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BanqueNationaleBank DE BELGIQUE VAN BELGIË
Eurosystem

Circular

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Circular to financial institutions on acquisitions, increases, reductions and disposals of qualifying holdings

Scope of application

- credit institutions governed by Belgian law
- stockbroking firms governed by Belgian law
- insurance companies governed by Belgian law
- reinsurance companies governed by Belgian law
- payment and electronic money institutions governed by Belgian law
- central securities depositories and institutions supporting central securities depositories governed by Belgian law
- financial holding companies governed by Belgian law
- investment holding companies governed by Belgian law
- insurance holding companies governed by Belgian law
- mixed financial holding companies governed by Belgian law

(hereinafter collectively referred to as “financial institutions”)

Summary/Objectives

This circular is an update of circular NBB_2017_23 on the occasional and periodic reporting obligations of financial institutions to the supervisory authority in relation to qualifying holdings. Its purpose is to remind financial institutions of the statutory and regulatory reporting requirements applicable to them with regard to the composition of their capital and to inform them of the fact that the forms for disclosures to the supervisory authority in this regard have been fully digitalised.

Statutory references

- Act of 25 April 2014 on the legal status and supervision of credit institutions: Articles 53 and 212;
- Act of 20 July 2022 on the legal status and supervision of stockbroking firms: Articles 52 and 182;
- Act of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies: Articles 71 and 443;
- Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions: Articles 31 and 183;

- Royal Decree of 26 September 2005 on the legal status and supervision of settlement institutions and entities treated as settlement institutions: Article 14; and
- Regulation (EU) No 909/2014 on central securities depositories: Article 27.

Structure

1. Content and objectives
2. Occasional disclosures
3. Annual disclosure
4. Procedure for submission of the required disclosures - digitisation
5. Entry into force

Dear Sir or Madam,

From a prudential point of view, it is essential that persons who are capable of influencing the management of financial institutions due to their direct or indirect holdings in the capital of such institutions have the qualities necessary to consider that they will exercise this influence to promote the sound and prudent management thereof.

In addition to the statutory notification requirements for proposed acquirers, the prudential legislation also imposes on financial institutions themselves obligations for occasional and annual disclosures to the supervisory authority.

1. Context and objectives

The main reference document on qualifying holdings is the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector published on 5 May 2017 by the European Supervisory Authorities or ESAs (i.e. the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA)). These guidelines are supplemented, as far as credit institutions are concerned, by the ECB Guide on qualifying holding procedures, published in May 2023.[1]

The National Bank of Belgium (the "NBB") is publishing, concurrently with this circular, a new notice for the attention of persons intending to acquire, increase, reduce or dispose of a qualifying holding in the capital of financial institutions and for persons holding a qualifying holding. This communication NBB_2024_10 sets out the practical details of the procedure to notify and disclose qualifying holdings to the supervisory authority, i.e. the NBB or the ECB.[2] The key new feature is that the notification and disclosure forms will be fully digitalised as from 1 October 2024.

In this context, the purpose of this circular is to inform financial institutions that the occasional and annual composition of capital reporting forms have been updated and will be digitised as from 1 October 2024.

1 See the annexes to new communication NBB_2024_10 to persons intending to acquire, increase, reduce or dispose of a qualifying holding in the capital of a financial institution and to persons holding a qualifying holding.

2 The division of tasks between the NBB and the ECB can be summarised as follows: (i) for credit institutions governed by Belgian law, financial holding companies governed by Belgian law which head significantly important credit institutions, and mixed financial holding companies belonging to a Belgian banking group, the ECB is the competent authority, in accordance with the allocation of powers laid down in or pursuant to the SSM Regulation or the SSM Framework Regulation with regard to the supervision of credit institutions and (ii) for stockbroking firms governed by Belgian law, insurance companies and the other financial institutions referred to in the present circular, the NBB is the competent authority.

2. Occasional disclosures

Pursuant to the aforementioned legal provisions, financial institutions are required to notify the supervisory authority as soon as they become aware of an acquisition or disposal of their securities or shares that causes the transferor or transferee to exceed the statutory notification thresholds. This is the case when the holding concerned:

- ✓ becomes or ceases to be a qualifying holding (i.e. a holding equal to or greater than 10% of the capital or voting rights or below this threshold but allowing the holder to exert significant influence over the management of the financial institution),
- ✓ exceeds or falls below the threshold of 20%, 30% or 50%,
- ✓ causes the financial institution to become or cease to be the subsidiary of the acquiring or disposing person.

It should be noted that the disclosure obligations of the proposed acquirer or the transferring shareholder, on the one hand, and of the financial institution, on the other, are complementary but not identical. Thus, while proposed acquirers or transferring shareholders must fulfil their legal obligation to notify the supervisory authority prior to the proposed acquisition or disposal, as soon as they have taken a decision, the obligation of financial institutions to notify the supervisory authority of an acquisition or disposal of their securities or shares arises "*as soon as they become aware of it*". Depending on the circumstances, the notification obligation may therefore arise prior to completion of the transaction where the financial institution concerned is informed in advance of the decision of the proposed acquirer or transferring shareholder.

