 12 July 2022.

3.3. LOANS TO MANAGERS

- 3:17 Article 72 of the Banking Law contains legal provisions on loans, credits and guarantees provided by credit institutions¹² to their managers, shareholders and related persons. These provisions are further specified in Circular NBB_2017_21 on loans, credits and guarantees to managers, shareholders and related persons.
- 3:18 Article 72 of the Banking Law provides for the obligation for institutions to notify the supervisory authority of loans, credits, guarantees and other transactions exceeding € 500.000. In all other respects, EBA Guidelines EBA/2021/05 apply. They provide inter alia for the possibility for the supervisory authority to ask that additional information be provided to it at first request for transactions exceeding € 200.000¹³.

¹¹ More specifically, Article 62, § 8 of the Banking Law provides that the NBB must be notified without delay of external functions performed by directors and senior managers, with the exception of senior managers at “N-1” level (and not of functions performed by persons responsible for independent control functions). In practice, this notification requirement may be waived only for the notification of new external functions performed during the exercise of another function (via the “New elements” form). This restriction is also without prejudice to the institutions’ obligation to update the eManex platform, which is intended to provide an overview of all external functions performed by directors, senior managers and persons responsible for independent control functions.

¹² Article 72 of the Banking Law does not apply to (mixed) financial holding companies.

¹³ This is without prejudice to Article 135 of the Banking Law.

3:19 For further information, please refer to Circular NBB_2017_21 on loans, credits and guarantees to managers, shareholders and related persons, and to paragraphs 120 to 131 of Guidelines EBA/GL/2021/05.

4. APPROPRIATE ORGANISATION OF THE BUSINESS

4:1 The requirement of sound and appropriate structures for the organisation of the business to ensure effective and prudent management of the 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 institutions. It must be complied with in any case; only its scope and intensity vary according to the nature, scale and complexity of the risks inherent to the institution's business model and operations (application of the principle of proportionality). The governance structure should at all times be adapted to the development of the business. This requirement is illustrated in the Banking Law by a non-exhaustive, thematic list of its various aspects, which will be covered in more detail below.

4.1. MANAGEMENT STRUCTURE

4.1.1. GENERAL REQUIREMENTS

Legal and regulatory framework:

1. Banking Law: Articles 21, § 1, 1°, 31, 56, 168 and 333, § 1, 5°
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 19 to 67

4:2 The institution must have a transparent management structure which ensures effective and prudent management in light of the nature, scale and complexity of the risks inherent to the institution's business model and operations.

4:3 In accordance with Article 21 of the Banking Law, as a basic rule, there must be a division at the highest level between the functions responsible for effective management and the functions responsible for the supervision thereof. The following functions must be in place:

- the general policy function, responsible for determining general policy and strategy;
- the management function, responsible for managing the institution's activity; and
- the supervisory function, responsible for supervising management.

4:4 The Banking Law provides for a *sui generis* governance model¹⁴. In credit institutions, the general policy function is entrusted to the executive and non-executive directors in the statutory governing body, the management function is entrusted to the executive directors, who sit on the management committee, and the supervisory function is entrusted to the non-executive directors, in particular (but not exclusively) to the members of the specialised committees of the statutory governing body established according to the Banking Law (audit committee, risk committee, nomination committee and remuneration committee)¹⁵.

4:5 The institution must clearly define the responsibilities for management and the supervision of management. The management function should define the competences and responsibilities of each segment of its organisation, specify the procedures and reporting lines and monitor their application. The interaction between the management function and the supervisory function must be efficient and constructive.

¹⁴ See the NBB's 2019 Annual Report, pages 280 and 281. Notwithstanding the particularities provided for in the Banking Law due to the *sui generis* hybrid governance model, the ordinary law provisions of the CAC remain applicable.

¹⁵ See Articles 27, 33 and 34 of the Banking Law.

4.1.2. STATUTORY GOVERNING BODY

Legal and regulatory framework:

1. Banking Law: Articles 23, 31, 36, § 2, 56-58, 60, § 3 and 62/1
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - The NBB's Fit & Proper Manual
 - Circular NBB_2021_27 of 16 November 2021 transposing Guidelines EBA/GL/2021/06 of 2 July 2021 on the assessment of suitability
 - Communication NBB_2021_04 of 19 January 2021 on the HIVE project and the digitalisation of the fit and proper process
 - Communication NBB_2018_05 of 8 February 2018 on the report of the statutory governing body on assessment of the compliance function
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 20 to 27 and 31 to 33
 - BCBS Principles: principles 1 to 3

4.1.2.1. Composition

4.1.2.1.1. Members and status

- 4:6 The statutory governing body is composed of non-executive directors and executive directors (i.e. members of the management committee or of senior management). In order to safeguard the supervisory function of the statutory governing body, the majority of members should be non-executive directors and the chairs of the statutory governing body and of the management committee must be two different persons. The chair of the statutory governing body must be a non-executive director.
- 4:7 The size of the statutory governing body must be determined taking into account the nature, scale and complexity of the institution's activities, its internal organisation and its capital structure. It should be sufficiently small to allow for effective decision-making, but large enough to ensure that directors bring experience and knowledge from fields relevant to its proper management and that its composition can be changed without causing undue disruption, in order to ensure continuity.
- 4:8 In accordance with Article 19 of the Banking Law, the (executive and non-executive) members of the statutory governing body must be natural persons.
- 4:9 In terms of social status, a directorship of an institution may not be exercised within the framework of an employment contract (this mandate must be performed under the social status of self-employed) and a combination of two statuses (self-employed and employee) within the same institution or a company in which the institution has a holding is incompatible with the principles of sound governance applicable to credit institutions¹⁶ (Article 62/1 of the Banking Law). However, exceptions are possible if the institution is required to comply with obligations under foreign law that require the presence of employees in the statutory governing body.

4.1.2.1.2. Independent directors within the meaning of Article 3, 83° of the Banking Law

- 4:10 The independent non-executive directors should specifically ensure that the decision-making process takes into account the interests of all the institution's internal and external stakeholders,

¹⁶ These principles include independence of mind, collegiality in the statutory governing body, etc.

including of minority shareholders, depositors, investors, etc. In this way, the independent directors contribute to the supervision of management.

- 4:11 Pursuant to Article 27 of the Banking Law, institutions that are required to establish an audit committee, a risk committee, a remuneration committee and a nomination committee must ensure that each of these committees includes at least one independent director. Furthermore, a majority of members of the audit committee should be independent.
- 4:12 Prior to the entry into force of the CAC, the Banking Law referred to Article 526ter of the former Companies Code for the concept of independent director and the criteria they had to meet. These elements are now included in Article 3, 83° of the Banking Law, with reference to the criteria set out in Guidelines EBA/GL/2021/06. Failure to meet one of the independence criteria does not automatically mean that the person concerned can no longer be considered independent. The institution has the possibility to demonstrate to the supervisory authority that, although not all criteria have been met, the independence of the person concerned is not compromised (application of the “comply or explain” principle). In this case, the institution should submit a request for exemption. The competent supervisory authority (ECB/NBB) must then decide whether or not to grant this request¹⁷.

4.1.2.1.3. Selection of directors – suitability and diversity

- 4:13 Directors should at all times be of sufficiently good repute and have adequate expertise, both individually and collectively, for the performance of their duties.
- 4:14 Specifically, directors should: (i) be of sufficiently good repute; (ii) possess sufficient knowledge, skills and experience to perform their duties; (iii) be able to act with honesty and independence of mind; (iv) be able to commit sufficient time to perform their functions (and in the case of a significant institution, not exceed the maximum number of external functions permitted by the Banking Law); and (v) contribute to the collective suitability of the statutory governing body and, where appropriate, of the management committee.
- 4:15 With regard to collective suitability, the statutory governing body should at all times possess adequate knowledge, skills and experience to be able to understand the institutions’ activities, including the main risks to which it is exposed¹⁸. In terms of the areas of competence to be represented in the statutory governing body, please refer to the NBB’s Fit & Proper Manual, with the understanding that the NBB pays particular attention to the following areas of collective suitability: information technology and security, management of climate and environmental risks, and management of risks related to money laundering and terrorist financing.
- 4:16 The composition of the statutory governing body should also reflect a diversity of genders, educational and professional backgrounds, ages and - for institutions that are active internationally - geographical provenance. Indeed, having a range of backgrounds, experiences, values, opinions and views in the statutory governing body improves the decision-making process for strategies and risk-taking within the institution. The promotion of diversity is anchored in the Banking Law. For instance, Article 31 of the Banking Law obliges institutions to use diversity as one of the criteria for the composition of the statutory governing body and to draw up a diversity policy that at least refers to the above aspects.
- 4:17 In the area of gender diversity in particular, the Banking Law considers gender balance of particular importance for ensuring adequate representation of society in the governing bodies of institutions. In this regard, the said law provides for the setting of a target for the representation of the

¹⁷ The supervisory authority generally decides simultaneously on both the suitability of the person concerned and on the request for exemption from one of the criteria of Article 3, 83° of the Banking Law. However, it cannot be ruled out that these decisions are taken separately if the issue of independence has a broader scope and implications for sound governance.

¹⁸ The monitoring of collective suitability falls under both sound governance and fit & proper supervision (collective suitability being one of the aspects of the notion of adequate expertise).

underrepresented gender in the statutory governing body of the institution and for the development of a plan to increase the number of representatives of this gender in order to reach the target. The target should be quantitative (percentage of targeted participation of the underrepresented gender) and defined for the statutory governing body collectively. If the management committee is large enough, the target may be split between the statutory governing body and the management committee. This target, the aforementioned plan and its implementation modalities must be made public in accordance with Article 435(2)(c) of Regulation No 575/2013 and disclosed to the NBB/ECB. When setting diversity objectives, institutions should consider the diversity benchmarking results published by the EBA.

- 4:18 As part of the annual review of the composition of the statutory governing body, institutions should document their compliance with the objectives and targets set. In the event that diversity objectives or targets have not been met, institutions should document the reasons why, the measures to be taken and the timeframe for measures to be taken, in order to ensure that the diversity objectives and targets will be met.

4.1.2.1.4. Chair of the statutory governing body

- 4:19 The chair of the statutory governing body should lead the statutory governing body, contribute to an efficient flow of information within the statutory governing body and between the statutory governing body, its specialised committees and the management committee, and should be responsible for its effective overall functioning. For further information on the specific tasks of the chair, please refer to paragraphs 35 to 39 of Guidelines EBA/GL/2021/05.

4.1.2.2. Tasks

- 4:20 Article 23 of the Banking Law provides that the statutory governing body holds the general responsibility for the institution. It does so in particular through the two functions described below.

4.1.2.2.1. General policy function

- 4:21 The main task of the statutory governing body is to establish the institution's strategy and general policy.
- 4:22 The statutory governing body is expected to set the strategy and orientation of the activities, inter alia as regards commercial policy and structures, the granting or carrying out of investment services and activities and ancillary activities, 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.
- 4:23 The statutory governing body determines the risk tolerance of the 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 statutory governing body, where appropriate through the audit and risk committees, should at all times possess relevant and comprehensive information on the risks of the institution.
- 4:24 Furthermore, when setting out its risk management policy, the statutory governing body should formally establish the (qualitative and/or quantitative) criteria that determine whether or not transactions, in particular credit transactions, constitute a credit or counterparty risk that should be deemed major. The statutory governing 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.
- 4:25 The statutory governing body should also approve the liquidity recovery plan.

4:26 For further information on the tasks of the statutory governing body, please refer to the Banking Law and to paragraphs 22 to 27 of Guidelines EBA/GL/2021/05.

4.1.2.2.2. Supervisory function

4:27 The supervision of the business and the regular assessment of the governance structure, the organisation and the internal control mechanisms of the institution are the second important pillar of the responsibilities of the statutory governing body.

4:28 In accordance with Article 56 of the Banking Law, the statutory governing body must periodically, and at least once a year, assess the effectiveness of the institution's organisational structure. In addition, it must periodically monitor and evaluate the appropriateness and implementation of the institution's strategic objectives in relation to the provision of investment services, the conduct of investment activities, the provision of ancillary services, and the marketing of and advice on structured deposits.

4:29 The statutory governing body should also assess the proper functioning of the independent control functions. 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 statutory governing 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 statutory governing body provides the supervisory authority with an annual report on the assessment of the compliance function, in accordance with Article 36, § 2 of the Banking Law.

4:30 The responsibility for the supervision of the institution's operations lies with the statutory governing body in its supervisory function and, in particular, with the non-executive directors who form the majority of this body. This supervision may be exercised in particular in the following ways:

- reporting by the independent control functions;
- effective use of the investigative powers vested in the members of the statutory governing body;
- reporting on the development of the institution's business by the management committee to the statutory governing body; and
- exercising its right to access the information and documents needed to carry out its tasks, for instance the minutes of the management committee¹⁹.

4:31 The exercise of this supervision also presupposes that information and proposals formulated by members of the management committee and senior managers are critically evaluated, and if necessary challenged, to ensure that decisions are made with full knowledge of the facts.

4:32 For further information on this subject, please refer to paragraph 34 of Guidelines EBA/GL/2021/05.

4.1.2.3. Functioning

4:33 The statutory governing body is a collegial body. In accordance with Article 31 of the Banking Law, the nomination committee should ensure that the decision-making of the statutory governing body is not dominated by any one individual or small group of individuals in such a way as to cause damage to the interests of the institution as a whole.

4:34 The minutes of the meetings of the statutory governing body must summarise the discussions held, record the decisions taken and specify the questions and divergent views expressed by directors, in accordance with principle 3.8 of the Code on Corporate Governance published by Royal Decree of 12 May 2019.

