25 APRIL 2014. - Law on the legal status and supervision of credit institutions and stockbroking firms

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(Belgisch Staatsblad/Moniteur belge [Belgian Official Gazette], 7 September 2014)

(Unofficial consolidated text)


BOOK I. - SCOPE - DEFINITIONS - GENERAL PROVISIONS

TITLE I. - Scope

Article 1. § 1. Articles 242, 15° to 19° and 296 to 310, 378 and 379 of the present Law regulate a matter referred to in Article 77 of the Constitution.

The other provisions of the present Law, including the Annexes thereto, regulate a matter referred to in Article 78 of the Constitution.

§ 2. This Law regulates the establishment, activity and the supervision of credit institutions and investment firms which have the capacity of stockbroking firm operating in Belgium, and their potential resolution, to protect savers, investors and the robustness and proper functioning of the financial system.

For this purpose, it determines the supervisory task of the National Bank of Belgium in its capacity of national competent authority, namely within the scope of the Single Supervisory Mechanism.

Books I to XI and Annexes I to VI of the present Law provide for the partial transposition - which remains limited to the part relating to credit institutions,

- of Directive 2013/36/EU;


- of Directive 2014/65/EU;


Books I, XI, and XII and Annexes I, II and IV to VI of the present Law provide for the transposition - which remains limited to the part relating to investment firms with the capacity of stockbroking firm,

- of Directive 2013/36/EU;
- of FICOD I;
- of Directive 2014/59/EU;
- of Directive 2014/65/EU; as well as
- of Directive 97/9/EC.

§ 3. A “credit institution” shall mean a Belgian or foreign undertaking whose business is to receive deposits or other repayable funds from the public and to grant credit for its own account.

A “stockbroking firm” shall mean an investment firm governed by Belgian or foreign law, the business of which consists in providing

a) investment services consisting of:
- dealing on own account;
- underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
- placing of financial instruments without a firm commitment; or
- operating multilateral trading facilities; and/or

b) ancillary services consisting of:
- safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash and/or collateral management;
- granting credits or loans to an investor to enable the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
- foreign exchange services where these are connected to the provision of investment services; or
- services related to underwriting of financial instruments.

Article 2. The following shall not be considered credit institutions for the purposes of this Law:

1° the National Bank of Belgium, the European Central Bank and the public limited liability company bpost;

2° companies carrying out capital redemption operations governed by the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.

TITLE II. — Definitions

Article 3. The following definitions shall apply for the purposes of this Law and its implementing decrees and regulations:

1° the National Bank of Belgium: the institution referred to in the Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium, hereinafter referred to as “the Bank”;

17.6.2016
2° the SSM Regulation: 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;

3° Single Supervisory Mechanism: the supervisory mechanism established by the SSM Regulation;

4° the supervisory authority: the Bank or the European Central Bank, as per the distribution of competences stipulated in or by virtue of the SSM Regulation, as regards the supervision of credit institutions; the Bank as regards the supervision of stockbroking firms;

5° non-participating Member State: a Member State whose currency is not the euro and which has not established a close cooperation within the meaning of Article 7 of the SSM Regulation;

6° non-participating Member State: a Member State whose currency is not the euro and which has not established a close cooperation within the meaning of Article 7 of the SSM Regulation;


9° Member State: a State that is a party to the European Economic Area (EEA) Agreement;

10° competent authority: a public authority or institution officially recognized by Directive 2013/36/EU or Directive 2014/65/EU and by the national law of a Member State and that is authorized under that national law to exercise supervision of credit institutions and investment firms within the scope of the supervisory regime of that State, as well as, where applicable, the European Central Bank by virtue of its powers under the Single Supervisory Mechanism;

10° Single Resolution Board: the board established by Article 42 of Regulation No 806/2014;

11° third country: a State that is not a party to the European Economic Area Agreement;

12° authority of a third country: an authority that is tasked with the supervision of credit institutions or investment firms in a third country;

13° consolidating supervisor: the competent authority responsible for the supervision on a consolidated basis of EEA parent credit institutions and credit institutions controlled by an EEA parent financial holding company or an EEA parent mixed financial holding company;


15° European Banking Authority: the European Banking Authority established by Regulation No 1093/2010, hereinafter also referred to as the “EBA”;


17° ESRB: the European Systemic Risk Board established by Regulation (EU) No 1092/2010;

18° stability of the financial system: condition in which the risk of lack of continuity or disruption to the operation of the financial system is low, or in which the consequences for the economy would be limited should such disruptions occur;


21° Financial Services and Markets Authority: the institution referred to in Article 44 of the Law of 2 August 2002, hereinafter referred to as the “FSMA”;

22° Deposit and Financial Instrument Protection Fund, the fund established by Article 3 of Royal Decree of 14 November 2008 implementing crisis measures provided for in the Law of 22 February 1998 establishing the Organic Statute of the National Bank of Belgium, as regards the establishment of the guarantee fund for financial services;


24°/1 Law of 25 October 2016: the Law of 25 October 2016 on access to the activity of investment services and on the legal status and supervision of portfolio management and investment advice companies;

25° financial instruments: instruments as referred to in Article 2, paragraph 1, 1° of the Law of 2 August 2002;

26° the concepts of “control”, “participation”, “link through a participation”, “parent undertaking”, “subsidiary”, “consortium” and “affiliated enterprise”: the description given of these in the implementing decrees of Article 106, § 1 of the present Law;

27° close links:
   a) condition in which a link through a participation exists or
   b) condition in which enterprises are affiliated enterprises or
   c) a link of the same nature as referred to in points a) and b) hereinabove between a natural person and a legal person;

27°/1 related persons: spouses, partners deemed equivalent to spouses pursuant to their national law, and first-degree relatives;

28° qualifying holding: a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights attached to the securities issued by this undertaking or which makes it possible to exercise a significant influence over the management of that undertaking; the voting rights are calculated in accordance with the provisions of the Law of 2 May 2007 on disclosure of major holdings, and of its implementing decrees; no account is taken of voting rights or shares held as a result of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, unless these rights are exercised or otherwise used to intervene in the management of the issuer, provided that these rights are disposed of within one year of acquisition;

29° systemically important financial institution: an institution as referred to in Article 12 of Annex IV of the present Law;

30° significant credit institution: a credit institution that comes under one of the following criteria:
   a) a systemically important credit institution;
   b) a credit institution with a balance sheet total of more than EUR 3 billion.