On the other hand, notification may only be required *after the fact* if the financial institution becomes aware of the acquisition or disposal of its securities or shares only after the transaction has actually taken place.

Such notifications to the supervisory authority may be based on information obtained from various sources by the financial institution. Thus, the obligation to notify the supervisory authority applies, for example, when the acquisition or disposal is reported to the financial institution in accordance with Article 7:79 of the Code of Companies and Associations or when the financial institution is required to record transfers of registered shares or partners' shares in its shareholders' or partners' register. More generally, however, this obligation applies when credible information[3] is directly or indirectly communicated to the financial institution outside the context of an obligation provided for by law or pursuant to the institution's articles of association. The supervisory authority also recommends that financial institutions examine, after each ordinary or extraordinary general meeting of shareholders, whether the list of shareholders present reveals any changes in the shareholder structure that would require them to make an occasional disclosure to the supervisory authority.

In such cases, financial institutions are asked to submit an occasional disclosure to the supervisory authority. The content of this occasional disclosure is set out in Annex 1.[4] This form is provided for information purposes only given that, as from 1 October 2024, it may be submitted to the supervisory authority solely by electronic means, via the OneGate platform.

The changes made to the occasional disclosure form compared with the previous version relate, on the one hand, to the extension of its scope of application to payment and electronic money institutions as well as central securities depositories and entities treated as such and, on the other hand, to its digitisation and layout.

It should also be noted that a financial institution is not exempt from this occasional disclosure obligation on the grounds that the proposed acquirer or the shareholder that has decided to dispose of all or part of

3 Credible information is information that the financial institution can reasonably believe.

4 In the case of a disposal or acquisition where the shareholder is already known (e.g. an intra-group transaction without a genuine change of control or the disposal of an indirect shareholding without a change in the percentage held at the next higher shareholder level), certain requests for information to be appended to the occasional reporting form in Annex 1 may be reduced with the prior consent of the supervisory authority. In this regard, the supervisory authority must be contacted in advance and the request must be justified.

its qualifying holding has fulfilled its statutory obligation to submit a prior notification to the supervisory authority.

In addition to the statutory obligation for financial institutions to disclose acquisitions and disposals of qualifying holdings on an occasional basis, the supervisory authority also asks financial institutions to disclose promptly, as part of the ongoing dialogue necessary for the optimal exercise of prudential supervision, acquisitions and disposals of their shares or partners' shares which, although not covered by the statutory occasional disclosure obligation, are likely to have a significant effect on the prudential assessment of the financial institution's situation. Such is notably the case when the financial institution is aware of an acquisition or disposal that causes or will cause the acquirer or transferor to exceed the 5% threshold and which the latter is required by law to disclose to the supervisory authority for information purposes only.

3. Annual disclosure

The aforementioned statutory provisions also stipulate that financial institutions must inform the supervisory authority at least once a year of the identity of their shareholders or partners that hold, directly or indirectly, acting alone or in concert, qualifying holdings in their capital, as well as the percentage of capital and voting rights held.

Financial institutions are requested to make this annual disclosure in the month following their annual general meeting, using all reliable sources of information at their disposal, in particular the disclosures of acquisitions or disposals sent to them in accordance with Article 7:79 of the Code of Companies and Associations, their shareholders' or partners' register, and the list of shareholders present at the last annual general meeting.

The content of this annual disclosure is set out in Annex 2. This form is provided for information purposes only given that, as from 1 October 2024, it may be submitted to the supervisory authority solely by electronic means, via the OneGate platform.

Changes made to the annual disclosure form compared with the previous version relate, on the one hand, to the extension of its scope of application to payment and electronic money institutions as well as central securities depositories and entities treated as such and, on the other hand, to its digitisation and layout.

4. Procedure for submission of the required disclosures - digitisation

The new occasional and annual disclosure forms are currently being digitised and will be available on the NBB's OneGate platform as from 1 October 2024.

As a result:

- as from 1 October 2024, financial institutions will be required to submit forms 1 and 2 systematically and exclusively by electronic means using the NBB's OneGate platform. After this date, any other means of submission will no longer be accepted (save for exceptional cases, for example if a file was already under discussion on the aforementioned date of digitisation). In other words, as from 1 October 2024, only forms submitted via OneGate will be processed;

- until 30 September 2024, the old versions of forms 1 and 2 (which are still available on the NBB's website) may be used;

- the new forms 1 and 2 annexed to this circular will also be available, in PDF format, on the NBB's website. The NBB stresses that these forms are for information purposes only and cannot be used to submit information to the NBB;

- for more information on OneGate, please visit the NBB's website (FAQ New Reporting - OneGate | nbb.be).

5. Entry into force and digitisation of forms

This circular repeals and replaces circular NBB_2017_23 with immediate effect (with the exception of the old forms annexed hereto, which remain applicable until 30 September 2024).

A copy of this circular is being sent to the auditor(s) of your company or institution.

Yours faithfully,

Pierre Wunsch

Annexes:

- *Form 1 - Modification of the capital structure or composition - Occasional disclosure*
- *Form 2 - Capital structure and composition - Annual disclosure*