¹⁹ See Article 56, § 1, third paragraph of the Banking Law. The minutes of the management committee must be made available to all directors via a secure IT tool.

- 4:35 The statutory governing body must adopt internal rules of procedure²⁰ describing its composition, tasks and functioning. The NBB recommends that these internal rules of procedure be annexed to the governance memorandum.
- 4:36 The statutory governing body must meet with sufficient regularity to carry out its duties effectively. It is recommended that a strategy meeting be held at least once a year.
- 4:37 The statutory governing body should regularly assess the functioning of the governance structure, including the powers, composition, size and number of meetings of the governing bodies, as well as the individual attendance of directors. External facilitators may be used to carry out this assessment. In accordance with Article 31 of the Banking Law, the nomination committee also has an important role to play in this respect. The NBB's Fit & Proper Manual and Guidelines EBA/GL/2021/06 specify the situations in which the individual or collective suitability of members of the statutory governing body should be reassessed.
- 4:38 The non-executive directors should assess their interaction with the executive directors at least once a year, 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.
- 4:39 The institution should inform the supervisory authority of any distribution of tasks between the members of the statutory governing body.
- 4:40 The members of the statutory governing body must receive induction and training in accordance with paragraphs 95 to 101 of Guidelines EBA/GL/2021/06. This training must enable them to have a clear understanding of the relevant laws, regulations and administrative provisions, the institution's structure, business model, risk profile²¹ and governance arrangements, as well as their role. In accordance with Article 56, § 3, second paragraph of the Banking Law, the statutory governing body ensures that the institution dedicates sufficient human and financial resources to the ongoing training of its members. Please refer to the NBB's Fit & Proper Manual for further information on this subject.

4.1.3. MANAGEMENT COMMITTEE

Legal and regulatory framework:

1. Banking Law: Articles 24 to 26, 59 and 60, § 3
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - The NBB's Fit & Proper Manual
 - Circular NBB_2021_27 of 16 November 2021 transposing Guidelines EBA/GL/2021/06 of 2 July 2021 on the assessment of suitability
 - Communication NBB_2021_04 of 19 January 2021 on the HIVE project and the digitalisation of the fit and proper process
 - 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. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 28 to 31
 - BCBS Principles: principle 4

²⁰ Internal regulations that do not necessarily have to meet the conditions of Article 2:59 of the CAC.

²¹ Including in relation to environmental and climate risks.

4:41 Every institution, regardless of its legal form, is required to set up a management committee within the statutory governing body, unless exempted (see point 4.1.3.4 below)²². The management committee should enhance the efficiency of plural supervision and the collegial decision-making on the conduct of the institution's activity.

4.1.3.1. Composition

4:42 Being a collegial body, the statutory governing body must in principle comprise at least three members. However, this number may be increased to take into account the nature, scale and complexity of the institution's activities.

4:43 All executive members of the statutory governing body, and they alone, are required to be members of the management committee. Each member of the statutory governing body to whom the daily management of the institution is delegated should therefore be on the management committee. Thus, a clear distinction is made within the statutory governing body between the institution's supervisory and control functions on the one hand, and the management function on the other.

4:44 Members of the management committee must be natural persons who meet the (individual and collective) suitability requirements set out in the NBB's Fit & Proper Manual. They must exercise their mandate under the social status of self-employed (no exceptions possible)²³.

4.1.3.1.1. Chair of the management committee (Chief Executive Officer)

4:45 The appointment of a chair of the management committee (usually referred to as the Chief Executive Officer or CEO) to lead the management committee contributes to the efficient and coherent overall functioning of the institution and to an effective flow of information with the statutory governing body. In accordance with Article 24, § 3 of the Banking Law, this function may not be exercised by the chair of the statutory governing body.

4.1.3.1.2. Chief Financial Officer (CFO)

4:46 The Banking Law does not require the Chief Financial Officer (CFO) to be a member of the management committee. In practice, however, this is very often the case. When the CFO is a member of the management committee, he is usually responsible for managing financial resources, financial planning and financial reporting. In institutions where the CFO is not a member of the management committee, he should be appointed at "N-1" level and be considered a senior manager.

4.1.3.1.3. Director responsible for the risk management function (Chief Risk Officer)

4:47 Pursuant to Article 37, § 3 of the Banking Law, the person responsible for the risk management function (usually referred to as Chief Risk Officer or CRO) must be a member of the management committee²⁴. In principle, this person should only be responsible for the risk management function. However, by way of derogation from this principle, the supervisory authority may authorise the CRO to also be responsible for the compliance function, provided that these two functions are performed separately.

²² In the case of (mixed) financial holding companies, the management committee does not have to be set up within the statutory governing body but may be composed of directors and managers who are not members of the statutory governing body.

²³ See in this respect Articles 19 and 62/1 of the Banking Law.

²⁴ When the Chief Risk Officer is a member of the management committee, he must ensure that this positioning does not jeopardise the independence of the risk management function.

4:48 For credit institutions that are not significant institutions within the meaning of Article 3, 30° of the Banking Law, the supervisory authority may allow this function - taking into account the principle of proportionality - to be exercised by a senior member of staff (at “N-1” level), provided there is no conflict of interest on the part of this person.

4.1.3.1.4. Senior officer responsible for combating money laundering and terrorist financing (AML/CFT)

4:49 In accordance with Article 9, § 1 of the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, the institution must appoint a senior officer responsible for AML/CFT from among the members of the management committee. The senior officer responsible for AML/CFT is expected to possess general AML/CFT-related knowledge so as to be able to critically review the measures taken by the AMLCO and to ensure compliance with the provisions of the above-mentioned law. It should also be ensured that the senior officer responsible for AML/CFT does not combine this task with other ML/FT risk-generating tasks (such as the commercial function).

4.1.3.1.5. Financial holding companies

4:50 Pursuant to Article 212 of the Banking Law, the management committees of (mixed) financial holding companies may have a mixed composition (directors and non-directors), provided that at least three members of the management committee are members of the statutory governing body. The reason for this separate arrangement is that the tasks and profile of the managers, as well as the debates and the decision-making process in the statutory governing body of the group are so different in nature and technicality from those of the management committee that at group level - unlike for the operational entities - it is not necessary for all members of the group’s management committee to sit on the statutory governing body. Moreover, for financial holding companies, there is no requirement that the majority of the members of the statutory governing body should not be members of the management committee.

4.1.3.2. Tasks

4:51 In accordance with, in particular, Article 59 of the Banking Law, the following tasks are the responsibility of the executive members of the statutory governing body, who sit on the management committee:

- a) managing the institution's business and developing its management structure;
- b) supervising line management, monitoring compliance with the allocated competences and responsibilities, and overseeing financial reporting;
- c) making suggestions and giving advice to the statutory governing body regarding the definition of the institution’s general policy and strategy, and communicating all relevant information and data to enable the statutory governing body to take informed decisions;
- d) organising, 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 statutory governing body;
- e) ensuring that the remuneration policy established by the statutory governing body is correctly implemented;
- f) taking the necessary measures to ensure that the institution controls its risks;
- g) organising 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;
- h) reporting to the statutory governing body on the institution’s financial position and on all aspects required to fulfil its tasks correctly.

4:52 With regard to the last point, Article 59 of the Banking Law provides that the management committee should report at least once a year or every two years (depending on the size of the institution) to the statutory governing body, the accredited statutory auditor and the supervisory authority on the

assessment of the effectiveness of the organisational requirements imposed by the Law and on any measures taken to tackle shortcomings²⁵.

4:53 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 periodic prudential reporting"). A copy of the declaration is to be submitted to the statutory governing body and the accredited statutory auditor.

4:54 For further details on the tasks of the management committee, please refer to paragraphs 28 to 31 of Guidelines EBA/GL/2021/05.

4.1.3.3. Functioning

4:55 The management committee is a collegial body.

4:56 Collegiality does not, however, preclude the allocation of specific areas of competence to members of the management committee. In this respect, it is recommended that the internal division of tasks between the members of the management committee:

- avoids that one member of the management committee is entrusted with both an independent control function and a risk-generating operational function;
- is balanced between the different members; and
- ensures, to the extent possible, an appropriate separation between the members responsible for the second-line control functions and those responsible for internal audit as a third-line control function.

For institutions that are not significant within the meaning of Article 3, 30° of the Banking Law, the following restrictions must be complied with: (i) there must be a strict separation between "Risk Management" and "Investment" as well as between "Risk Management" and "Commercial", and (ii) the internal audit must be assigned to a member of the management committee who is not otherwise responsible for "Commercial".

4:57 The division of tasks among the members of the management committee and any significant changes thereto must be notified to the supervisory authority in accordance with Article 60, § 3 of the Banking Law and be included in the governance memorandum.

4:58 Decisions taken by the management committee should be minuted and all its members must be loyal to them. The minutes of the meetings of the management committee must summarise the discussions held, record the decisions taken and specify the divergent views expressed by its members, in accordance with the provisions of the Code on Corporate Governance published by Royal Decree of 12 May 2019.

4:59 The management committee must adopt internal rules of procedure²⁶ that describe its composition, tasks and functioning and which comply in particular with Article 59/1 of the Banking Law with regard to the management of conflicts of interest. The NBB recommends that these internal rules of procedure be annexed to the governance memorandum.

4:60 The management committee must meet regularly.

4:61 For the rules on induction and training, please refer to the section on the statutory governing body above and to the NBB's Fit & Proper Manual.

²⁵ As specified in Circular NBB_2011_09, the management committee must submit two reports in this respect: 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.

²⁶ Internal regulations that do not necessarily have to meet the conditions of Article 2:59 of the CAC.

4.1.3.4. Derogations

- 4:62 Based on the size and risk profile of the institution, the supervisory authority may authorise 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 directors to become members of it.
- 4:63 The institution's governance model should in any case meet the following general qualitative sound governance criteria:
- there is an appropriate separation between the functions responsible for managing the institution's activity and the functions in charge of its supervision;
 - the management function is entrusted to at least two persons who, without prejudice to an adequate distribution of tasks, act collegially; any delegation of competences relating to day-to-day management should be enshrined in a clear legal framework (e.g. the articles of association);
 - there is a structured dialogue between the functions responsible for managing the institution's activity and the functions in charge of its supervision.

4.1.4. SPECIALISED COMMITTEES

Legal and regulatory framework:

1. Banking Law: Articles 27 to 34 and 506
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - The NBB's Fit & Proper Manual
 - Circular NBB_2021_27 of 16 November 2021 transposing Guidelines EBA/GL/2021/06 of 2 July 2021 on the assessment of suitability
 - Circular NBB_2021_30 of 7 December 2021 on remuneration policy: update of the legal framework and transposition of Guidelines EBA/GL/2021/04 of 2 July 2021 on sound remuneration policies under Directive 2013/36/EU
 - Communication CBFA_2009_22 of 25 May 2009 on derogation policies for audit committees
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 40 to 67
 - Guidelines EBA/GL/2021/04 of 2 July 2021 on sound remuneration policies under Directive 2013/36/EU
 - BCBS Principles: principle 3

4.1.4.1. General

- 4:64 Where necessary, the statutory governing body should set up specialised advisory committees to analyse specific issues and advise the statutory governing body thereon. The creation of such committees may not undermine the role of the statutory governing body: decisions are always taken by the statutory governing body, which fulfils its tasks acting as a college.
- 4:65 In order to reinforce the effectiveness of the statutory governing body's supervision and monitoring of the activities, the operation and the risk profile of the institution, four specialised committees should be set up within the statutory governing body²⁷:

²⁷ Credit institutions which are not significant within the meaning of Article 3, 30° of the Banking Law are exempt from this obligation. For further information, see Articles 33 and 34 of the Banking Law and point 4.1.4.4. of this Manual.

- an audit committee,
- a risk committee,
- a remuneration committee, and
- a nomination committee.

4:66 These committees are responsible for preparing the decisions of the statutory governing body in their respective areas of competence.

4:67 In addition to the committees imposed by the Banking Law, practice shows that institutions also set up other committees, such as a compliance committee, a committee on combating money laundering and terrorist financing, a strategic committee, an investment committee, an ethics committee, etc. In the case of committees related to the supervisory function of the statutory governing body, it is recommended that these committees follow the rules on composition and functioning applicable to the committees required by the Banking Law insofar as possible.

4.1.4.2. Composition

4:68 The specialised committees to be set up according to the Banking Law must comprise only non-executive members of the statutory governing body, in order to strengthen the latter's supervisory function. The majority of the members of the audit committee must be independent within the meaning of Article 3, 83° of the Banking Law. The other committees should comprise at least one independent director.

4:69 As stated in Guidelines EBA/GL/202/05, the committees should have at least three members. Institutions must ensure that the committees are not composed of a group of members who already form another committee. In this respect, the Banking Law also specifies that the same (non-executive) member of the statutory governing body may not serve on more than three committees, for reasons associated with ensuring the availability of directors and with a balanced division of responsibilities between the various non-executive members of the statutory governing body.

4:70 The following measures contribute to a proper operation of the committees and are therefore - subject to stricter requirements provided for in the CAC²⁸ - recommended as good practice:

- the chair of the audit or risk committee is not the chair of the statutory governing body or of any other committee; and
- for systemically important institutions and other important credit institutions within the meaning of the SSM Regulation, the chair of each committee is independent, and the majority of the members of the risk, remuneration and nomination committees are independent directors within the meaning of Article 3, 83° of the Banking Law.

4:71 The members of the specialised committees must have the following specific expertise described in Articles 28 to 31 of the Banking Law:

- Audit committee: the members of the audit committee should have collective expertise regarding the 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.
- Risk committee: the members of the risk committee should individually possess the necessary knowledge, expertise, experience and skills to understand and comprehend the institution's strategy and risk tolerance. This requirement cannot lead to the exclusion of certain types of training or professional background, but implies that the members must have the necessary professional or academic background to challenge the subjects covered by the said committee.