The supervisory authority may decide that a credit institution that comes under the criterion under b) does not qualify as a significant credit institution because of its nature, its internal organization and the nature, scale, complexity and the cross-border nature of its activity;

31° insurance company: a company as referred to in Article 5, paragraph 1, 1° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;

32° reinsurance company: a company as referred to in Article 5, paragraph 1, 2° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;

33° investment firm: an investment firm within the meaning of Article 3, § 1 of the Law of 25 October 2016;


35° management company of undertakings for collective investment: a management company of undertakings for collective investment within the meaning of Article 3, 12° of the Law of 3 August 2012 on certain forms of collective management of investment
portfolios which satisfy the conditions laid down in Directive 2009/65/EC and Financial Vehicle Corporations;

36° Alternative Investment Funds or “AIFs”: undertakings for collective investment, including investment compartments thereof,

a) which raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

b) which do not qualify as a UCITS Scheme under the terms of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

37° Alternative Investment Fund Manager: a manager of Alternative Investment Funds within the meaning of Article 3, 13° of the Law of 19 April 2014 on Alternative Investment Funds and their managers, hereinafter also referred to as “AIFMs”;

38° financial holding company: a financial institution, the subsidiaries of which are exclusively or mainly one or more credit institution(s), stockbroking firm(s) or financial institution(s), at least one of such subsidiaries being a credit institution or stockbroking firm, and which is not a mixed financial holding company;

39° mixed financial holding company: a parent undertaking, other than a regulated undertaking, which heads a financial conglomerate;

40° mixed-activity holding company: a parent undertaking, other than a credit institution, financial holding company or mixed financial holding company, the subsidiaries of which include at least one credit institution;

41° financial institution: an institution other than a credit institution or stockbroking firm, the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12 and 15 of the list in Article 4;

42° regulated undertaking: a credit institution, an insurance company, a reinsurance company, an investment firm, a management company of undertakings for collective investment or an alternative investment fund manager;

43° insurance holding company: an insurance holding company within the meaning of Article 338, 5° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;

44° mixed-activity insurance holding company: a mixed-activity insurance holding company within the meaning of Article 338, 6° of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;

45° executive member of the statutory governing body: a member of the statutory governing body involved in the senior management of the institution; the following persons shall, inter alia, be considered an executive member: members of the statutory governing body who are members of the management committee or to whom the day-to-day management is entrusted within the meaning of Article 525 of the Companies Code;

46° critical functions: a credit institution’s or stockbroking firm’s activity, services or transactions, the interruption of which is likely to lead to disruption, in Belgium or in one or more other Member States, of services that are vital for the functioning of the real economy, or to disrupt financial stability due to the scale, market share, interconnectedness with entities internal or external to the group, complexity or cross-border activities of the credit institution, stockbroking firm or of the group it belongs to, with particular attention to the substitutability of this activity, these services or these transactions;
47° independent control functions: the internal audit function, the compliance function or the risk management function as referred to in Article 35;

48° regulatory own funds requirements: the own funds requirements stipulated in Article 92 of Regulation No 575/2013;

49° common equity tier 1 capital, additional tier 1 capital and tier 2 capital: the regulatory own funds elements laid down in Part 2, Title I, Chapters 2, 3 and 4 of Regulation No 575/2013;


50° recovery plan: a plan drawn up by a credit institution or a stockbroking firm in accordance with Article 108 or Article 557, insofar as Article 108 declares this applicable to the stockbroking firms referred to in Article 499, § 2;

50/1° group recovery plan: a plan drawn up in accordance with Article 425 or a plan as referred to in Article 7 of Directive 2014/59/EU that is drawn up by an EEA parent undertaking;

51° resolution plan: a plan drawn up by the resolution authority for a credit institution or a stockbroking firm in accordance with Article 226 or Article 581, insofar as Article 226 declares this applicable to the stockbroking firms as referred to in Article 499, § 2;

51/1° group resolution plan: a plan drawn up in accordance with Article 439 or a plan within the meaning of Article 12 of Directive 2014/59/EU drawn up by a foreign resolution authority;


52/1° foreign resolution authority: a public authority or an institution which, by virtue of Article 3 of Directive 2014/59/EU is officially recognized by the national law of another Member State and with the power to apply resolution tools and exercise the resolution powers, as well as, where applicable, the Single Resolution Board, in accordance with the distribution of competences established by or pursuant to Regulation No 806/2014;

52/2° third-country resolution authority: an authority which is responsible in a third country for the application of instruments or the exercise of power comparable with the resolution tools and resolution powers referred to in the present Law;

53° resolvability: the possibility for a resolution authority to resolve a credit institution, [a stockbroking firm,] a group as referred to in Article 423, 12°, or an entity as referred to in Article 424;

54° resolution tool: the sale of business tool, the bridge institution tool or the asset separation tool, depending on the case;

55° resolution: the application of a resolution tool in order to achieve one or more of the objectives specified in Article 243;
55/1° Resolution Fund: the resolution fund as referred to in Article 2 of the Law of 28 December 2011 on the Resolution Fund;

56° reorganization measures: measures which are intended to preserve or restore the financial situation of a credit institution or a stockbroking firm and which could affect the pre-existing rights of third parties. For the credit institutions as referred to in Book II, and for the stockbroking firms as referred to Book XII, Title II, these measures consist of:

a) the resolution tools and the respective resolution powers as referred to in Book II, Title VIII;
b) the appointment of a special commissioner as referred to in Article 236, § 1, 1°;
c) the suspension or prohibition of all or part of the activities, as referred to in Article 236, § 1, 4°;

57° reorganization authorities: the administrative or judicial authorities competent in the area of reorganization measures. For the credit institutions referred to in Book II, and for the stockbroking firms referred to in Book XII, Title II, these are the resolution authority and the supervisory authority as regards their respective competences for reorganization measures;

58° commissioner in reorganization: any person or body appointed by a reorganization authority whose task is to administer reorganization measures;

59° winding-up proceedings: collective proceedings opened and monitored by administrative or judicial authorities with the aim of realizing assets of a credit institution or stockbroking firm under the supervision of those authorities. For the credit institutions referred to in Book II, and for the stockbroking firms referred to in Book XII, Title II, such proceedings are consistent with a bankruptcy as governed by the Law of 8 August 1997 on bankruptcy;

