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PRACTICAL GUIDANCE ON THE LICENSING OF CREDIT INSTITUTIONS UNDER BELGIAN LAW

I. INTRODUCTION

This document outlines the procedure for credit institutions to obtain a licence under Belgian law and lists the main sources of information on - and forms to be used for – the application process.

Furthermore, it aims to assist applicants in their dealings with the NBB and the ECB so that their file is as clear and complete as possible.

II. SCOPE OF THE LICENSING REQUIREMENT

In Belgium, the activities of credit institutions are governed primarily by the Act of 25 April 2014 on the legal status and supervision of credit institutions (the “[Banking Act](#)”) and Regulation 575/2013 on prudential requirements for credit institutions and investment firms¹ (the Capital Requirements Regulation or “[CRR](#)”).

Pursuant to Article 7 of the Banking Act, a credit institution incorporated under Belgian law that wishes to carry out activities in Belgium must first obtain an authorisation. A credit institution is defined as:²

- (i) an undertaking whose activities consist of:
 - taking cash deposits or other repayable funds from the public and
 - extending credit for its own behalf; or
- (ii) a large, systemically important investment firm licensed as a credit institution (so-called “class 1 investment firms”) within the meaning of Article 4(1)(b) CRR.

Article 16 of the Banking Act states that credit institutions formed under Belgian law must take one of the following corporate forms: public limited company (NV/SA), cooperative company (CV/SC), European company (SE) or European cooperative society (SCE).

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

² Article 1(3)(1) of the Banking Act.

III. OVERVIEW OF THE LICENSING PROCESS

Pursuant to Article 4(1)(a) of Regulation 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions³ (the “[SSM Regulation](#)”), the ECB is exclusively empowered to authorise both “significant institutions”⁴ and “less significant institutions”⁵ in Belgium.

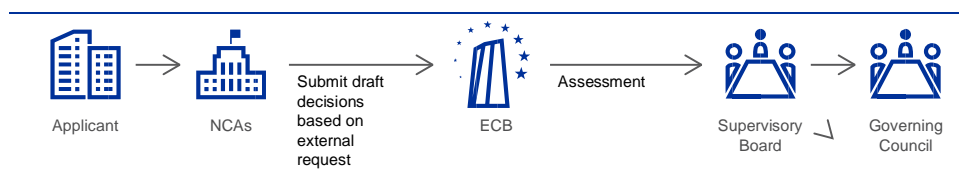
Since the [licensing of credit institutions](#) forms part of the so-called “common procedures”, the ECB works closely for this purpose with the NBB, which serves as the first point of contact in the process.

When assessing and granting licence applications, the NBB and the ECB apply the authorisation conditions set out in the Banking Act.

a. Procedural steps

The procedure can be summarised as follows:⁶

The authorisation process



1	The NBB serves as the first point of contact during the authorisation process. To apply, it is necessary to complete and submit the licence application form via the ECB's IMAS portal.	
2	The NBB analyses the application and checks whether it is complete and meets the conditions of the Banking Act. If the application is found to be incomplete, the NBB will ask the applicant to provide additional information.	
	Procedure in the event of approval	Procedure in the event of rejection
3	If the NBB finds that the application meets all applicable conditions, it will send a draft decision to both the applicant and the ECB.	If the NBB finds that the application does not meet the applicable conditions, the licence application will be rejected. The applicant will be notified of this decision within 15 days. The applicant has the right to be heard and may also appeal the NBB's rejection decision .

³ 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.

⁴ These are credit institutions that are directly supervised by the ECB pursuant to Article 6(4) and (5)(b) of the SSM Regulation.

⁵ These are other credit institutions that do not fall within the definition set out in footnote 4.

⁶ Source: ECB Guide to assessments of licence applications.

4	The ECB assesses the NBB's draft decision based on the licensing conditions set out in the Banking Act and expresses an opinion on it, in the form of a "statement of no objection".	
5	The NBB's draft decision ⁷ is deemed accepted by the ECB unless the ECB rejects the decision within a period not to exceed 10 working days, which may be extended once for the same period of time on a substantiated basis.	The ECB has a period of 10 working days (which may be extended once for the same period of time, on a substantiated basis) to reject the NBB's draft decision if it finds that the licensing conditions set out in the Banking Act are not satisfied.
6	The applicant is notified by the NBB of the ECB's decision within 15 days' time.	The ECB must set down in writing the reasons for its rejection. The applicant has the right to be heard ⁸ and may also appeal the ECB's decision rejecting the application .
The above procedure should be carried out within a period of 6 months from the submission of a complete file and in any case no later than 12 months from receipt of the application. ⁹		

b. Practicalities

In practice, the licence application process is comprised of three stages, which are further explained in the ECB's *Guide to assessments of licence applications* ("[ECB Licensing Guide](#)").

During the **pre-application phase**, the applicant - even before submitting a formal licence application - can discuss its plans with the NBB. Such pre-application discussions do not affect the timeline for the licence application. It is highly recommended to complete this phase before taking the decision to formally submit a licence application.

The **application phase** starts with the formal submission of a licence application and the accompanying file as stipulated in Article 8 of the Banking Act. This is done by filling in the [licence application form](#) via the ECB's IMAS portal. Once the application has been formally submitted and is considered complete, the aforementioned period of 6 to 12 months starts to run. During this time, the NBB and the ECB analyse the file and hold several meetings with the applicant. They may request at any time additional information necessary for analysis and proper understanding of the application. The NBB will also consult the FSMA, if so required by the Banking Act.

If, based on the application, the NBB and the ECB find that the conditions to grant a licence are met, an establishment report must be prepared. This report must be drawn up by an auditor that

⁷ Given the need for sound and prudent policies, the draft decision may provide that the licence to carry out certain proposed activities is subject to conditions.