²⁸ Article 32 of the Banking Law provides that Article 27 is without prejudice to the provisions of the CAC relating to the audit committee and the remuneration committee in listed companies within the meaning of Article 1:11 of the CAC.

- Remuneration committee: the remuneration committee must be constituted in such a way as to ensure it can give relevant and independent advice on remuneration policies and practices and on the incentives created for risk management, capital requirements and liquidity position.
- Nomination committee: the nomination committee must be constituted in such a way as to ensure it can give relevant and independent advice on the composition and operation of the governing and management bodies of the institution, in particular on their members' individual and collective expertise and their integrity, repute, independence of mind and availability.

4:72 As part of its prudential supervision task, the supervisory authority should assess the knowledge and experience of prospective members of the aforementioned committees and should also examine whether the composition and procedures of these committees offer sufficient guarantees to enable them to carry out their duties properly²⁹.

4.1.4.2. Tasks

4.1.4.2.1. Audit committee

4:73 As specified in Article 28 of the Banking Law, the audit committee should have at least the following tasks as defined in Article 7:99, § 4 of the CAC:

- a) informing the statutory governing body of the outcome of the statutory audit of the annual accounts and, where appropriate, the consolidated accounts, and explaining how the statutory audit of the annual accounts and, where appropriate, the consolidated accounts contributed to the integrity of the financial reporting process, and what the role of the audit committee was in that process;
- b) monitoring the financial reporting process and making recommendations or proposals to ensure its integrity;
- c) monitoring the effectiveness of the institution's internal control and risk management systems and, where applicable, monitoring the internal audit and its effectiveness;
- d) monitoring the statutory audit of the annual accounts and the consolidated accounts, including following up on questions and recommendations made by the statutory auditor and, where applicable, by the auditor in charge of auditing the consolidated accounts;
- e) reviewing and monitoring the independence of the statutory auditor and, where applicable, of the auditor in charge of auditing the consolidated accounts, in particular with regard to the appropriateness of the provision of additional services to the institution. In particular, the audit committee should analyse with the statutory auditor the risks threatening the latter's independence and the safeguards applied to mitigate those risks, where the total fees relating to a public interest entity referred to in Article 1:12 of the CAC exceed the criteria set out in Article 4(3) of Regulation (EU) No 537/2014; and
- f) making recommendations to the institution's statutory governing body for the appointment of the statutory auditor and, where applicable, the auditor in charge of auditing the consolidated accounts, in accordance with Article 16(2) of Regulation (EU) No 537/2014.

4.4.2.2. Risk committee

4:74 The duties of the risk committee are defined in Article 29 of the Banking Law and further specified in Guidelines EBA/GL/2021/05. As such, the risk committee should at least:

- a) advise and support the statutory governing body in its supervisory function regarding the monitoring of the institution's overall actual and future risk strategy and risk appetite;
- b) assist the statutory governing body in its supervisory function and particularly the non-executive directors in overseeing the implementation of the institution's risk strategy and the corresponding limits set;

²⁹ In this context, care should be taken that the committees are not too small, in order to avoid deadlocks when a member is absent.

- c) oversee the implementation of the institution's strategies for capital and liquidity management as well as for all other relevant risks;
- d) provide the statutory governing body in its supervisory function and particularly the non-executive directors with recommendations on necessary adjustments to the risk strategy;
- e) provide advice on the appointment of external consultants that the supervisory function may decide to engage for advice or support;
- f) review a number of possible scenarios, including stressed scenarios, to assess how the institution's risk profile would react to external and internal events;
- g) oversee the process to ensure the alignment between all material financial products and services offered to customers and the business model and risk strategy of the institution;
- h) examine the pricing policy for customers and ensure that the prices of the products offered reflect the risks that these products may present for the institution, based on its risk strategy, without the need to consider each product separately;
- i) ensure that the prices of assets and liabilities and of the categories of off-balance sheet products offered to customers take into account the risks incurred by the institution in view of its business model and risk strategy, in particular the risks - especially the reputational risks - that could arise from the types of products that are offered to clients. Where this is not the case, the risk committee must provide an action plan to the statutory governing body; and
- j) assess whether the incentives in terms of variable remuneration take suitable account of the risk control, own funds requirements and liquidity position of the institution, as well as with the probability and spread over time of profits.

4:75 For more information on this subject, please refer to paragraphs 61 to 63 of Guidelines EBA/GL/2021/05.

4.4.2.3. Remuneration committee

4:76 The tasks of the remuneration committee are specified in Article 30 of the Banking Law. As such, it must at least:

- a) provide an opinion on the institution's remuneration policy and any changes made thereto. In this respect, the remuneration committee must in particular examine 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. It must also ensure that the remuneration policy does not give rise to conflicts of interest, in particular to the detriment of customers to whom certain products are offered;
- b) prepare decisions on remuneration that have consequences for the risks and risk management of the institution and on which the statutory governing body must decide; and
- c) exercise direct supervision of the remuneration of the persons responsible for independent control functions.

4: 77 However; the remuneration committee may rely on information provided by the risk committee to propose changes to the decisions of the statutory governing body relating to the variable remuneration.

4:78 For further information, please refer to Guidelines EBA/GL/2021/04.

4.4.2.4. Nomination committee

4:79 The tasks of the nomination committee are specified in Article 30 of the Banking Law. As such it is tasked at least with:

- a) identifying and recommending for approval by the general meeting, or where applicable, by the statutory governing body, candidates to fill vacancies in the statutory governing body, examining the extent to which knowledge, skills, diversity and experience are distributed within the statutory governing body, and drawing up a description of the tasks and skills required for a particular appointment as well as deciding how much time must be dedicated to the function. In this context,

the nomination committee should draw up policies relating to the suitability, diversity, induction and training of members of the statutory governing body. Furthermore, the nomination committee must establish a target percentage for the representation of the underrepresented gender in the statutory governing body and prepare a plan to increase the number of representatives of this gender in order to reach the target³⁰;

- b) periodically, and at least annually, assess the structure, size, composition and performance of the statutory governing body and make recommendations to the statutory governing body with regard to any changes therein;
- c) periodically, and at least annually, assess the knowledge, skills, experience, degree of involvement, including attendance, of individual members of the statutory governing body and of the statutory governing body collectively, and report to this body accordingly;
- d) periodically review the policy of the statutory governing body for selection and appointment of its executive directors, and make recommendations to the statutory governing body.

4:80 In addition, the nomination committee is expected to plan the renewal and orderly succession of directors and persons responsible for independent control functions.

4:81 For more information on the tasks of the nomination committee related to the suitability assessment, please refer to the NBB's Fit & Proper Manual.

4.1.4.3. Functioning

4:82 Members of committees should engage in open and critical discussions, during which dissenting views are discussed in a constructive manner.

4:83 Committees should document the agendas of their meetings, their discussions, the conclusions of their work and their decision proposals to be submitted to the statutory governing body, and specify the divergent views expressed by its members. Their conclusions and decision proposals should be reported to the statutory governing body.

4:84 The statutory governing body establishes each committee's internal rules of procedure³¹ specifying its tasks, composition and operation (including the drawing up of minutes). The NBB recommends that these internal rules of procedure be annexed to the governance memorandum.

4:85 Depending on their competences, committee members should at least:

- a. have access to all relevant information and data necessary to perform their role, including information and data from relevant corporate and independent control functions (e.g. legal, finance, human resources, IT, internal audit, risk management, compliance, including information on AML/CFT compliance and aggregated information on suspicious transaction reports, and ML/FT risk factors);
- b. receive regular reports, ad hoc information, communications and opinions from the persons responsible for independent control functions concerning the current risk profile of the institution, its risk culture and its risk limits, as well as on any material breaches that may have occurred, with detailed information on and recommendations for corrective measures taken, to be taken or suggested to address them, and periodically review and decide on the content, format and frequency of the information on risk to be reported to them; and

³⁰ In establishing this target percentage and carrying out subsequent reviews, the nomination committee is expected to receive assistance from the Human Resources department (for the operational aspects) and the compliance function (for the compliance aspects). As a reminder, the target percentage, the plan and its implementation modalities must be made public in accordance with Article 435(2)(c) of Regulation No 575/2013 and disclosed to the supervisory authority to enable it to conduct diversity benchmarking.

³¹ Internal regulations that do not necessarily have to meet the conditions of Article 2:59 of the CAC.

- c. where necessary, ensure the proper involvement of the independent control functions and other relevant functions (human resources, legal, finance) within their respective areas of expertise and/or seek external expert advice.

- 4:86 Committees should interact with each other as appropriate. To a limited extent, such interaction could take the form of cross-participation so that the chair or a member of a committee may also be a member of another committee.
- 4:87 Institutions should consider the occasional rotation of chairs and members of committees, taking into account the specific experience, knowledge and skills that are individually and collectively required for those committees.
- 4:88 For reasons of efficiency, external persons (e.g. the chair or a member of the management committee, the internal auditor, the accredited statutory auditor, etc.) may participate in all or part of the meetings of the committees as guests. Nevertheless, the systematic participation of permanent guests (executive directors, non-executive directors who are not members, representatives of the group, etc.) in all meetings of the specialised committees should be avoided, barring duly justified exceptions. It is good practice to ensure that guests participate only in those discussion points that are relevant to them, and that there is always at least one meeting per year without any external persons. The chairs of the committees have an important role to play in this respect in order to safeguard the quality of the debates.

4.1.4.4. Exemptions for non-significant institutions

- 4:89 The legal obligation to set up the four specialised committees within the statutory governing body, which are composed exclusively of non-executive directors, is not justified for institutions with a reduced risk profile, taking into account their size or the nature of their business. 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, and may combine the audit and risk committees. Institutions combining the two latter committees should document the reasons which led them to set up a combined committee and how this approach achieves the objectives of both committees. Such an institution must at all times ensure that the members of the combined committee, individually and collectively, have the necessary knowledge, skills and expertise to fully understand the tasks to be carried out by this committee.
- 4:90 In the absence of one or more committees, the statutory governing 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 statutory governing body, regardless of the internal structure set up by this body.

4.1.4.5. Group context

- 4:91 Article 33, § 2 of the Banking Law authorises the supervisory authority to take into account the group context when authorising a credit institution, where appropriate, not to set up one or more of the four committees which are compulsory by law. In this case, one or more committees which are competent for the credit institution and meet the requirements of the Banking Law should be set up within the groups or subgroups concerned.
- 4:92 Communication CBFA_2009_22 concerning audit committees applies 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.

4.2. ORGANISATIONAL SET-UP

4.2.1. ORGANISATIONAL FRAMEWORK AND STRUCTURE

Legal and regulatory framework:

1. Banking Law: Article 21
2. NBB Regulation:
 - Regulation of 19 May 2015 on the internal control and the internal audit function
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - Uniform Letter of 6 July 2021 to accredited auditors regarding their obligations in respect of special mechanisms
 - Circular NBB_2021_17 of 6 July 2021 on fiscal prevention policy
 - Circular NBB_2021_17 of 6 July 2021 on special mechanisms
 - Circular NBB_2015_21 on the internal control and the internal audit function
4. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 68 to 93

4.2.1.1 Organisational framework

- 4:93 The statutory governing body should implement and ensure a suitable and transparent organisational and operational structure for the institution. This implies in particular that the reporting lines and the allocation of responsibilities should be clear, well-defined, coherent and duly documented. For further information on this subject, please refer to paragraphs 68 to 70 of Guidelines EBA/GL/2021/05.

4.2.1.2. Decision-making process, reporting lines and distribution of duties

- 4:94 The institution should have a clear, transparent and documented decision-making process and a clear allocation of responsibilities and reporting lines within its internal control framework, including its business lines, internal units and independent control functions.
- 4:95 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 activities.
- 4:96 When implementing the internal control framework, institutions should establish adequate segregation of duties, for example by allocating conflicting activities or supervisory and reporting responsibilities to different persons, and by establishing information barriers (Chinese walls) to prevent the transmission of certain information (e.g. through the physical separation of certain departments).

4.2.1.3. Administrative and accounting organisation

- 4:97 The institution should have an appropriate administrative and accounting organisation, including inter alia a control system that provides a reasonable level of assurance of the reliability of the financial reporting process.
- 4:98 The management committee must take, under the supervision of the statutory governing body, the necessary steps to ensure that the institution has a reliable financial and prudential reporting.

4.2.1.4. Know your structure

- 4:99 Directors should have a clear understanding of the institution's legal and operational structure and of its activities, including the risks associated with the services and products offered. They must ensure that this structure and these activities are in line with the approved business and risk strategy and risk appetite. The supporting 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.
- 4:100 Institutions that offer a broad range of financial services and products (banking, insurance and investment products), propose complex services and products and/or develop cross-border activities should set up adequate structures to monitor the risks associated with these activities.
- 4:101 Institutions that are part of a group should be able to inform their supervisory authority of the structure of the group they belong to, as well as the group's governance and control mechanisms that apply to them. When an institution establishes within its group a large number of legal entities, their number, and in particular any interconnections and transactions between them, should not constitute an obstacle for sound governance or efficient management and supervision of the group's risks.
- 4:102 For further information, please refer to paragraphs 71 to 75 of Guidelines EBA/GL/2021/05.