60° settlement: the realization of the assets of a credit institution or stockbroking firm through winding-up proceedings;

61° winding-up authorities: the administrative or judicial authorities competent in the area of winding-up proceedings. For the credit institutions referred to in Book II, and for the stockbroking firms referred to in Book XII, Title II, this is the commercial court as regards its competence in the area of bankruptcies;

62° liquidator: any person or body, including the trustee in bankruptcy, appointed by a winding-up authority whose task is to administer winding-up proceedings;

63° strategic decision: a decision of a certain importance, that can therefore have a more global impact on an institution, insofar as various functions of the institution would be involved or affected by such a decision, and with a bearing on all investments, divestments, participations or strategic collaborations of the institution, in particular a decision to acquire or establish another institution, to establish a joint venture, to establish in another State, to enter into a cooperation agreement, to contribute or acquire a branch of activity, or to embark on a merger or division. By means of a regulation pursuant to Article 12bis § 2 of the Law of 22 February 1998, the supervisory authority can further stipulate which decisions shall be considered strategic within the meaning of this provision, in particular bearing in mind the risk profile and the nature of the institutions’ activity. The supervisory authority shall publish these further stipulations;

64° branch: a place of business which forms a legally dependent part of credit institutions or stockbroking firms and which carries out directly all or some of the transactions inherent in the business of credit institutions or the authorized business of a stockbroking firm; any number of places of business set up in the same Member State by an institution or firm with its registered office in another Member State shall be regarded as a single branch;
65° significant branch: a branch designated as being significant in a Member State in accordance with Article 51(1) of Directive 2013/36/EU;

66° systematic internalizer: a credit institution or a stockbroking firm which, on an organized, frequent and systematic basis, executes client orders on its own account outside a regulated market or a multilateral trading facility (MTF);

67° exceptional government intervention: any state aid within the meaning of Article 107, paragraph 1 of the Treaty on the Functioning of the European Union given to a credit institution or a stockbroking firm to maintain or restore its viability, liquidity or solvency;

68° covered deposits: deposits, including registered bank savings certificates and dematerialized bank savings certificates and those registered on nominative accounts, which are covered by the Belgian deposit protection scheme referred to in Article 380, at the coverage level provided for in Article 382;

69° eligible deposits: deposits, including registered bank savings certificates and dematerialized bank savings certificates and those registered on nominative accounts, which, by virtue of the applicable European Directive, are not excluded, owing to their nature or that of the depositor, from repayment through a deposit guarantee system;

70° working day: a day that is neither a Saturday, nor a Sunday nor a public holiday.

71° investment services and activities: the services and activities referred to in Article 2, 1° of the Law of 25 October 2016;

72° ancillary services: ancillary services as described in Article 2, 2° of the Law of 25 October 2016;

73° dealing on own account: trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

74° Multilateral trading facility (MTF): a multilateral system, operated by a stockbroking firm, a credit institution or a market operator, which brings together multiple third-party buying and selling interests in financial instruments—in the system and in accordance with non-discretionary rules—in a way that results in a contract in accordance with the provisions of Chapter II of the Law of 2 August 2002 or Title II of Directive 2014/65/EU;

75° third-party intermediary: an intermediary as referred to in Article 65/1, where a credit institution or a stockbroking firm deposits client assets;

76° financial instrument: a financial instrument as referred to in Article 2, paragraph 1, 1° of the Law of 2 August 2002;

Article 4. The following activities are subject to mutual recognition as governed by Articles 86, 90 and 92 and Book III, Title I:

1) acceptance of deposits or other repayable funds;
2) Lending, including consumer credit, mortgage credit, factoring with or without recourse and financing of commercial transactions (including forfaiting);
3) Financial leasing;
4) Payment services within the meaning of Article 4, 1° of the Law of 21 December 2009 on the legal status of payment institutions and electronic money institutions, on access to the activity of payment service provider, access to the activity of issuing electronic money and access to payment systems;
5) Issuing and administering other means of payment (e.g. travellers’ cheques and letters of credit), insofar as these activities do not fall under point 4;
6) Guarantees and commitments;
7) Transactions for the institution’s own account or for the account of clients in:
   a) money market instruments (cheques, bills, certificates of deposit etc.);
b) currencies

c) financial futures and options

d) exchange and interest-rate instruments

e) transferable securities;

8) Participation in securities issues and the provision of services related to such issues;

9) Advice to undertakings on capital structure, business strategy and related matters, as well as advice and services relating to mergers and acquisitions of undertakings;

10) Intermediation on the interbank market;

11) Portfolio management or advice;

12) Safekeeping and administration of securities;

13) Credit reference services;

14) Safe custody services;

15) Issuing electronic money.

Where reference is made in paragraph 1 to financial instruments, the services and activities specified in Article 2, 1° and 2° of the Law of 25 October 2016 fall under the mutual recognition regime of the present Law.

TITLE III. — Reserved names

CHAPTER I. — Naming of credit institutions

Article 5. Only the following institutions may make public use in Belgium of the terms “credit institution”, “bank”, “banking”, “savings bank” or “investment bank” or more generally of terms that refer to the status of a credit institution, in particular in their name, statement of corporate purpose, securities, assets, documents or advertising:

1° credit institutions established in Belgium;

2° credit institutions governed by the law of another Member State operating in Belgium in accordance with Article 313;

3° representation offices as referred to in Article 341;

4° credit institutions governed by the law of a third country and that offer investment services without being established in Belgium by virtue of the Law of 25 October 2016 and its implementing decrees.

However,

1° for the terms “bank” and “banking”, paragraph 1 shall not apply to the National Bank of Belgium, the European Central Bank and banking institutions governed by public international law to which one or more Member States are affiliated;

2° for the terms “credit institution”, “bank”, “savings bank” and “investment bank”, paragraph 1 shall not apply to credit institutions governed by foreign law that may not carry out banking operations in Belgium and that offer investment instruments to the public or that apply to admit investment instruments to trading on a regulated market within the meaning of the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets, as regards the aforementioned public offerings or applications for admission of financial instruments;

3° financial holding companies may make use of the term “bank” in the expression “bank holding company” or similar expressions, and mixed financial holding companies may make use of the term “bank” in the expression “bancassurance holding company” or similar expressions.
In the event of a risk of confusion, the Bank can request that credit institutions governed by foreign law that have the right to use the terms referred to in paragraph 1 in Belgium, add an explanatory statement to their name.