⁸ Where a licence application is rejected by the ECB or where conditions or obligations are imposed, the applicant is given the opportunity to comment, in accordance with the right to be heard (cf. Article 31 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing a framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities).

⁹ It is hereby clarified that each of these time limits should be considered a non-binding deadline, which is intended solely to reflect the legislator's will to ensure the prompt implementation of statutory requirements. Thus, even after expiry of these deadlines, the supervisor can still act and remains obliged to take a decision.

has been certified by the NBB.¹⁰ The report is used to verify, on the one hand, that the requirements to obtain a licence have been met and, on the other hand, that the institution fits the description of it provided in the application file. The licence can only be granted if the auditor finds that all conditions have been met. Moreover, NBB/ECB staff may organise a site visit prior to taking a final decision.

The **handover phase** to ongoing supervision starts after the ECB has taken a formal decision to grant a licence. In this phase, the ECB verifies the credit institution's compliance with the decision (and, if applicable, the conditions and/or obligations set out therein). Furthermore, the ECB and the NBB draw up a schedule for supervision of the institution. If the newly licensed institution does not meet the requirements stipulated in the licence decision or ongoing prudential requirements, the supervisor may take measures and/or impose sanctions.

IV. HOW TO PREPARE A FILE

a. Useful sources of information

Before starting to compile a file, applicants should read and consult the following documents and information sources, among others:

- the [Authorisations](#) page on the ECB's website;
- the ECB's [Guide to assessments of licence applications](#);
- the other information and guides provided on the ECB's [Authorisations](#) page, including the [Guide to fit and proper assessments](#) for directors and the [Guide on qualifying holding procedures](#);
- the [EBA Guidelines](#) of 11 November 2021 on a common assessment methodology for granting authorisation as a credit institution in accordance with Article 8(5) of Directive 2013/36/EU, which are addressed to competent authorities but contain useful information for applicants as well;
- the [licence application form](#) on the ECB's IMAS portal.¹¹

If the application relates to a fintech bank, i.e. a credit institution with a business model in which the development and provision of banking products and services are based on technological innovation, reference should also be made to the ECB's [Guide to assessments of fintech credit institution licence applications](#).

The aforementioned documentation provides insight into the following aspects:

- the statutory framework;
- general principles for the grant of licences;
- the various parts of the licence application and the assessment procedure, including:
 - ✓ the presentation of the applicant and its background, including the context and reason for the application;
 - ✓ the programme of operations, including the intended activities, the business model and the associated risk profile;
 - ✓ the organisational structure, including IT organisation and outsourcing needs;

¹⁰ The auditor, certified auditor or certified company auditor acts as an independent expert and is paid by the applicant. For more information on the auditor's role, please refer to Article 220 *et seq.* of the Banking Act.

¹¹ This form has been prepared in accordance with Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities.

- ✓ financial information, including an indication of the expected evolution of the balance sheet and income statement as well as the capital and liquidity adequacy;
 - ✓ the suitability of the shareholders;
 - ✓ the suitability of the directors and key function holders.
- specificities inherent to fintech banks;
 - the list of information to be submitted by the applicant as part of the licence application process;
 - general procedural considerations.

These documents allow applicants to prepare a broad outline for their project in an informed manner with a view to conducting a structured dialogue with the NBB during the pre-application phase.

In addition to the aforementioned basic information, detailed European and Belgian banking regulations constitute a valuable source of information which can help to guide applicants through the licence application process. A list of the main [European and Belgian regulations](#) and of the NBB [circulars and communications](#) applicable to credit institutions can be found on the NBB's website. On the latter page, prudential requirements are listed by category (shareholders and directors, regulatory coefficients, etc.) on the left-hand side, thus allowing more targeted searches to be conducted.

As the credit institution licence application process is complex, in terms of both content and scope, we strongly recommend that applicants consult a specialised (legal) service provider.

b. The pre-application phase

Before proceeding with the formal submission of a licence application, we recommend that applicants contact the NBB to discuss their proposed project. These discussions take place on the basis of a draft business plan prepared by the applicant. This allows, among other things:

- a determination to be made of whether the proposed activities indeed require a licence as a credit institution;
- the maturity of the project to be estimated;
- the scope and timeline of the project to be estimated;
- any prudential concerns to be addressed at an early stage;
- practical and procedural questions to be discussed directly with the supervisor.

As the pre-application phase does not affect the timeline of the formal licensing process, the applicant can decide at this stage to delay or discontinue the procedure. If the applicant finds that the project is ready to move forward, it can proceed to the next step, namely the formal submission of a licence application.

V. HOW TO SUBMIT A FILE

The licence application file should **always** be compiled and submitted **solely by electronic means** using the [form](#) available on the ECB's IMAS portal. Licence applications submitted in hard copy will not be accepted. The IMAS webpage contains practical information on how to access and use the portal. In order to access the licence application form, it is first necessary to register. For questions concerning the IMAS portal and the available forms, please contact the ECB.

The applicant may also choose to complete the application form in draft mode. This option allows the file to be compiled in stages and, if desired, certain aspects of the form to be discussed with the supervisor. Once the file is complete, the applicant can convert the draft form into a final version, which allows the file to be submitted and the assessment phase to start. The NBB will then check whether the file is complete and meets the conditions laid down in the Banking Act. If the

application is found to be incomplete, the NBB will ask the applicant to provide additional information. The file will then be handled as set out in this guide and the [ECB Licensing Guide](#).

The application should be true, accurate, complete and not misleading. If any information submitted by the applicant should fail to meet these requirements at any time, the applicant should notify the supervisor in writing.