4.2.1.5. Complex structures and non-standard or non-transparent activities

- 4:103 Institutions are increasingly making use of complex service schemes and company structures in their activities (setting up complex company structures, special purpose vehicles, trust structures), be it for own account or to propose these schemes and structures to their customers. In addition, institutions often develop cross-border activities. The decision to develop activities in specific jurisdictions is driven by a range of factors and circumstances relating to strategic, commercial or financial objectives that may be legitimate. However, complex structures or foreign activities, in particular in offshore financial centres or jurisdictions devoid of transparency, may lead to financial, legal and/or reputational risks and as such may not meet prudential requirements.
- 4:104 In accordance with Article 21 of the Banking Law, institutions should avoid setting up complex and potentially non-transparent structures or activities. In taking their decisions, they should carry out a risk assessment to determine on the one hand whether such structures or activities could be used for money laundering, terrorist financing or other financial crimes, and on the other hand what supervisory and regulatory provisions apply to such structures or activities.
- 4:105 Paragraph 76 of Guidelines EBA/GL/2021/05 sets out the criteria to be taken into account by institutions in their risk assessment. Where an institution sets up complex structures or activities, the statutory governing body must understand those structures, their purpose and the specific risks associated with them, and involve the internal control functions in an appropriate manner. In any case, institutions should not set up opaque or unnecessarily complex structures which have no clear economic rationale or legal purpose or structures that could raise concerns that these might be created for a purpose connected with financial crime.
- 4:106 Please refer to paragraphs 76 to 82 of Guidelines EBA/GL/2021/05 for more information on this subject.
- 4:107 In addition, regulations on special mechanisms and fiscal prevention policy have been reviewed. The NBB has notified institutions by circular of a list of transactions and practices that must be considered "special mechanisms". The prohibition on setting up "special mechanisms" aims to prevent financial institutions from carrying out acts that promote tax fraud by their customers and that cannot be justified within the framework of the normal and proper transactions and services provided by institutions. The NBB has also asked institutions to establish a prevention policy striving for a fiscally correct attitude in all respects and not to cooperate directly or indirectly with customers who use their services to evade their tax obligations.

4:108 For further information, please refer to Article 21, § 1/1 of the Banking Law, Circular NBB_2021_17 of 6 July 2021 on fiscal prevention policy and Circular NBB_2021_17 of 6 July 2021 on special mechanisms.

4.2.2. OUTSOURCING

Legal and regulatory framework:

1. Banking Law: Articles 21 and 66
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - Circular NBB_2019_19 on the European Banking Authority (EBA) Guidelines on outsourcing arrangements of 25 February 2019 (EBA/GL/2019/02)
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 91 to 93

4:109 In accordance with Article 21 of the Banking Law, each institution must have appropriate structures for the organisation of the business to ensure effective and prudent management of the institution.

4:110 Article 66 of the Banking Law moreover specifies that in this context, each institution is required to take appropriate measures to, on the one hand, limit the operational risk associated with outsourcing and, on the other hand, to ensure that the adequacy of the institution's internal control procedures is not materially impaired and that the supervisory authority is not prevented from monitoring the institution's compliance with its legal and regulatory requirements.

4:111 The prudential expectations regarding outsourcing are specified in Circular NBB_2019_19.

4:112 Please refer to this circular for further information on these different topics.

4.2.3. CENTRAL ADMINISTRATION IN BELGIUM

Legal and regulatory framework:

1. Banking Law: Article 43

4:113 Article 43 of the Banking Law stipulates as a condition for authorisation of credit institutions governed by Belgian law that their central administration must be established in Belgium, i.e. in the same Member State as its registered office. This legal obligation flows from European Directive 95/26/EC of 29 June 1995 (the "BCCI Directive")³².

4:114 The concept of "central administration" should be understood within the meaning of Article 48 of the Treaty on European Union, and covers the concept of "real seat", i.e. the place where the institution's essential decisions are taken and where the conduct of its business is effectively concentrated. This is the main administrative headquarters and not the main place of operation. Thus, "central administration" means the place from which the institution is managed and where its organs usually meet.

³² European Parliament and Council Directive 95/26/EC of 29 June 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non- life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision.

- 4:115 The use of technological means for remote decision-making makes the concept of central administration more difficult to define. For instance, in order to conclude that the “nerve centre” of the business of an institution with a cross-border organisation is established in Belgium and that the institution in question therefore fulfils the legal condition of having its central administration in Belgium, the members of the management committee and the persons responsible for the independent control functions must be sufficiently available in Belgium.
- 4:116 In addition, these persons must be able to respond within a reasonable period of time to any request made by the NBB, including requests for interviews involving their physical presence either at the institution’s registered office or at the NBB’s premises. The same applies to the members of the statutory governing body, although they may be allowed more flexibility.
- 4:117 Finally, it is recommended that all persons responsible for independent control functions³³ be registered in the institution’s personnel register and that the majority of meetings of the statutory governing body and the management committee be held on Belgian territory at the seat of the institution.

³³ This also applies to organisational models where the independent control functions are centralised in the group, as even in the case of full outsourcing of an independent control function, a person responsible for the control function must still be appointed within the regulated entities of the group in order to inter alia monitor the quality of the outsourcing (see in particular the Regulation of the NBB of 19 May 2015 on internal control and internal audit as well as Circular NBB_2015_21).

4.3. RISK CULTURE AND INTEGRITY

4:118 Sound governance cannot be achieved by management and organisational structures, procedures and control mechanisms alone, but relies to a large extent on the commitment and dedication of all members of staff of the institution and on the existence of an adequate corporate culture.

4.3.1. RISK CULTURE

Legal and regulatory framework:

1. Banking Law: Article 21
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 94 to 98

4:119 A sound, diligent and consistent risk culture should be a key element of institutions' effective risk management and should enable them to make sound and informed decisions. A sound risk culture includes, but is not necessarily limited to, "tone at the top", diversity and inclusion, accountability, effective communication, challenge and absence of risk-taking incentives. The risk management function and compliance function should play an active role in implementing an adequate risk culture. For further information on this subject, please refer to paragraphs 94 to 98 of Guidelines EBA/GL/2021/05.

4.3.2. CORPORATE VALUES AND CODE OF CONDUCT

Legal and regulatory framework:

1. Banking Law: Articles 21, § 1, 5° and 23, second paragraph, 4°
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 99 to 104

4:120 The statutory governing body should develop, adopt, adhere to and promote high ethical and professional standards, taking into account the specific needs and characteristics of the institution, and should ensure the implementation of such standards through a code of conduct or similar instrument.

4:121 These ethical standards must be communicated and promoted throughout the institution and should also be integrated into the training programme for staff and the induction of the members of the statutory governing body. It is important that in implementing these standards, the management impose strict and demanding rules of conduct upon itself and lead by example ('tone at the top').

4:122 The internal codes of conduct should relate inter alia to subjects such as corruption, acceptance or offering 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.

4:123 Reference is also made to paragraphs 99 to 104 of Guidelines EBA/GL/2021/05, which in particular provide that (i) institutions should ensure that there is no discrimination of staff based on gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other

opinion, membership of a minority, birth, disability, age or sexual orientation, (ii) the institution's policies should be gender neutral, (iii) risk awareness should be promoted, and (iv) examples should be provided of unacceptable behaviour (including fraud, money laundering and terrorist financing, unfair competition practices, financial sanctions, bribery and corruption, market manipulation, mis-selling and other violations of consumer protection laws, tax offences, whether committed directly or indirectly, including through prohibited mechanisms).

4.3.3. REMUNERATION

Legal and regulatory framework:

1. Banking Law: Article 21, § 1, 6°, Articles 67 to 71 and Annex II
2. European regulations:
 - Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive
 - 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)
 - 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
 - Regulation of the NBB of 1 April 2014 on proprietary trading activities
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_30 of 7 December 2021 on remuneration policy: update of the legal framework and transposition of the EBA Guidelines of 2 July 2021 on sound remuneration policies under Directive 2013/36/EU (EBA/GL/2021/04)
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - 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)
 - 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)
4. International reference documents:
 - Guidelines EBA/GL/2021/04 of 2 July 2021 on sound remuneration policies under Directive 2013/36/EU

4:124 The statutory governing body should develop a remuneration policy aimed at ensuring that the personal objectives of the staff members are aligned with the long-term interests of the institution. To this end, the institution should establish and maintain a remuneration policy and remuneration practices that promote effective risk management.

4.3.3.1. Identified staff

4:125 Institutions must identify the members of staff to whom specific requirements on remuneration apply ("identified staff"). These include in particular the categories of staff whose professional activities have a material impact on the institution's risk profile.

4:126 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). In addition, pursuant to Article 9, § 2 of the Regulation of the NBB of 1 April 2014, all staff members who are authorised to perform risky transactions and who are employed in trade departments should in any case be considered as identified staff.

4:127 According to Recital 14 of the above-mentioned Delegated Regulation (EU) No 604/2014, 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 designated as identified staff 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).

4:128 The NBB recommends that at least 1 % of the total number of staff be selected as identified staff.

4.3.3.2. EBA guidelines

4:129 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. The latest version of these guidelines (EBA/GL/2021/04) was published on 2 July 2021. These guidelines were transposed into the Belgian legal framework by Circular NBB_2021_30.

4:130 These guidelines will assist the NBB in its actual monitoring of institutions' remuneration policies and practices. They complete and clarify the regulatory framework to be complied with by institutions.

4:131 New elements of Guidelines EBA/GL/2021/04 include transparency to stakeholders, proportionality, the need for a gender-neutral remuneration policy and monitoring of the gender pay gap. For more information on this subject, please refer to Circular NBB_2021_30.

4.3.3.3. Impact of the CAC

4:132 The entry into force of the CAC has had a very limited impact on remuneration rules. Following the entry into force of the CAC, listed institutions must ensure that their remuneration policies comply with Article 7:92, fourth paragraph, last sentence of the CAC, which stipulates that no variable remuneration may be awarded to an independent director. In addition, the CAC provides for the possibility for the general meeting to grant a notice period and a severance payment to directors, as the principle of the ad nutum dismissal of directors is now suppletive.

4.3.3.4. Financial instruments

4:133 The NBB expects institutions to comply with the requirement of Article 6 of Annex II to the Banking Law, pursuant to which at least 50 % of all variable remuneration must be appropriately balanced 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).

4.3.3.5. Termination and severance payments

4:134 In line with CRD IV and Guidelines EBA/GL/2021/04, Article 12 of Annex II to the Banking Law specifies the regime applicable to termination payments, which also include severance payments.

4:135 In general, termination payments always constitute variable remuneration. This is clear from Article 94(1)(h) of CRD IV, Chapter 9.3 of Guidelines EBA/GL/2021/4 and the preparatory work in relation

to Article 12 of Annex II to the Banking Law. As a rule, therefore, such payments should be subject to all the rules applicable to variable remuneration.

4:136 However, Article 12 of Annex II to the Banking Law and the above-mentioned EBA Guidelines provide for a limited number of exhaustively listed situations in which the severance payment (or part thereof) may be exempted for (i) the calculation of the fixed/variable remuneration ratio and (ii) the application of deferral and payment in instruments. For further information on this topic, please refer to Circular NBB_2021_30 and Guidelines EBA/GL/2021/04.

4.3.3.6. Collection of data on remuneration

4:137 According to Article 450 of Regulation No 575/2013, institutions must disclose certain quantitative information regarding their remuneration policies 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.

4:138 Furthermore, pursuant to Article 20 of Annex II to the Banking Law, institutions should provide the NBB with information on the number of natural persons within 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 specified in Circular NBB_2014_08 of 1 September 2014.

4.3.4. CONFLICTS OF INTEREST

Legal and regulatory framework:

1. Banking Law: Articles 21, § 1, 3°, 72 and 73
2. NBB Regulation:
 - Royal Decree of 8 February 2022 approving the Regulation of the NBB of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - The NBB's Fit & Proper Manual
 - Circular NBB_2021_27 of 16 November 2021 transposing Guidelines EBA/GL/2021/06 of 2 July 2021 on suitability assessment
 - Circular NBB_2017_21 of 7 July 2017 on loans, credits and guarantees to managers, shareholders and related persons
 - Communication NBB_2022_19 of 12 July 2022 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
4. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 105 to 131
 - Guidelines EBA/GL/2021/06 of 2 July 2021 on suitability assessment
 - BCBS Principles: principle 3

4:139 The activity of an institution is characterised by a combination of various interests - often converging but just as often diverging or conflicting - which require appropriate rules.

4:140 Conflicts of interest may arise in - but are not limited to - the following relationships:

- between shareholders and the institution;

- between directors and the institution;
- between staff and the institution and, by extension, the institution's customers;
- between the institution and its customers, as a result of the business model implemented and/or the various services and activities offered by the institution;
- between customers;
- between the institution and its parent undertaking, its subsidiary or other affiliated undertakings, in the context of intra-group transactions.

4:141 Without prejudice to the application of the provisions of the Companies and Associations Code or other specific applicable regulations (investment services, market abuse), two types of conflict of interest policies should be developed:

4.3.4.1. Conflict of interest policy at institutional level

4:142 The statutory governing body should be responsible for establishing, approving and overseeing the implementation and maintenance of effective policies to identify, assess, manage and mitigate or prevent actual and potential conflicts of interest at institutional level, e.g. as a result of the various activities and roles of the institution, of different institutions within the scope of prudential consolidation or of different business lines or units within an institution, or with regard to external stakeholders (including, where appropriate, entities where a director of the institution holds an external position).

4:143 For further information on the conflict of interest policy at institutional level, please refer to paragraphs 105 to 107 of Guidelines EBA/GL/2021/05.

4.3.4.2. Conflict of interest policy for staff

4:144 The statutory governing body should be responsible for establishing, approving and overseeing the implementation and maintenance of effective policies to identify, assess, manage and mitigate or prevent actual and potential conflicts between the interests of the institution and the private interests of staff, including members of the statutory governing body, which could adversely influence the performance of their duties and responsibilities and the institution's activities.