CHAPTER II. — Credit institutions that may issue covered bonds

Article 6. § 1. The term “Belgian covered bond” may only be used for securities issued in accordance with the provisions of Book II, Title II, Chapter 4, Section 3.

§ 2. The terms “Belgian lettre de gage/pandbrief” may only be used for securities that fulfil the conditions laid down by virtue of Article 2, § 1 of Annex III.

BOOK II. - CREDIT INSTITUTIONS GOVERNED BY BELGIAN LAW

TITLE I. — Access to activity in Belgium

CHAPTER I - Authorization

Section I. — Authorization requirement

Article 7. Every credit institution governed by Belgian law that wishes to pursue its business in Belgium must, prior to commencing, obtain authorization, irrespective of where else it pursues its business.

Section II. — Procedure

Article 8. With the application for authorization submitted to the Bank, an administrative dossier must be included which complies with the conditions laid down by the supervisory authority and which includes, inter alia, a programme of operations which in particular details the nature and scale of the transactions envisaged, as well as the organizational structure of the institution and the close links it has with other persons. Applicants must provide all the information needed for the application to be assessed.

When determining the conditions referred to in paragraph 1, the supervisory authority takes into account the conditions laid down by the FSMA as regards the organization and procedures that fall under its supervision pursuant to Article 45, § 1, paragraph 1, 3° and § 2 of the Law of 2 August 2002.

Article 9. Applicants must also notify the Bank of the identity of any natural or legal persons who, alone or in concert, directly or indirectly, have a qualifying holding, which confers voting rights or not, in the capital of the credit institution. The notification must detail the proportion of capital and the amount of voting rights these persons hold. […]

Where there are no qualifying holdings, the said notification must detail the identity of the twenty largest shareholders and their proportion of capital.

Article 10. The Bank shall consult the FSMA prior to making a decision on an application for authorization concerning an institution that is either the subsidiary of a portfolio management and investment advice company, an AIFM, a management company of undertakings for collective investment governed by Belgian law, or the subsidiary of the parent undertaking of a portfolio management and investment advice company, an AIFM, a management company of undertakings for collective investment governed by Belgian law, or which is controlled by the same natural or legal persons as those controlling a portfolio.
management and investment advice company, an AIFM, or a management company of undertakings for collective investment governed by Belgian law.

Where the application for authorization concerns an institution that is either the subsidiary of another credit institution, insurance company, reinsurance company, investment firm, AIF, management company of undertakings for collective investment, with authorization or permission pursuant to the law of another Member State, or the subsidiary of the parent undertaking of another credit institution, insurance company, reinsurance company, investment firm, AIFM, management company of undertakings for collective investment, with authorization or permission pursuant to the law of another Member State, or that is controlled by the same natural or legal person as those controlling another credit institution, insurance company, reinsurance company, investment firm, AIFM, management company for undertakings for collective investment with authorization or permission pursuant to the law of another Member State, the Bank shall consult the authorities competent for the supervision of credit institutions, insurance companies, reinsurance companies, investment firms, AIFMs or management companies for undertakings for collective investment in these other Member States prior to making a decision on the application.

The Bank shall also previously consult the authorities referred to in the first or second paragraph to determine the suitability of shareholders and management in accordance with Articles 18 and 19, where these shareholders are undertakings as referred to in the first or second paragraph, and that of persons involved in the management of the credit institution as well as of those involved in the management of undertakings referred to in the first or second paragraph. These authorities shall share all information relevant for determining the suitability of the shareholders referred to in the present paragraph and that of the persons involved in the management.

Article 11. § 1. The supervisory authority shall make a decision on the application for authorization based on the opinion of the FSMA as regards:

1° the adequacy of the credit institution’s organization, in particular of its integrity policy as referred to in Article 21 to 42, as regards compliance with the rules referred to in Article 45, § 1, paragraph 1, 3°, and § 2 of the Law of 2 August 2002;

2° the professional integrity of the persons who are members of the statutory governing body of the credit institution or of the management committee or, where there is no management committee, that of the persons who are tasked with the senior management, and that of the persons responsible for the independent control functions if these persons are nominated for such a function for the first time in an undertaking that falls under the supervision of the supervisory authority pursuant to the SSM Regulation or to Article 36/2 of the Law of 22 February 1998.

The FSMA shall provide its opinion on the aforementioned matters within a period of fourteen days to be counted from the date on which the dossier is received from the Bank as referred to in Article 8 and at the latest within a month of receiving the request for an opinion. An absence of opinion by this date shall be deemed to be a positive opinion. Prior to the expiry of the deadline of one month, the FSMA may however inform the Bank that it will communicate its opinion at the latest within 15 days from the expiry of the said deadline.

§ 2. Where the Bank does not take into account the opinion of the FSMA on the matters referred to in the first paragraph, § 1, this fact shall be communicated, including the reasons thereof, in the decision to refuse the authorization or in the draft decision it forwards to the European Central Bank pursuant to the SSM Regulation. The aforementioned opinion of the FSMA on point 1° of § 1, first paragraph, shall be included in the notification of the
Bank’s decision to refuse the authorization or in its draft decision on the application for authorization as well as in the final decision of the European Central Bank.

**Article 12.** The supervisory authority shall provide its opinion on an application for authorization within six months after submission of the full dossier and at the latest within twelve months after receipt of the application.

If the Bank decides that the conditions of Section II are met, it shall communicate a draft decision to the applicant and to the European Central Bank so that the European Central Bank can rule within the terms referred to in paragraph 1 pursuant to the SSM Regulation. The Bank may, with a view to the need for sound and prudent management, in its draft decision attach conditions to authorization for the exercise of some of the envisaged activities.

If the Bank determines that the conditions of Section II are not met, it shall refuse the authorization.

The Bank shall notify of its decision to refuse the authorization or the final decision of the European Central Bank within fifteen days by registered letter or letter with recorded delivery, with due regard to the terms referred to in paragraph 1.

**Article 13.** Where a credit institution is granted authorization, the Bank shall provide the information referred to in Article 8 and any changes thereto to the FSMA to allow the FSMA to fulfil the tasks referred to in Article 45, § 1, 3° and § 2 of the Law of 2 August 2002.

**Article 14.** The supervisory authorities shall draw up a list of credit institutions to which authorization has been granted pursuant to this Book. This list, along with the annex referred to in § 2 and any changes made thereto, shall be published on their website and communicated to the European Banking Authority.

The financial holding companies and mixed financial holding companies referred to in Article 218 shall be annexed to this list. This annex and all changes made thereto shall be published on the website of the supervisory authorities and communicated in accordance with Article 218, paragraph 2.

**CHAPTER II. - Conditions for authorization**

**Section I – General provisions**

**Article 15.** Aside from the conditions laid down in this Chapter, the supervisory authority shall also take into consideration the applicant institution’s capacity to meet the conditions for pursuing activity referred to in Title II and to achieve its development objectives under the conditions necessary for the proper functioning of the banking and financial system and for the safety of depositors.

**Section II – Legal form**

**Article 16.** All credit institutions governed by Belgian law must be established under the legal form of a commercial company, with the exception of the form of sole-proprietor private limited-liability company.

**Section III. —Initial capital**

**Article 17.** In order to be granted authorization, a minimum capital of EUR 6 200 000 shall be required.

The capital shall be fully paid up to the minimum amount set out in paragraph 1.
For existing institutions applying for authorization, the issue premiums, reserves and results brought forward, with the exception of revaluation gains, will be considered as capital. However, this capital on its own must amount to at least EUR 2 500 000 and be paid up to that amount.

Section IV — Shareholders or members

Article 18. Where the supervisory authority is not satisfied as to the suitability of the natural or legal persons referred to in Article 9 to guarantee the sound and prudent management of the credit institution, authorization shall be refused.

The decision as to the suitability to guarantee the sound and prudent management of the credit institution shall be made on the basis of the following criteria:

a) the integrity of the natural or legal persons referred to in Article 9;

b) the professional integrity and expertise of each of the persons referred to in Article 19 who will manage the business of the credit institution;

c) the financial soundness of the natural or legal persons referred to in Article 9 especially in light of the nature of the activity exercised and envisaged within the credit institution;

d) whether the credit institution can comply and continue to comply with the prudential provisions by virtue of the present Law and its implementing decrees and of Regulation No 575/2013, in particular whether the group it forms a part of is structured in such a way as to permit effective supervision and effective sharing of information between the competent authorities, and to determine the distribution of responsibilities between the competent authorities.

e) whether there are grounds to suspect that on account of the natural or legal persons referred to in Article 9 money is being or has been laundered or terrorism is being or has been financed or an attempt is being made or has been made to launder money or finance terrorism, or that their capacity of shareholder of the credit institution would increase the risk thereof.

Section V. — Management

Article 19. § 1. The members of the statutory governing body of the credit institution, the persons tasked with the senior management thereof and the persons responsible for independent control functions may only be natural persons.

The persons referred to in the first paragraph must at all times possess the professional integrity and expertise required for their role.

§ 2. The senior management of the credit institution must be entrusted to at least two natural persons.

Article 20. § 1. The functions of member of the statutory governing body, person tasked with the senior management, or person responsible for an independent control function may not be exercised by persons charged with:

1° punishment for an offence as referred to in Royal Decree No 22 of 24 October 1934 prohibiting persons convicted of certain offences and bankrupts from carrying out certain functions, professions or activities;

2° punishment for violating:

a) Article 348 of the present Law;

b) Articles 42 to 45 of Royal Decree No 185 of 9 July 1935 on the supervision of banks and the rules governing the issue of securities or Article 104 of the Law of 22 March 1993 on the legal status and supervision of credit institutions;
c) Articles 31 to 35 of the provisions on the supervision of private savings banks, as consolidated on 23 June 1967;

d) Articles 13 to 16 of the Law of 10 June 1964 on the public soliciting of funds;

e) Articles 100 to 112ter of Title V of Book I of the Commercial Code or Articles 75, 76, 78, 150, 175, 176, 213 and 214 of the Law of 4 December 1990 on financial transactions and financial markets;

f) Article 4 of Royal Decree No 41 of 15 December 1934 protecting savings by regulating instalment sales of premium bonds;

g) Articles 18 to 23 of Royal Decree No 43 of 15 December 1934 on the supervision of capitalization companies;

h) Articles 200 to 209 of the laws on commercial companies, as consolidated on 30 November 1935;

i) Articles 67 to 72 of Royal Decree No 225 of 7 January 1936 regulating mortgage loans and organizing the supervision of mortgage loan companies, Article 34 of the Law of 4 August 1992 on mortgage loans or Articles XV.87, 3°, XV.90, 18° and 19°, XV.91, XV.126 and XV.126/1 of Book XV of the Code of Economic Law;

j) Articles 4 and 5 of Royal Decree No 71 of 30 November 1939 on the peddling of securities and door-to-door sales of securities, merchandise and goods;

k) Article 31 of Royal Decree No 72 of 30 November 1939 regulating the stock exchanges and forward commodities markets, the profession of brokers and intermediaries working on these forward markets and the non-enforceability of gambling debts;

l) Articles 29 of the Law of 9 July 1957 regulating hire purchase and the financing thereof, Article 101 of the Law of 12 June 1991 on consumer credit or Articles XV.87,2°, XV.90, 1° to 16°, XV.91, XV.126 and XV.126/1 of Book XV of the Code of Economic Law;

m) Article 11 of Royal Decree No 64 of 10 November 1967 regulating the status of holding companies;

n) Articles 83 and 87 of the Law of 9 July 1975 on the supervision of insurance companies;

o) Articles 11, 15, § 4 and 18 of the Law of 2 March 1989 on the disclosure of large shareholdings in companies listed on the stock exchange and regulating takeover bids;


q) Article 15 of the Law of 27 March 1995 on insurance and reinsurance broking and the distribution of insurance;

r) Articles 148 and 149 of the Law of 6 April 1995 on the legal status and supervision of investment firms;


s) Articles 345 to 349, 387 to 389, 433, 434, 647 to 653, 773, 788, 872, 873, 946 and 948 of the Companies Code;

t) Articles 38 to 43 of the Law of 2 August 2002;

u) Article 25 of the Law of 22 April 2003 on public offers of securities;


w) Article 14 of the Law of 14 December 2005 abolishing the bearer securities;
x) Articles 151 to 153 of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision;

y) Article 69 of the Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets;

z) Article 21 of the Law of 22 March 2006 on intermediation in banking and investment services and on the distribution of financial instruments;

z/1) Article 38 of the Law of 1 April 2007 on takeover bids;

z/2) Article 26 of the Law of 2 May 2007 on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions;

z/3) Article 75 of the Law of 16 February 2009 on reinsurance;

z/4) Articles 368 to 375 of the Law of 19 April 2014 on Alternative Investment Funds and their managers;

z/5) Article 605 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;