4:145 The conflict of interest policy for staff should aim at identifying conflicts of interest of staff, including the interests of their closest family members.

4:146 For further information on the conflict of interest policy for staff, please refer to paragraphs 108 to 131 of Guidelines EBA/GL/2021/05.

4:147 The EBA Guidelines also contain a series of recommendations regarding "loans and other transactions with members of the management body and their related parties". These provisions should be read in conjunction with Article 72 of the Banking Law and Circular NBB_2017_21, which regulate the granting of loans, credits and guarantees to members of the statutory governing body and their related persons³⁴. Please refer to point 3.3. of this Manual for more information on this subject.

4.3.4.3. General measures applicable to all types of conflicts of interest

4:148 The institution's measures to manage or, as the case may be, mitigate conflicts of interest should be documented. This should include, inter alia, the following measures and procedures:

³⁴ Article 72 of the Banking Law does not apply to (mixed) financial holding companies.

- put in place information barriers (Chinese walls) or separate certain departments physically or with regard to IT matters;
- entrust conflicting activities within a chain of transactions or services to different persons;
- entrust supervisory and reporting responsibilities relating to (potentially) 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 or outside the institution with a conflict of interests have an inappropriate influence on an activity of the institution;
- establish an appropriate policy and procedures for transactions with related parties. This could include requiring, for example, that transactions be conducted at arm's length terms, that a binding opinion be given by independent members of the statutory governing body, that exposure to such transactions be limited, etc.;
- provide that the members of the statutory governing body have a responsibility to abstain from voting on matters where they have or may have a potential conflict of interest, or where the objectivity or ability of the person concerned to perform the duties properly may be compromised;
- limit the external activities of relevant persons.

4:149 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. Please refer to paragraphs 108 to 131 of Guidelines EBA/GL/2021/05 for further information on the NBB's prudential expectations regarding the content of this policy and the procedures for reporting and communicating conflicts of interest. For more information on this subject, please refer to Guidelines EBA/GL/2021/05, the NBB's Fit & Proper Manual, the NBB Regulation of 9 November 2021 and Communication NBB_2022_19 on external functions and to Circular NBB_2017_21 on loans to managers.

4.3.5. INTERNAL AND EXTERNAL REPORTING OF BREACHES (WHISTLEBLOWING)

Legal and regulatory framework:

1. Banking Law: Article 21, § 1, 8° (internal reporting of breaches)
2. Other laws:
 - Organic Law of the NBB: Article 36/7/1 (external reporting of breaches)
 - Law of 28 November 2022 on the protection of persons who report breaches of Union law or national law observed within a legal entity in the private sector (transposing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, which regulates the establishment of internal and external reporting channels and the handling of breach reports)
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
4. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 132 to 140

4.3.5.1. Internal reporting of breaches

4:150 Compliance with regulations, corporate values and internal codes of conduct and the effectiveness of the institution's internal controls are enhanced where there are channels for staff to raise legitimate

concerns internally, in good faith, about significant breaches of such regulations, corporate values and codes or about unethical or illegal behaviour relating to matters within the institution's competence and control. In this context, institutions should put in place and maintain appropriate internal reporting policies and procedures for staff to report potential or actual breaches of regulatory or internal requirements, including in particular requirements imposed by the Banking Law and Regulation No 575/2013, or of the internal governance arrangements, through a specific, independent and autonomous channel.

4:151 The proper operation of the reporting process should depend on clear rules and procedures that precisely indicate what can be reported and specify the stages of the procedure. The internal reporting procedures should meet the criteria set out in the law dated 28 November 2022 transposing Directive (EU) 2019/1937, which regulates the establishment of internal and external reporting channels and the handling of breach reports and the NBB circular issued on its basis, as well as in paragraph 138 of Guidelines EBA/GL/2021/05. The management should see to it that the information communicated by staff is effectively examined and that the necessary measures are taken to rectify any dysfunction.

4:152 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 rules on the basis of the applicable provisions. Please refer to paragraphs 132 to 138 of Guidelines EBA/GL/2021/05 and in the law dated 28 November 2022.

4.3.5.2. External reporting of breaches

4:153 The NBB and the ECB have set up systems for reporting breaches. The practical details of the reporting system set up by the NBB can be found on the NBB's website under "Report a breach"³⁵. In this respect, the NBB recommends that institutions ensure that, during training sessions, reference is made - in writing - to the NBB's external reporting system.

4:154 Article 36/7/1 of the Law of 22 February 1998 establishing the Organic Statute of the NBB and the law dated 28 November 2022 prohibit any civil, penal or disciplinary proceedings, any professional sanctions and any unfavourable or discriminatory treatment, and any termination of the employment contract of a member of staff because of his or her having reported a breach. The NBB may impose an administrative sanction on any institution that violates this prohibition.

4:155 The NBB uses the information supplied in the breach report exclusively for the purpose of performing its legal tasks. That information is subject to the enhanced confidentiality regime laid down in Article 36/7/1, § 2 of the Law of 22 February 1998 establishing the Organic Statute of the NBB and the law dated 22 November 2022. The protection of the person reporting the breach and of the person accused in this report is therefore guaranteed.

4.3.6. PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

Legal and regulatory framework:

1. Law: Article 21, § 1, 2° of the Banking Law and Law of 18 September 2017
2. NBB Regulation / Relevant thematic NBB circulars and international reference documents: Please refer to the section of the NBB's website dedicated to the prevention of money laundering and terrorist financing

³⁵ It is noted that this system for reporting breaches to the NBB is not specifically intended for breaches of the Banking Law, but also for breaches of other prudential regulations and anti-money laundering regulations.

4:156 The identification, management and mitigation of the risk of money laundering and terrorist financing should be an integral part of an institution's governance and risk management arrangements. Thus, in accordance with Article 8 of the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, institutions should draw up a policy on preventing money laundering and terrorist financing.

4:157 This policy should set out the institution's objectives and the guidelines to be followed in this area.

4:158 For further information, please refer to the section of the NBB's website dedicated to the prevention of money laundering and terrorist financing ([Combating money laundering and the financing of terrorism | nbb.be](#)).

4.3.7. DIVERSITY

Legal and regulatory framework:

1. Law: Article 31 of the Banking Law and Law of 18 September 2017

4:159 In order to attract sufficiently diverse candidates for positions on the statutory governing body, institutions should implement a diversity policy for their staff that includes career planning aspects and measures to ensure equal treatment and opportunities for employees of all genders. In particular, these measures should ensure that the issue of appropriate gender representation is also taken into account when selecting staff for management positions or providing management training.

4.4. INTERNAL CONTROL AND INDEPENDENT CONTROL FUNCTIONS

4.4.1. INTERNAL CONTROL FRAMEWORK

Legal and regulatory framework:

1. Banking Law: Article 21, § 1, 2°
2. NBB Regulation:
 - Regulation of 19 May 2015 on the internal control and the internal audit function
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - Uniform letter of 16 November 2015 on the report of the senior management on the assessment of the internal control
 - Circular NBB_2015_21 of 13 July 2015 concerning the internal control system and the internal audit function
 - Circular NBB_2011_09 of 20 December 2011 on the report of the senior management on the assessment of the internal control
4. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 141 to 151

4:160 Institutions should develop and maintain a culture that encourages a positive attitude towards risk control and compliance within the institution, as well a robust and comprehensive internal control framework. Under this framework, institutions' business lines should be responsible for managing the risks they incur in conducting their activities and should have controls in place that aim to ensure compliance with internal and external requirements. As part of this framework, institutions should have independent control functions with appropriate and sufficient authority, stature and access to the statutory governing body to fulfil their mission, and a risk management framework.

4:161 The internal control framework of institutions should be adapted on an individual basis to the specificity of the institution's activities, its complexity and the associated risks, taking into account the group context. Institutions should organise the exchange of the necessary information in a manner that ensures that each management body, business line and internal unit, including each independent control function, is able to carry out its duties. This means, for example, that appropriate information should be exchanged between the business lines and the compliance function (including the AMLCO), as well as between the persons responsible for the independent control functions at group level and the institution's statutory governing body.

4:162 Institutions should put in place, maintain and regularly update adequate internal control policies, processes/mechanisms and procedures. Particular attention should, inter alia, be paid to arrangements for combating money laundering and countering terrorist financing.

4:163 The written policies should be approved by the statutory governing body and communicated to all staff. This should be repeated each time significant changes are made.

4:164 The NBB recommends that at least the following governance policies be developed:

1	Fit & proper policy ³⁶
2	Diversity policy ³⁷
3	Internal rules regarding external functions

³⁶ Policy covering the selection, appointment, reappointment and succession of members of the statutory governing body as well as their induction and training.

³⁷ This policy may be part of the fit & proper policy, or it may be separate provided that the fit & proper policy makes explicit reference to it.

4	Remuneration policy
5	Outsourcing policy
6	Conflict of interest policy at institutional level
7	Conflict of interest policy for staff
8	Internal reporting policy (whistleblowing)
9	Code of good business conduct
10	Tax prevention policy
11	Policy on preventing money laundering and terrorist financing
12	Risk management policy
13	New product approval policy
14	ICT security and continuity policy
15	Charters regulating the independent control functions

4:165 The independent control functions should verify that the policies, mechanisms and procedures set out in the internal control framework are properly implemented in their respective areas of responsibility.

4:166 For further information on the internal control framework, please refer to paragraphs 141 to 151 of Guidelines EBA/GL/2021/05.

4.4.2. RISK MANAGEMENT FRAMEWORK

Legal and regulatory framework:

1. Banking Law: Articles 21, 64 and 65
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 152 to 162
 - Circular NBB_2021_18 of 20 July 2021 transposing Guidelines EBA/GL/2020/06 of 29 May 2020 on loan origination and monitoring
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 152 to 162
 - Guidelines EBA/GL/2020/06 of 29 May 2020 on loan origination and monitoring
 - BCBS Principles: principles 5 and 7

4:167 As part of the overall internal control framework, institutions should have a holistic institution-wide risk management framework extending across all its business lines and internal units, including independent control functions, recognising fully the economic substance of all its risk exposures (including environmental and climate risks). The risk management framework should enable the institution to make fully informed decisions on risk-taking.

4:168 For further information on this subject, please refer to paragraphs 152 to 162 of Guidelines EBA/GL/2021/05 and to Guidelines EBA/GL/2020/06 on loan origination and monitoring.

4.4.3. NEW PRODUCTS AND SIGNIFICANT CHANGES

Legal and regulatory framework:

1. Banking Law: Article 21
2. Relevant thematic NBB circulars:

- Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
- 3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 163 to 168

4:169 Institutions should have in place a well-documented new product approval policy, approved by the statutory governing body, that addresses the development of new markets, products and services, and significant changes to existing ones, as well as exceptional transactions.

4:170 For further information, please refer to paragraphs 163 to 168 of Guidelines EBA/GL/2021/05.

4.4.4. INDEPENDENT CONTROL FUNCTIONS

Legal and regulatory framework:

1. Banking Law: Articles 35 to 40
2. NBB Regulations:
 - Regulation of 19 May 2015 on the internal control and the internal audit function (approved by Royal Decree of 5 July 2015)
 - Regulation of the NBB of 9 November 2021 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies (approved by Royal Decree of 8 February 2022)
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 169 to 224
 - The NBB's Fit & Proper Manual
 - Circular NBB_2021_27 of 16 November 2021 transposing Guidelines EBA/GL/2021/06 of 2 July 2021 on suitability assessment
 - Communication NBB_2019_15 of 2 July 2019 on the NBB's expectations regarding the content of the statutory governing body's report on the assessment of the compliance function
 - Circular NBB_2015_21 of 13 July 2015 concerning the internal control system and the internal audit function
 - Circular NBB_2012_14 of 4 December 2012 on the Compliance function
 - Communication NBB_2022_19 of 12 July 2022 on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies
4. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 169 to 224
 - Guidelines EBA/GL/2021/06 on the assessment of the suitability of members of the management body and key function holders
 - BCBS Principles: principles 6 to 10

4:171 Institutions should set up 3 independent control functions:

- a risk management function;
- a compliance function; and
- an internal audit function.

4:172 These functions are necessary to enable the statutory governing body in its supervisory function to monitor the management committee.

4.4.4.1. GENERAL ASPECTS

4.4.4.1.1. Three lines of defence

4:173 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 operational units (including the front office) are the institution's first line of defence. This line of defence is responsible for identifying the risks associated with each operation and should observe the procedures and limits laid down;
- the second line of defence includes the risk management function and the compliance function, which should ensure that the risks are identified and managed by the operational units, according to the rules and procedures laid down;
- the third line of defence is the internal audit, which, inter alia, monitors compliance with the procedures by the first and second lines of defence.

4:174 For the statutory governing body in its supervisory function, the risk management, compliance and internal audit functions are the necessary instruments for the optimal fulfilment of their supervisory tasks. They form a coherent set of transversal control functions between which coordination is required. Given that these control functions are connected, they should harmonise their activities and ensure sufficient sharing of relevant information. The risk management and compliance functions are monitored by the internal audit function.

4:175 None of the institution's areas of activity (e.g. offshore activities) may, for personal, commercial or financial reasons, fall out of the scope of the control functions.

4:176 As regards the prevention of money laundering and terrorist financing (AML/CFT), the Anti-Money Laundering Law stipulates that institutions should appoint one or more persons tasked with implementing and steering the AML/CFT policy (the "AMLCO"). For further information on this subject, please refer to the EBA Guidelines on the role and responsibilities of the AMLCO (EBA/GL/2022/05) and the NBB's AML website³⁸.