3° payment of an administrative fine imposed by the Bank or the FSMA as a result of an infringement:

a) of the Articles referred to in Article 348 of the present Law;

b) as referred to in Article 40 of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing;

c) of Articles 25 and 86bis of the Law of 2 August 2002;

d) of the Articles referred to in Article 605 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;

4° similar offences or violations as those referred to in 1°, 2° and 3° by a foreign administration, court or authority.

The King may amend the provisions of this Article in order to bring them into line with the laws amending the texts cited herein.

§ 2. The prohibitions referred to in paragraph 1 are valid for a term of

a) twenty years in the case of a prison sentence exceeding twelve months;

b) ten years for other prison sentences or fines as well as in the case of a suspended sentence.

Section VI. — Organization

Subsection I. — General principles

Article 21. § 1. Every credit institution shall have sound and appropriate structures for the organization of the business, including supervisory measures, to ensure effective and prudent management of the institution, and in particular founded on:

1° an appropriate management structure which is based, at the highest level, on the existence of a clear division between the senior management of the institution and the supervision of this management and ensuring that there is an adequate separation of functions within the organization and a clear, transparent and coherent structure for allocating responsibilities;

2° an appropriate administrative and accounting procedures and internal control, especially including a control system that provides a reasonable level of assurance of the reliability of the financial reporting process;
3° effective procedures for the identification, measurement, administration, monitoring and internal reporting of risks that the institution could incur and for the prevention of conflicts of interest;

4° an appropriate independent internal audit function, risk management function and compliance function;

5° an appropriate integrity policy;

6° a remuneration policy that guarantees sound and effective risk management, and discourages risk-taking that exceeds the level of tolerated risk established by the institution;

7° appropriate IT supervision and security measures for the operations of the institution;

8° an appropriate internal warning system which in particular provides for a specific independent and autonomous alert for breaches to the rules and codes of conduct of the institution;

9° the introduction of appropriate measures for business continuity to guarantee that the critical functions can be preserved or restored as quickly as possible and, without prejudice to the special requirements for investment services and activities, that the normal provision of services and activities can be resumed within a reasonable timescale.

§ 2. The organizational structure referred to in paragraph 1 shall be exhaustive and appropriate for the nature, scale and complexity of the risks inherent to the business model and operations of the institution.

§ 3. Every credit institution shall draw up a governance memorandum which includes, for the institution in question and, where applicable, for the group or subgroup of which it is the final parent undertaking, the entire internal organizational structure referred to in § 1.

Where the credit institution forms a part of a group that falls under the supervision of the supervisory authority, the memorandum drawn up for the credit institution may form part of the group memorandum.

§ 4. In subsections II to V, in Articles 67 to 70 and in Annexes I and II, the scope of the general obligations referred to in 1 and 2 is determined for specific domains.

Article 22. If the credit institution has close links with other natural or legal persons, or if the credit institution forms part of a group, such links or the legal structure of the group must not hinder the prudential supervision of the institution at both company and consolidated level.

If the credit institution has close links with a natural or legal person governed by the laws of a third country, the legal, regulatory and administrative provisions as well as the implementation of such provisions that apply to this person must not hinder the prudential supervision of the institution at both company and consolidated level.

Subsection II. - Governing bodies

Article 23. The statutory governing body holds the general responsibility for the credit institution.

The statutory governing body determines and controls in particular

1° the institution’s strategy and objectives;

2° risk management, including the risk tolerance referred to in Article 57.
The statutory governing body shall approve the credit institution’s governance memorandum referred to in Article 21, § 3.

Article 24. § 1. Every credit institution established as a public limited company (naamloze vennootschap/société anonyme) shall set up a management committee within the meaning of Article 524bis of the Companies Code, which shall be exclusively composed of members of the board of directors, and to which all management powers of the board of directors shall be transferred. This delegation of powers may under no circumstances relate to the determination of the general policy or to actions reserved for the board of directors pursuant to the Companies Code or to the present Law.

§ 2. The majority of members of the board of directors shall not be members of the management committee.

§ 3. The role of Chair of the board of directors shall be exercised by a person who is not a member of the management committee.

§ 4. A non-executive member of the board of directors may not be tasked with day-to-day management as referred to in Article 525 of the Companies Code.

Article 25. § 1. The articles of association of credit institutions established with a legal form other than that of public limited company (naamloze vennootschap/société anonyme), shall provide for the establishment of a body that is exclusively made up of the members of the statutory governing body, which shall be called the “management committee”, to which all management powers of the statutory governing body shall be transferred, with the exception of the establishment of the general policy and of the actions reserved for the statutory governing body pursuant to the Companies Code or to the present Law.

§ 2. The majority of members of the statutory governing body shall not be members of the management committee referred to in paragraph 1.

§ 3. The role of Chair of the statutory governing body shall be exercised by a person who is not a member of the management committee.

§ 4. Where the Companies Code provides for day-to-day management for the legal form concerned, a non-executive member of the statutory governing body may not be tasked with this day-to-day management.

Article 26. The supervisory authority may allow derogation, in whole or in part, from the obligations contained in Articles 24 and 25 based on the scale and risk profile of a credit institution.

This derogation may, inter alia, relate to:

1° the obligation to set up a management committee without prejudice to compliance with Article 19, § 2;

2° the composition of the management committee, by permitting that persons who are not members of the statutory governing body be members of the management committee; in such a case Articles 19, 20 and 60 as well as 14 to 18 of Annex II shall apply;

3° combining the role of member of the management committee and Chair of the statutory governing body.

Subsection III. — Establishment of committees within the statutory governing body

Article 27. Without prejudice to the tasks of the statutory governing body, credit institutions shall establish the following committees within this body:

1. 1° an audit committee;

2. 2° a risk committee;
3. 3° a remuneration committee;
4. 4° a nomination committee;

which shall be exclusively composed of members of the statutory governing body who are not executive members thereof and with at least one member being independent within the meaning of Article 526ter of the Companies Code; one member may not sit in more than three of the aforementioned committees.

The majority of the members of the audit committee are independent within the meaning of Article 526ter of the Companies Code. The Chair of the audit committee is nominated by the members of the committee.

**Article 28.** § 1. In addition to the requirements of Article 27, members of the audit committee shall have collective expertise in the field of the credit institution’s operations as well as in the area of accounting and audit and at least one member of the audit committee shall be an expert in the field of accounting and/or audit.

§ 2. The audit committee has at least the tasks included in Article 526bis, § 4 of the Companies Code.

The audit committee shall regularly report to the statutory governing body on the performance of its tasks and at least when the statutory governing body draws up the annual and consolidated financial statements as well as the periodic statements referred to in Article 106, which the credit institution submits at the end of the financial year and at the end of the first half-year respectively.

The Bank can, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, make technical clarifications and add to the items referred to in this paragraph.

§ 3. The accredited statutory auditor is tasked with the work included in Article 526bis, § 6, paragraphs 1 to 3 of the Companies Code.

**Article 29.** § 1. The members of the risk committee shall individually possess the necessary knowledge, expertise, experience and proficiency to understand and comprehend the institution’s strategy and risk tolerance.

§ 2. The risk committee shall provide advice to the statutory governing body on current and future risk tolerance and risk strategy. It shall assist the statutory governing body in exercising supervision of the implementation of this strategy by the management committee.

The risk committee shall oversee that the prices of assets and liabilities and of the categories of off-balance sheet products, that are offered to clients, 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 shall provide an action plan to the statutory governing body.

§ 3. Without prejudice to the information referred to in Article 57, § 3, the risk committee shall determine the nature, scale, form and frequency of the risk information it must be forwarded. It shall have direct access to the risk management function of the institution and to the advice of external experts.

§ 4. To promote sound remuneration practices and a sound remuneration policy, the risk committee shall, without prejudice to the tasks of the remuneration committee, investigate whether the incentives arising from the remuneration system 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.
Article 30. § 1. The remuneration committee shall be constituted in such a way as to ensure it can give sound and independent advice on the remuneration policy as well as the remuneration practices and incentives arising therefrom for the risk control, own funds requirements, and liquidity position.

§ 2. The remuneration committee shall provide an opinion on the remuneration policy that must be established by the statutory governing body and on any changes made thereto.

§ 3. The remuneration committee is tasked with preparing decisions on remuneration, in particular decisions that have consequences for the risks and risk management of the credit institution in question and on which the statutory governing body must decide. For the preparation of such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other interested parties of the credit institution, as well as with the general interest.

Paragraph 1 is also applicable to decisions on the remuneration of persons who are responsible for the independent control functions. In addition, the remuneration committee shall exercise direct supervision of the remuneration of those responsible for the independent control functions.

Article 31. § 1. The nomination committee shall be constituted in such a way as to ensure it can give sound and independent advice on the composition and operation of the governing and management bodies of the institution, in particular on the individual and collective expertise of their members and on their integrity, repute, independence of mind and availability.

§ 2. The nomination committee is tasked with:

1° 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, proficiency, diversity and experience is 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.

Furthermore, the nomination committee shall establish targets for representation by the underrepresented gender in the statutory governing body and map out the policy for increasing the number of representatives of that gender in the statutory governing body in order in that way to achieve the target. The target, the policy line and the implementation thereof shall be disclosed in accordance with Article 435(2) c) of Regulation No 575/2013;

2° evaluating, periodically and at least once a year, the structure, size, composition and performance of the statutory governing body and formulating recommendations on any changes to be made to the statutory governing body;

3° assessing, periodically and at least once a year, the knowledge, skills, experience, extent of involvement—including the frequency of availability—of the individual members of the statutory governing body and of the statutory governing body as a whole, and reporting on the same to this body;

4° periodically reviewing the policy of the statutory governing body for the selection and appointment of the executive members thereof, and formulating recommendations to the statutory governing body.

In performing its duties, the nomination committee shall 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.
The nomination committee shall be able to use all forms of resources that it deems appropriate for executing its task, such as obtaining advice from external sources, and shall receive sufficient financial means for that purpose.

**Article 32.** Articles 27, 28 and 30 are without prejudice to the provisions of the Companies Code that relate to the audit committee and the remuneration committee in listed companies within the meaning of Article 4 of that Code.

**Article 33.** § 1. Credit institutions that are not significant shall be exempt from the obligation to set up the two committees as referred to in Articles 30 and 31 within their statutory governing body. Credit institutions that are not significant under Article 3, 30°, b) can moreover decide that one single committee shall be responsible for the tasks of the committees referred to in Articles 28 and 29.

§ 2. The supervisory authority can permit that a credit institution that is a subsidiary or a sub-subsidiary of a mixed financial holding company, an insurance holding company, a financial holding company, another credit institution, an insurance company, a reinsurance company, an investment firm, a management company of undertakings for collective investment, or a management company of alternative investment funds, derogate in whole or in part from the provisions of this subsection and can lay down specific conditions for granting such derogations, as long as one or more committees are set up within the groups or subgroups in question within the meaning of Articles 28 to 31, which are competent for the credit institution and satisfy the requirements of the present Law.

Irrespective of the conditions determined by the supervisory authority in application of paragraph 1, the accredited statutory auditor shall make the additional report referred to in Article 11 of Regulation No 537/2014 on an annual basis to the recipients provided for in Article 225/1.

Where the conditions determined by the supervisory authority in application of paragraph 1 lead to the set-up of an audit committee, the methods referred to Article 16, paragraph 5 of Regulation No 537/2014 for the proposal for the appointment of an accredited statutory auditor apply.

Where the conditions determined by the supervisory authority do not require the set-up of an audit committee, the tasks of the accredited statutory auditor included in Article 28, § 3, remain applicable, but apply vis-à-vis the statutory governing body.


**Article 34.** If no committees are set up under Article 33, § 1, as referred to in Articles 30 and 31, the tasks entrusted to such committees shall be carried out by the statutory governing body as a whole. If, pursuant to a derogation permitted under Article 26, the person chairing the statutory governing body is an executive member, he/she shall not chair the statutory governing body where it acts in the capacity of one of the committees referred to in Article 27.