4.4.4.1.2. Persons responsible for control functions

4:177 Persons responsible for independent control functions should be appointed at an adequate hierarchical level that provides them with the appropriate authority and stature needed to fulfil their responsibilities. Without prejudice to the specific characteristics of the position of Chief Risk Officer (see the section on the composition of the management committee above and the section "Risk management function" below), the persons responsible for independent control functions are at "N-1" level in relation to the management committee.

4.4.4.1.3. Independence of control functions

4:178 The three control functions should be independent, which should at least be reflected in their status, their prerogatives, the arrangements for the remuneration of the persons responsible for these functions and of the staff made available for the performance of these functions, and their direct access to the statutory governing body (which entails that they do not first have to go through the management committee).

4:179 Notwithstanding the overall responsibility of the statutory governing body, the persons responsible for the independent control functions should be independent of the operational lines or units they control. Although the persons responsible for the risk management, compliance and internal audit functions report functionally to a member of the management committee³⁹, they report directly to and

³⁸ Please refer to the section of the NBB's website dedicated to the prevention of money laundering and terrorist financing ([Combating money laundering and the financing of terrorism | nbb.be](#)).

³⁹ Functional reporting to a member of the management committee consists of reporting on the activities of the independent control function concerned, without that member being able to intervene in the decision-making process (no hierarchical role). The member of the management committee to whom the persons responsible for the independent control functions report, should also determine, in consultation with the statutory governing body and/or its specialised committees, the human and material resources (IT, etc.) required by the independent control function concerned to carry out its tasks properly and should monitor resource-related issues.

are directly accountable for their activities to the statutory governing body. Their performance is also reviewed by the statutory governing body.

4:180 For further information, please refer to paragraph 175 of Guidelines EBA/GL/2021/05, which specifies the conditions to be met for control functions to be considered independent.

4.4.4.1.4. Resources of the control functions

4:181 Independent control functions should have sufficient (human and IT) resources to be able to carry out their tasks in an appropriate and independent manner. The persons responsible for these functions should ensure that their staff possess the necessary qualifications and skills. For further information, please refer to paragraphs 177 and 178 of Guidelines EBA/GL/2021/05.

4.4.4.1.5. Methodology and access

4:182 The method and procedures used by the three control functions should be commensurate with the nature, scale and complexity of the institution's activities, and should be explained in writing.

4:183 The control functions should have access to all business lines and all internal units that have the potential to generate risk, as well as to relevant subsidiaries and affiliated undertakings. They interact with the operational units and this interaction must help to achieve the objective of all the institution's staff being made aware of the importance of risk management.

4.4.4.1.6. Reporting

Regular reporting to the statutory governing body

4:184 The persons responsible for the risk management, compliance and internal audit functions should report at least once a year directly to the statutory governing body on the performance of their task, and should inform the management committee. This direct access, which entails that they do not first have to go through the management committee, is necessary to enable the statutory governing body to more strictly exercise its supervisory function as regards the execution of the strategy mapped out and the institution's operation.

4:185 This reporting of activities to the statutory governing body can be done through the risk committee for the risk management function and the compliance function⁴⁰ and through the audit committee for the internal audit function.

4:186 The (at least) annual activity report of the independent control functions should:

- 1° document all tasks performed by the independent control function during the preceding period;
- 2° clearly indicate all shortcomings identified;
- 3° provide recommendations to remedy these shortcomings.

Own-initiative reports

4:187 Article 38 of the Banking Law provides that, when justified by specific circumstances, the persons responsible for the risk management function and the compliance function can, of their own accord and without needing to refer the matter to the management committee, inform the statutory governing body of their concerns, and where applicable alert it where specific developments related to risk have or could have a negative influence on the institution, or in particular, could be damaging to its reputation.

⁴⁰ Circular NBB_2019_15 stipulates that the compliance function reports to the statutory governing body through the audit committee, but in practice this is currently usually done through the risk committee.

4.4.4.1.7. Periodic assessment

4:188 In its supervisory function, the statutory governing 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 specialised advisory committees set up for this purpose by the statutory governing body. For its assessment of the operation of the compliance function, the statutory governing body relies on a predetermined model that is described in Circular NBB_2019_15 and observes the deadline specified in the NBB's communications on qualitative reporting.

4.4.4.1.8. Removal

4:189 In accordance with Article 61, § 2 of the Banking Law, the persons responsible for the independent control functions may not be removed from their functions without the prior approval of the statutory governing body in its supervisory function. 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 governance.

4.4.4.2. COMPLIANCE FUNCTION

Legal and regulatory framework:

1. Banking Law: Articles 35, 36 and 38
2. NBB Regulation:
 - Regulation of 6 February 2018 on expertise of heads of the compliance function (approved by Royal Decree of 15 April 2018)
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 204 to 213
 - Communication NBB_2019_29 of 26 November 2019 on the modification of the date for the transmission of compliance reports
 - Communication NBB_2019_15 of 2 July 2019 on the NBB's expectations regarding the content of the statutory governing body's report on the assessment of the compliance function
 - Circular NBB_2012_14 of 4 December 2012 on the compliance function
4. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 204 to 213
 - BCBS Principles: principle 9

4:190 Pursuant to Article 36 of the Banking Law, the compliance function is responsible for monitoring compliance with the legal and regulatory provisions on integrity and conduct applicable to banking activities. The compliance function should thus prevent the institution from suffering the consequences - in particular a loss of reputation or credibility, or legal risks, which can cause serious financial harm - of non-compliance with the legal and regulatory provisions or with the ethical rules applicable to bankers (compliance risk). For further information on the compliance function, please refer to Circular NBB_2012_14 and to paragraphs 204 to 213 of Guidelines EBA/GL/2021/05.

4:191 The specific requirements regarding the expertise of persons responsible for the compliance function are set out in the NBB's Regulation of 6 February 2018. According to that regulation, persons responsible for the compliance function should also, as of their appointment, participate in a training programme with a minimum duration of 40 hours every three years. Institutions should also ensure that the other persons in charge of the compliance function participate in such a training programme with a minimum duration of 20 hours every three years. The continuing training requirements are further explained in the explanatory note to the aforementioned Regulation and Communication FSMA_2018_05 of 8 May 2018 on continuing training for compliance officers.

4:192 The statutory governing body should issue an annual report assessing the proper functioning of the compliance function (see point 4.4.4.1.7. above).

4.4.4.3. RISK MANAGEMENT FUNCTION

Legal and regulatory framework:

1. Banking Law: Articles 35, 37 and 38
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 179 to 203
 - Circular NBB_2021_18 of 20 July 2021 transposing Guidelines EBA/GL/2020/06 of 29 May 2020 on loan origination and monitoring
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 179 to 203
 - Guidelines EBA/GL/2020/06 of 29 May 2020 on loan origination and monitoring
 - BCBS Principles: principles 6 to 8

4:193 The risk management function should ensure that all significant risks are detected, measured and duly reported. It should have access to all operational units and other internal units that have the potential to generate risk, as well as to subsidiaries and affiliated undertakings. It should have an appropriate status and corresponding central position in the institution's organisation. The risk management function 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 the institution is exposed to.

4:194 The tasks of the risk management function are described in detail in Guidelines EBA/GL/2021/05. For further information on its role in (i) risk strategy and decisions, (ii) material changes, (iii) identifying, measuring, assessing, managing, mitigating, monitoring and reporting risks, and (iv) unapproved exposures, please refer to paragraphs 179 to 199 of Guidelines EBA/GL/2021/05. Please also refer to paragraphs 63 to 71 of Guidelines EBA/GL/2020/06 on loan origination and monitoring, which describe the role of the risk management function in the lending decision process.

4:195 In accordance with Article 37, § 3 of the Banking Law, the person responsible for the risk management function should in principle be a member of the management committee, and the risk management function should be the only specific function for which he is individually responsible. However, if the credit institution is not a significant credit institution as defined in Article 3, 30° of the Banking Law, the supervisory authority may, based on the principle of proportionality, allow the risk management function to be exercised by a senior member of staff ("N-1"), provided there is no conflict of interest on the part of this person. Furthermore, Article 37, § 3, second paragraph allows for a derogation from the principle that a CRO who is a member of the management committee should only be individually responsible for the risk management function. The supervisory authority may authorise a CRO who is a member of the management committee to also be responsible for the compliance function, provided that these two functions are performed separately.

4:196 For further information, please refer to paragraphs 200 to 203 of Guidelines EBA/GL/2021/05.

4.4.4.4. INTERNAL AUDIT FUNCTION

Legal and regulatory framework:

1. Banking Law: Articles 35 and 39
2. NBB Regulation:
 - Regulation of 19 May 2015 on the internal control and the internal audit function

3. Relevant thematic NBB circulars:

- Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
- Circular NBB_2015_21 of 13 July 2015 concerning the internal control system and the internal audit function

4. International reference documents:

- Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 214 to 224
- BCBS Principles: principle 10
- The internal audit function in banks, BCBS, June 2012

4:197 An effective internal audit function should independently provide reasonable assurance to the statutory governing body and the management committee as regards the quality and effectiveness of the institution's internal control, risk management and governance systems and processes.

4:198 The internal audit function should report directly to the statutory governing body, where applicable through the audit committee, and should keep the management committee or the senior management informed about its findings. For more details on the NBB's prudential expectations regarding the internal audit function, please refer to the NBB's Regulation of 19 May 2015 and to Circular NBB_2015_21 as well as to paragraphs 214 to 224 of Guidelines EBA/GL/2021/05.

4.5. ICT SECURITY AND CONTINUITY MANAGEMENT

4.5.1. ICT SECURITY

Legal and regulatory framework:

1. Banking Law: Article 21, § 1, 7°
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_21 of 26 October 2021 on the EBA Guidelines on major incident reporting
 - Circular NBB_2020_23 of 16 June 2020 on the EBA Guidelines of 29 november 2019 on ICT and security risk management
 - Circular NBB_2019_09 of 8 May 2019 on the EBA Guidelines on security measures for operational and security risks of payments services
 - Circular NBB_2019_19 of 19 July 2019 on outsourcing
 - Circular NBB_2015_32 of 18 December 2015 on the NBB's additional prudential expectations concerning the operational continuity and security of systemic financial institutions
 - Communication NBB_2011_05 of 27 October 2011 on the NBB's prudential expectations on sound management of operational risk
 - Circular NBB_2009_17 of 7 April 2009 on prudential requirements for financial services via the Internet
 - Circular PPB 2005/2 of 10 March 2005 on the sound management practices aimed at ensuring the business continuity of financial institutions
3. International reference documents:
 - Principles for effective risk data aggregation and risk reporting, BCBS, January 2013
 - Sound Practices for the Management and Supervision of Operational Risk, BCBS, June 2011

4:199 Article 21, § 1, 7° of the Banking Law stipulates that IT control and security mechanisms should be put in place which are appropriate to the institution's activities and which are sufficiently robust to guarantee the security and authentication of the means of transferring information, minimise the risk of data corruption and unauthorised access and prevent information leaks in order to maintain data confidentiality at all times.

4:200 For example, the statutory governing body should ensure that the institution's governance system, in particular the risk management and internal control system, adequately manages the risks related to information and communication technology (ICT) and information security.

4:201 The statutory governing body should also ensure that the quantity and skills of the institution's staff are adequate to support its ICT operational needs and ICT risk management processes and ensure the implementation of its ICT strategy. Furthermore, staff should receive adequate training on information security and the associated risks, on a regular basis.

4:202 The statutory governing body has overall responsibility for setting and approving the institution's written ICT strategy as part of its overall business strategy, as well as for overseeing its communication and implementation. This includes determining the ICT risk tolerance, in accordance with the institution's risk strategy, and drafting a regular written report about the result of the ICT risk management process.

4:203 It is useful for the institution to establish a written information security policy approved by the statutory governing body, which should define the high-level principles and rules to protect the confidentiality, integrity and availability of the institution's information in order to support the implementation of its ICT strategy. The policy should include a description of the main roles and responsibilities for information security management. Based on this policy, the institution should establish and implement more specific information security procedures and measures to, inter alia, mitigate the ICT and security risks it is exposed to.

- 4:204 Institutions should, as part of their governance system and in accordance with the principle of proportionality, establish an information security function whose tasks should include: (i) providing guidance on the institution's information security vision and strategy, taking into account all relevant information; (ii) ensuring that the information security objectives and measures defined in this strategy are translated into a comprehensive information security policy framework; (iii) properly communicate this information security policy framework to all stakeholders, internally and, as appropriate, externally; (iv) assess, monitor and ensure compliance with the information security strategic framework and, as appropriate, adapt it; and (v) establish security risk management and reporting processes that are integrated into the institution's overall risk management framework.
- 4:205 Responsibility for the information security function may be assigned to the so-called Chief Information Security Officer (or CISO), who should have a sound knowledge of logical and physical security solutions, a thorough understanding of the institution's business model and organisational structure, and excellent leadership and communication skills.
- 4:206 The information security function should be a senior function ("N-1" level) within the institution that can report directly to the statutory governing body and the management committee. Institutions should ensure the independence and objectivity of the information security function by separating it appropriately from the processes related to ICT development and operations. To avoid any potential conflict of interest, it is recommended that institutions take the following measures: describe the function and tasks of the CISO and the information security function as a whole; determine the resources needed for the information security function; designate a budget for information security training sessions within the institution and for the training of the CISO and his or her staff; ensure that the CISO function is independent of the services responsible for the operation and development of ICT systems; and ensure that the CISO is not involved in internal audit activities.
- 4:207 For further information, please refer to the relevant thematic NBB circulars and to the document entitled *Sound Practices for the Management and Supervision of Operational Risk*, published by the Basel Committee on Banking Supervision on 30 June 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.
- 4:208 With regard to the use of outsourcing, see Circular NBB_2019_19, which applies to all cases of outsourcing, including cases of cloud outsourcing.
- 4:209 With regard to the provision of financial services via the internet, 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, transposed into Circular NBB_2016_29, also offer useful guidance in this context.
- 4:210 With regard to payment services, Circulars NBB_2020_23 and NBB_2021_21 clarify the applicable framework for the identification, implementation and monitoring of the security measures to be taken by institutions to control operational and security risks in the context of the provision of payment services and, where appropriate, report any major security incidents related thereto.

4.5.2. BUSINESS CONTINUITY MANAGEMENT

Legal and regulatory framework:

1. Banking Law: Article 21, § 1, 9°
2. Relevant thematic NBB circulars:

- Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
 - Circular NBB_2017_29 of 30 November 2017 on crisis management
 - Circular NBB_2015_32 of 18 December 2015 on the NBB's additional prudential expectations concerning the operational continuity and security of systemic financial institutions
 - Circular PPB 2005/2 of 10 March 2005 on sound management practices aimed at ensuring the business continuity of financial institutions
3. International reference documents:
- Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 225 to 230

4:211 Institutions should establish a sound business continuity management and recovery plan to ensure their ability to operate on an ongoing basis and to limit losses in the event of severe business disruption.

4:212 For more information on business continuity management, please refer to paragraphs 225 to 230 of Guidelines EBA/GL/2021/05, which recommend, inter alia, that a specific independent business continuity function be established, for example as part of the risk management function. Please also refer to the Law of 1 July 2011 on the security and protection of critical infrastructures.

4:213 In addition, Circular PPB 2005/2 sets out a number of criteria - translated into sound management practices - for the assessment by the NBB of the business continuity plan.

5. GOVERNANCE AT GROUP LEVEL

Legal and regulatory framework:

1. Banking Law: Articles 168, 168/1, 170 (consolidated supervision), 190 to 194 (supplementary conglomerate supervision) and 205 et seq. (parent undertakings)
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
3. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 83 to 90

5:1 The requirements of good governance also apply in the context of a group as defined in Part I, Title II, Chapter II of Regulation No 575/2013. Indeed, the rules of good governance should be complied with on a consolidated, and, if applicable, sub-consolidated basis. This chapter applies to all types of groups (groups at EEA level, groups at Member State level, groups at Belgian level) and subgroups (subgroups at Member State or Belgian level).

5.1. GOVERNANCE RULES APPLICABLE INDIVIDUALLY TO (MIXED) FINANCIAL HOLDING COMPANIES

5:2 The requirements applicable individually to (mixed) financial holding companies governed by Belgian law are defined in Article 212 of the Banking Law⁴¹. Pursuant to this provision, the following articles of the Banking Law apply mutatis mutandis to any (approved, exempted or intermediary) financial holding company or mixed financial holding company governed by Belgian law: Articles 18, 19, 20, 24, § 1, on the understanding that at least 3 members of the management committee should be members of the statutory governing body, and §§ 3 and 4 of the same Article, 25 and 26, 46 to 54, 59/1, 60 and 62, §§ 1 to 4, § 5, first sentence and §§ 6 to 9, and 71, 77, 234 and 236, § 1, 1° to 5°. In addition, Article 61 applies mutatis mutandis to any (mixed) financial holding company where the independent control functions referred to in Article 35 have been set up within the (mixed) financial holding company in order to comply with Article 168, § 1. For more information on the application of the said provisions, please refer to the other chapters of this manual⁴².

5.2. GOVERNANCE RULES APPLICABLE TO GROUPS⁴³

5.2.1. Approval and exemption regime for (mixed) financial holding companies

5:3 Pursuant to Articles 212/1 et seq. of the Banking Law (which transpose Article 21a of Directive 2013/36/EU), overarching (mixed) financial holding companies in a Member State or in the EEA are subject to approval as of 2021. To obtain this approval, the group should have an appropriate

⁴¹ The requirements applicable individually apply cumulatively with those to be met at group level when the Belgian institution responsible for the group is an approved (mixed) financial holding company governed by Belgian law which is assimilated to a credit institution at the head of a group. Exempted and intermediate (mixed) financial holding companies (which are not subject to the sub-consolidation requirement) are only required to apply the individual requirements laid down in Article 212 of the Banking Law.

⁴² Where specific rules apply to (mixed) financial holding companies, they are explained in footnotes.

⁴³ Since the entry into force of the legal amendments transposing the CRD V, it is the capacity of the institution governed by Belgian law responsible for compliance with the prudential rules on a consolidated basis by the group or subgroup and by its entities which determines whether the group governance rules and recommendations of this manual are applicable. Whether the supervisory authority is or is not the supervisory authority on a consolidated basis is thus no longer the determining factor as it was under the CRD IV regime.

organisation on a consolidated or, where applicable, sub-consolidated basis⁴⁴. The purpose of this approval requirement is thus to ensure that the (mixed) financial holding company responsible for the group or subgroup has the necessary means to be held directly responsible for compliance by the group and its entities with the applicable legal and regulatory provisions on a consolidated or sub-consolidated basis.

- 5:4 Subject to the fulfilment of certain strict conditions, mainly related to non-interference in the conduct of business of subsidiaries which are credit or financial institutions, a (mixed) financial holding company may be exempted from approval. In that case, a subsidiary credit institution or an approved intermediate (mixed) financial holding company⁴⁵ should be designated on a permanent basis as the entity responsible for ensuring compliance on a consolidated basis with the obligations of the group and of the entities within it. This designated entity should have the necessary means to do so. For more information on the conditions for exemption and on Article 212/2, 4° of the Banking Law, please refer to the explanatory memorandum accompanying the Law incorporating the provisions of the CRD V into the Banking Law.

5.2.2. Governance rules applicable to groups where a Belgian entity is responsible for compliance with the prudential rules on a consolidated basis by the group and its entities

- 5:5 This point 5.2.2. concerns:
- 1) groups where the overarching parent undertaking in Belgium or in the EEA is a Belgian credit institution;
 - 2) groups where the overarching parent undertaking in Belgium or in the EEA is an approved Belgian (mixed) financial holding company;
 - 3) subgroups subject to a sub-consolidation obligation where a Belgian (mixed) financial holding company has been approved;
 - 4) groups or subgroups where a Belgian credit institution has been designated;
 - 5) groups or subgroups where a Belgian (mixed) financial holding company has been designated.
- The institution which is at the head of these groups or subgroups⁴⁶ is referred to as the "Belgian institution responsible for the group".
- 5:6 The Belgian institution responsible for the group must comply (on a consolidated and/or, where applicable, sub-consolidated basis) with Articles 21, 27 to 42, 56 to 59 and 63 to 71 of the Banking Law and (i) ensure that the governance arrangements, processes and mechanisms are consistent and well-integrated on a consolidated or sub-consolidated basis, (ii) assess the influence on each other of the companies included in the consolidated whole, and (iii) obtain all data and information relevant for the supervision of the group or subgroup.
- 5:7 All rules relating to good governance included in this Manual apply mutatis mutandis at group or subgroup level⁴⁷.

⁴⁴ The conditions for approval under Article 212/5 are closely linked with compliance with the governance rules referred to in Articles 168 (1° and 2°) and 212 (3° and 4°) of the Banking Law. The same applies in case of designation of an institution to replace the exempted (mixed) financial holding company pursuant to Article 212/2, §1, 3° or in case of application of Article 212/7, § 1, second paragraph, 4°.

⁴⁵ Because this financial holding company is at the head of a subgroup and the supervisory authority has imposed a sub-consolidation obligation.

⁴⁶ This may be a Belgian parent credit institution (Art. 164, § 2, 2°), a designated credit institution governed by Belgian law (Art. 164, § 1, 6°), an approved or designated (mixed) financial holding company governed by Belgian law (Art. 164, § 1, 5° and 7°).

⁴⁷ Article 205 provides that Belgian parent credit institutions, designated credit institutions governed by Belgian law and approved or designated (mixed) financial holding companies governed by Belgian law are responsible for compliance with the obligations relating to the consolidated supervision. Where an approved mixed financial holding company and a parent credit institution governed by Belgian law are at the head of a financial conglomerate, they should also be responsible for compliance with the obligations arising from the supplementary conglomerate supervision. A designated mixed financial holding company or a designated credit institution may also exercise such responsibility for the group as a whole, if the banking sector is the most important sector within the financial conglomerate based on Article 186, § 3.

5:8 In practice, the Belgian institution responsible for the group should implement arrangements, processes and mechanisms to ensure sound and consistent governance for the whole group or subgroup (including subsidiaries not covered by Directive 2013/36/EU and subsidiaries established in third countries as well as offshore financial centres⁴⁸) on a consolidated and sub-consolidated basis. These arrangements, processes and mechanisms should be appropriate to the structure, business models and risks of the group or subgroup (application of the principle of proportionality) and should not compromise the responsibility of the decision-making bodies of the institutions comprising the group or subgroup.

5:9 Without prejudice to the governance requirements applicable on an individual basis to regulated entities within the group or subgroup, the Belgian institution responsible for the group should ensure that the governance arrangements, processes and mechanisms it has put in place at group or subgroup level cover at least the following specific governance requirements⁴⁹:

- Interaction between decision-making bodies: the relevant decision-making bodies within the Belgian institution responsible for the group or subgroup should interact and exchange data and information regularly with the entities within the group or subgroup. The governance arrangements, processes and mechanisms should ensure that the Belgian institution responsible for the group has sufficient data and information at its disposal to be able to assess the risk profile at group or subgroup level. This data or information must allow the group or subgroup to be supervised and steered, while remaining specific so as not to interfere with the subsidiaries' compliance with their local obligations regarding the exchange of information. Furthermore, the statutory governing body of the Belgian institution responsible for the group or subgroup should ensure that the different group or subgroup entities (including the Belgian institution responsible for the group) receive sufficient information to get a clear perception of the general objectives, strategies and risk profile of the group or subgroup and of how the group or subgroup entity concerned is embedded in the structure and operational functioning of the group or subgroup. Such information and revisions thereof should be documented and made available to the relevant functions concerned, including the statutory governing body, business lines and independent control functions. The members of the statutory governing body of the Belgian institution responsible for the group or subgroup should keep themselves informed about the risks posed by the group's or subgroup's structure. Without prejudice to any local obligations regarding the exchange of information and professional secrecy, this includes receiving: (i) information on main risk drivers; (ii) regular reports assessing the responsible Belgian institution's overall structure and evaluating the compliance of individual entities' activities with the approved strategy for the group or subgroup as a whole; and (iii) regular reports on topics where the regulatory framework requires compliance at individual, consolidated, and/or, if applicable, sub-consolidated levels;
- Group-level risk management: the Belgian institution responsible for the group or subgroup should implement a risk management system at group or subgroup level that takes into account interdependencies, and in particular: (i) reputational risk and risks arising from intra-group transactions and risk concentrations, including contagion risks, at group or subgroup level; (ii) interdependencies between risks arising from conducting activities through different entities and in different jurisdictions; (iii) risks arising from entities in third countries; (iv) risks arising from unregulated entities; and (v) risks arising from other regulated entities;

⁴⁸ For more precise information on the scope of consolidation of the group or subgroup and the distinction between subsidiaries that fall within the scope of Directive 2013/36/EU and those that do not, please refer to the Banking Law and to Regulation No 575/2013. As regards the applicable scope of consolidation for remuneration requirements, some exceptions apply, in accordance with Article 109(4) and (5) of Directive 2013/36/EU, Article 212 of the Banking Law, which refers to Article 71 of the same Law, and certain Annexes to the Banking Law.

⁴⁹ Non-exhaustive list of specific requirements for the group or subgroup.

- Risk concentration: the Belgian institution responsible for the group or subgroup should ensure that there are processes and procedures in place to identify, measure, manage, monitor and report risk concentrations;
- Intra-group transactions: the Belgian institution responsible for the group or subgroup should ensure that the risk management system of the group or subgroup and of each individual undertaking includes processes and procedures to identify, measure, monitor, manage and report significant intra-group transactions;
- Internal control system and independent control functions at group level: the Belgian institution responsible for the group or subgroup should ensure that the internal control systems within the group are consistent and should establish independent control functions at group level that can provide a holistic view of all risks at group or subgroup level;
- Intra-group outsourcing: without prejudice to the outsourcing rules to be followed individually by the subsidiaries, the Belgian institution responsible for the group or subgroup should document intra-group outsourcing in order to identify which functions are outsourced to which legal entity and should ensure that the performance of critical or important functions, activities or tasks of the group or subgroup entities is not compromised by the outsourcing arrangements;
- Remuneration: the Belgian institution responsible for the group or subgroup should establish a consistent remuneration policy for the whole group, in line with the group's or subgroup's risk management strategies. In this respect, it is recalled that, as regards remuneration, only "institutions", "financial institutions" and "institutions offering ancillary services", as defined in Article 4(1)(3), (18) and (26) of Regulation No 575/2013 are included within the scope of regulatory consolidation. The remuneration policy of the group or subgroup, established in accordance with Belgian rules, should also extend to the foreign subsidiaries that are included within the scope of consolidation of the group or subgroup, insofar as they employ employees whose professional activities have a significant impact on the group's or subgroup's risk profile. However, in accordance with the new Article 168/1, § 1 of the Banking Law, subsidiaries within the scope of regulatory consolidation are exempted from the application of the remuneration requirements insofar as they are subject to such requirements on the basis of rules specific to their sector;
- Management of conflicts of interest: the Belgian institution responsible for the group or subgroup should take into account the interests in the context of a conflict of interest policy at group or subgroup level on a consolidated or sub-consolidated basis. In accordance with Article 21, § 1, 3° in conjunction with Article 168, § 1 of the Banking Law, the said institution should put in place on a consolidated or sub-consolidated basis effective procedures for the identification, measurement, administration, monitoring, internal reporting and prevention of risks of conflicts of interest within the group or subgroup.

5:10 For further information, please refer to paragraphs 83 to 90 of Guidelines EBA/GL/2021/05.

5.2.3. Governance rules applicable to Belgian credit institutions and Belgian (mixed) financial holding companies within a group where an institution governed by the law of another Member State is responsible

5:11 For Belgian credit institutions and Belgian (mixed) financial holding companies within a group where an institution governed by the law of another Member State is responsible, it should be ensured that the organisation and management of the group do not prejudice the responsibility of the statutory governing body and the management committee of the Belgian institution as regards the conduct of the institution concerned.

5.2.3.1. Basic principle

5:12 The prudential assessment of the group governance assumes that the institution governed by the law of another Member State responsible for the group and its subsidiaries, including the Belgian

subsidiary(ies), are in agreement with each other and operate in a transparent and balanced manner, focusing on optimal management of the activities of the different supervised institutions and adequate monitoring of the risks faced by the individual institutions and the group as a whole.

5:13 In this respect, it is the institution responsible for the group, as the entity which defines the overall policy and strategy of the group, which should manage the group in the best possible way, while respecting the legal personality of the various subsidiaries, without prejudice to the measures that the institution responsible for the group may take to control the reputational risk that may arise from inappropriate behaviour by a subsidiary. In accordance with paragraph 86 of Guidelines EBA/GL/2021/05, the institution governed by the law of another Member State responsible for the group should consider the interests of all its subsidiaries, and how strategies and policies contribute to the interest of each subsidiary and the interest of the group as a whole over the long term.

5.2.3.2. Distribution of tasks between the institution governed by the law of another Member State responsible for the group and the Belgian subsidiary

5:14 It is the responsibility of the subsidiary not to undermine the necessary coherence within the group and to ensure that information can flow sufficiently upstream and downstream within the consolidated group.

5:15 Without prejudice to the role played by the institution responsible for the group in this respect, the Belgian subsidiary's governing bodies should also ensure that the management of the group complies with the rules and obligations of the subsidiary as an independent legal person and as a regulated institution. The Belgian subsidiary's statutory governing body and management committee should ensure in particular that the organisation of the group complies with the rules and obligations of this Belgian subsidiary as an independent legal person and as a regulated institution. They should ensure, inter alia, that decisions or practices at group level do not conflict with: (i) legal and regulatory provisions or prudential rules to which the subsidiary is subject; (ii) technical rules and regulations or codes regulating the supervised activity; (iii) the sound and prudent management and financial equilibrium of the subsidiary; or (iv) the interests of its own stakeholders and the protection of depositors.

5.2.3.3. Management of intra-group conflicts of interest

5:16 Conflicting interests at group level are identified, prevented or managed. These may include inter alia:

- i. conflicts of interest arising from the exercise of activities that could create mutual conflicts;
- ii. intra-group transactions and capital distribution within the group;
- iii. diverging interests between the institution responsible for the group and subsidiaries or between subsidiaries, e.g. regarding the allocation of corporate and regulatory opportunities;
- iv. group decisions that have a different impact on the management of the financial position for the different metiers exercised by the various subsidiaries.

5:17 In the exercise of their corporate responsibility, the directors of the subsidiary should have appropriate resources to safeguard the institution's corporate interest while keeping in mind its stakeholders. For this purpose, intra-group mechanisms should be put in place to allow certain decisions or practices at group level that could give rise to an intra-group conflict of interest to be identified in this light and brought to the attention of the governing bodies of the subsidiary and institution responsible for the group. In the case of intra-group operations or transactions that are potentially material to the subsidiary, it is proper to set up an ad hoc committee of independent directors in casu to issue an opinion, to be considered by the subsidiary's statutory governing body, on the subsidiary's interest in the context of such intra-group operations or transactions.

5:18 Depending on the group's governance model, these internal mechanisms should also rely for example on a robust supervisory function within the subsidiary's statutory governing body, the presence in the subsidiary's statutory governing body of directors who are independent from the institution responsible for the group or subgroup, or the existence of effective independent control functions within the subsidiary.

5.2.4. Governance rules applicable to Belgian credit institutions and Belgian (mixed) financial holding companies within third country groups

- 5:19 The governance rules set out in point 5.2.3. above are mutatis mutandis applicable to third country groups.
- 5:20 In accordance with Articles 218/1 and 218/2 of the Banking Law, third-country groups whose activities through subsidiaries in the European Union exceed the threshold of € 40 billion are required to establish an intermediate parent undertaking in the European Union. This requirement should allow for more comprehensive supervision of activities in the European Union and facilitate resolution. Where such an intermediate parent undertaking is established in the European Union, the rules applicable to EU banking groups apply.

6. PRUDENTIAL REPORTING ON GOVERNANCE AND TRANSPARENCY

6.1. GOVERNANCE REPORTING

- 6:1 The two main⁵⁰ prudential governance reports are (i) the governance memorandum and (ii) the report of the senior management on the assessment of internal control.

6.1.1. GOVERNANCE MEMORANDUM

Legal and regulatory framework:

1. Banking Law: Articles 21, § 3, 23 and 56, § 6
2. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => Annex I

6.1.1.1. Governance memorandum at institutional level

- 6:2 Each institution should describe and document its entire internal governance structure in a governance memorandum. The statutory governing body should approve the governance memorandum and ensure that it is kept up to date⁵¹.
- 6:3 The governance memorandum is a prudential document that is an integral part of the authorisation dossier and is, as such, confidential.
- 6:4 The memorandum is primarily the responsibility of the institution. It should be updated whenever significant changes occur that affect the institution's governance structure and organisation and should be assessed at least once a year by the statutory governing body, in accordance with Articles 23 and 56 of the Banking Law. The institution should provide a detailed explanation if it does not comply with best practices provided for in circulars or international guidelines (comply or explain approach).
- 6:5 A governance memorandum outline is annexed to this Manual. The use of this outline is optional. It is also good practice to annex to the governance memorandum an inventory of governance policies (based on the list in point 4.4.1. of this Manual) and internal rules of procedure in force, if possible with links to the relevant documents or the documents themselves.

6.1.1.2. Group governance memorandum

- 6:6 Where the institution is part of a group that falls under the supervision of the supervisory authority, the governance memorandum drawn up for the institution may be part of the group memorandum⁵². Where this governance memorandum is integrated into a group memorandum, the statutory governing body of each institution subject to supervision to which the memorandum applies should approve the said memorandum.

⁵⁰ Without prejudice to the other prudential reports listed in the NBB circulars and communications on qualitative reporting (compliance report, AML report, loans to managers, assessment of the compliance function, etc.).

⁵¹ Articles 21, § 3, 23 and 56, § 6 of the Banking Law.

⁵² Article 21, § 3, second paragraph of the Banking Law.

- 6:7 Besides any relevant aspects relating to the subsidiaries which are part of the group, the group memorandum should cover the situation of the institution responsible for the group and of the group as such, and should contain in particular:
- i. a description of the objectives and interests of the group versus the areas of activity and interests of the subsidiaries;
 - ii. a description of the steering of the group and of the organisation of the group supervision of the subsidiaries;
 - iii. the concrete distribution of tasks between the institution responsible for the group and the subsidiaries, including a demarcation of the subsidiaries' own competences;
 - iv. an organisation 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 centralised services and all prudentially relevant functions within the institution responsible for the group and the subsidiaries (internal audit, compliance, risk management, appointed actuary, accounting, ...);
 - v. the policy and rules taken into consideration by the group as regards intra-group outsourcing, management of diverging interests, ...

6.1.1.3. Assessment by the supervisory authority

- 6:8 The memorandum and any significant changes in it should be communicated to the supervisory authority.

6.1.2. REPORT ON THE ASSESSMENT OF THE INTERNAL CONTROL

Legal and regulatory framework:

1. Banking Law: Article 59, § 2
2. Relevant thematic NBB circulars:
 - Uniform letter of 16 November 2015 to the institutions on the report of the senior management on the assessment of the internal control
 - Circular NBB_2011_09 of 20 December 2011 on the report of the senior management on the assessment of the internal control

- 6:9 Article 59, § 2 of the Banking Law provides that the institution's management committee should report to the statutory governing body, the accredited statutory auditor and the supervisory authority on the evaluation of the effectiveness of the organisational structure referred to in Article 21 of the Banking Law, including the specific organisational measures for the provision of investment services, the marketing of structured deposits and the provision of advice to customers on such products, and on the measures taken, if any, to remedy any deficiencies that may have been identified.
- 6:10 It should be noted that the new Article 59, § 2 of the Banking Law provides that significant institutions which come under the direct supervision of the ECB should submit this report annually to the supervisory authority, whereas all other institutions should submit it only at least every two years⁵³.

⁵³ However, these other institutions, which are not subject to the ECB's direct supervision, should nevertheless provide the following in the year in which no reporting is required:

- a summary of the main developments and changes, or in the absence thereof, the significant developments and changes introduced by the senior management during the period covered by the internal control reporting (including for investment services and activities); and
- a statement by the senior management in which it formally confirms that the organisation and the measures taken (including investment services and activities) comply with legal and regulatory requirements.

- 6:11 Circular NBB_2011_09 provides further information on the various reports that the institution's senior management should submit to the accredited statutory auditor and the supervisory authority. This circular also sets out the NBB's expectations with regard to periodic prudential reporting. For more information, please refer to this circular.

6.2. TRANSPARENCY TOWARDS STAFF AND THE PUBLIC

Legal and regulatory framework:

1. Banking Law: Article 75
2. Delegated Regulation 575/2013: Articles 435 and 450
3. Relevant thematic NBB circulars:
 - Circular NBB_2021_28 of 16 November 2021 transposing Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance
4. International reference documents:
 - Guidelines EBA/GL/2021/05 of 2 July 2021 on internal governance => paragraphs 231 to 234
 - BCBS Principles: principle 12

- 6:12 The institution's strategies, policies and procedures should be communicated to all relevant staff throughout the institution. For further information, please refer to paragraphs 231 and 232 of Guidelines EBA/GL/2015/05.
- 6:13 As regards transparency towards the public, Article 75 of the Banking Law requires institutions to publish on their websites the relevant information contained in their governance memorandums, which should cover at least the information referred to in paragraph 234 of Guidelines EBA/GL/2012/05.
- 6:14 The disclosure of the risk management objectives and policies is regulated directly in Article 435 of Regulation No 575/2013. For each separate category of risk, the institution should publish a minimum of information. Furthermore, the said article indicates which information should be made public regarding governance arrangements.
- 6:15 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.
- 6:16 Article 449a of Regulation No 575/2013 also provides that from 28 January 2022, large institutions⁵⁴ which have issued securities that are admitted to trading on a regulated market in a Member State, as defined in Article 4(1)(21) of Directive 2014/65/EU, should disclose information on environmental, social and governance risks, including physical risks and transition risks.

⁵⁴ As defined in Regulation No 575/2013.

ANNEX: GOVERNANCE MEMORANDUM OUTLINE

1. Shareholder structure
2. Group structure if applicable (legal and functional structure; organisation chart)
3. Policy as regards composition and functioning of the management bodies (with impact on the group, if applicable)
 - (a) number, length of mandate, rotation, age, follow-up, ...
 - (b) selection criteria (including diversity considerations)
 - (c) nomination procedure (new mandates/renewal) and termination/non-renewal
 - (d) independent members
 - (e) remuneration policy
 - i. executive members of the statutory governing body
 - ii. non-executive members of the statutory governing body
4. Governance structure and organisation chart (with impact on the group, if applicable)
 - (a) statutory governing body (in casu the board of directors)
 - i. composition (including meeting the quantitative diversity target)
 - ii. functioning (internal rules of procedure)
 - iii. internal division of tasks, if applicable
 - iv. specialised committees
 - composition
 - functioning
 - (b) management committee
 - i. composition (including meeting the quantitative diversity target)
 - ii. functioning (internal rules of procedure)
 - iii. internal division of tasks between the members
 - (c) senior management (MC-1 level)
 - i. composition
 - ii. internal division of tasks between senior managers
 - (d) other committees
5. Internal control and key functions (with impact on the group, if applicable)
 - (a) internal control framework (description of each function, including its organisation, resources and authority)
 - (b) supporting functions (secretary general, legal affairs, human resources, communication)
 - (c) independent control functions
 - i. internal audit
 - ii. compliance
 - iii. risk management
 - (d) risk strategy and risk management framework
 - (e) measures to prevent money laundering and terrorist financing
6. Organisational structure (with impact on the group, if applicable)
 - (a) operational structure, business lines, matrix management and allocation of competences and responsibilities
 - (b) outsourcing
 - (c) range of products and services and new product approval policy
 - (d) geographical scope of business
 - i. free provision of services
 - ii. branches
 - iii. subsidiaries, joint ventures, ...
 - (e) use of offshore 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, ...)
 - (d) gender pay gap
- 8. Code of conduct and behaviour (with impact on the group, if applicable)
 - (a) strategic objectives and corporate values
 - (b) internal codes and regulations, prevention policy, ...
 - (c) conflict of interest policy (at institutional level and for staff)
 - (d) whistleblowing
 - (e) handling of complaints received from customers
- 9. ICT security and continuity
 - (a) ICT security function
 - (b) ICT security mechanism in place
 - (c) continuity policy
- 10. Policy as regards publication of the principles applied
- 11. Status governance memorandum with date
 - (a) drafting
 - (b) last amendment
 - (c) last assessment
 - (d) approval by the statutory governing body