*Subsection IV. - Operational independent control functions*

**Article 35.** § 1. Every credit institution shall take the necessary measures to have the following appropriate independent control functions at all times:

a) compliance;

b) risk management;

c) internal audit;
which shall be performed by persons who are independent from the institution’s business units and have the necessary powers to duly exercise their functions. The remuneration of these persons shall be based on achieving the objectives upon which their functions are based, irrespective of the results of the activity supervised.

§ 2. When assessing the appropriate nature of the functions referred to in paragraph 1, the supervisory authority shall take into account the provisions of Article 21, § 2.

Article 36. § 1. All credit institutions shall have at their disposal a compliance function to ensure compliance by the institution and the members of its statutory governing body, its senior management, its employees, its representatives and tied agents with the legal and regulatory rules on integrity and conduct that apply to banking.

Paragraph 1 is without prejudice to the provisions of Article 87bis of the Law of 2 August 2002.

§ 2. The persons tasked with the compliance function shall report at least once a year to the statutory governing body.

Article 37. § 1. All credit institutions shall have an appropriate risk management function, independent from the operational functions, with sufficient authority, status and resources as well as direct access to the statutory governing body.

§ 2. The persons tasked with the risk management function shall ensure that all significant risks are detected, measured and duly reported. They shall be actively involved in mapping out the institution’s risk strategy as well as in all management decisions that have a significant influence on the risks, and shall be able to give a full picture of the whole range of risks run by the institution.

§ 3. The head of the risk management function shall be a member of the management committee in which the risk management function is the only function for which he/she is individually responsible. Where the credit institution is not significant within the meaning of Article 3, 30°, the supervisory authority can permit that a member of the higher levels of management exercise this function within the institution as long as there are no conflicts of interest involving this person.

By way of derogation from the first sentence of paragraph 1, the supervisory authority—with a view to strengthening the autonomy and independence of the risk management function and the compliance function as referred to in Article 36—can allow the member of the management committee who is responsible for the risk management function also to be responsible for the compliance function on the proviso that the two functions be exercised independently of each other.

Article 38. The persons responsible for the risk management function and the compliance function can report direct to the statutory governing body, independently of the management committee, where applicable through the risk committee, and notify, or where applicable, warn of their concerns 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.

Paragraph 1 is without prejudice to the responsibilities of the statutory governing body pursuant to the present Law and Regulation No 575/2013.

Article 39. § 1. All credit institutions shall at least ensure, by way of an audit charter, that the internal audit function is independent and that the tasks pertaining thereto relate to all of the institution’s operations and entities, including in the case of outsourcing.
§ 2. The internal audit function shall provide the statutory governing body and the management committee with an independent assessment of the quality and effectiveness of the internal control, risk management and governance policy of the credit institution.

§ 3. The internal audit function shall report direct to the statutory governing body, where applicable via the audit committee, and shall notify the management committee.

**Article 40.** Without prejudice to the provisions of Articles 35 to 39, the Bank can, by means of a Regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, further determine what must be understood by an appropriate management structure, appropriate internal control, an appropriate independent internal audit function, an appropriate independent risk management function and, upon the recommendation of the FSMA, an appropriate independent compliance function, and establish further rules in accordance with European regulations.

*Subsection V. - Specific organization relating to the provision of investment services*

**Article 41.** § 1. All credit institutions shall set out appropriate policy lines and procedures to ensure compliance with the legal requirements on investment services and activity by the institution and its managers, senior management, employees, representatives and tied agents.

It shall set out appropriate rules for direct and indirect personal transactions in financial instruments that are executed by the persons referred to in the first paragraph.

§ 2. Upon the recommendation of the FSMA and the Bank, the King may determine the rules and obligations referred to in paragraph 1. These rules and obligations can in particular relate to:

- the relevant persons to which these rules and obligations apply;
- the personal transactions deemed to contravene the law;
- the methods by way of which the relevant persons must declare their personal transactions to the credit institution;
- the manner in which the credit institution must keep records on personal transactions.

**Article 42.** § 1. Every credit institution shall take the appropriate organizational and administrative measures to prevent conflicts of interest relating to investment services and activity between the institution and its managers, senior management, employees, representatives and tied agents, or an affiliated enterprise thereof, between the institution and its clients, or between its clients themselves, that could be prejudicial to the interests of the latter.

§ 2. Upon the recommendation of the FSMA and the Bank, the King may determine the rules and obligations on that subject. These rules and obligations may in particular relate to the organizational rules that must be taken into consideration to avoid conflicts of interest and when the credit institution shall produce and disseminate research in the area of investment.
Section VII. — Central administration

Article 43. The central administration of a credit institution must be established in Belgium.

Section VIII. — Deposit protection

Article 44. All credit institutions must join a collective deposit protection scheme in accordance with Article 380 of the present Law.

Credit institutions that provide investment services and/or activities must additionally join a collective investor protection scheme in accordance with Article 384/2 of the present Law.


Title II. - Conditions for pursuit of business

CHAPTER I. — General provisions

Article 45. All credit institutions must at all times comply with the provisions established pursuant to Articles 15 to 44 of the present Law.

CHAPTER II. — Changes in the capital structure

Article 46. Without prejudice to Articles 9 and 18 and without prejudice to the Law of 2 May 2007 on disclosure of major holdings, all natural or legal persons who, acting alone or in concert, decide to, directly or indirectly, acquire or increase a qualifying holding in a credit institution governed by Belgian law, by way of which the percentage of the voting rights or capital shares held would reach or cross the threshold of 20%, 30%, or 50%, or by way of which it would become the credit institution’s subsidiary, shall previously notify the Bank thereof in writing, specifying the size of the envisaged participation and the relevant information referred to in paragraph 2.

Paragraph 1 amended by Article 7 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

The Bank shall publish a list on its website of the relevant information required for assessment, relating to and in line with the nature of the candidate acquirer and the envisaged acquisition, which must be provided along with the notification referred to in the first paragraph.

[Article 47. The Bank shall send the candidate acquirer a written confirmation of receipt promptly and in all cases within two working days of receipt of the notification and of all the information referred to in Article 46, as well as upon receipt at a later date, where applicable, of the information referred to in paragraph 3. This shall include the date on which the assessment period shall close. The Bank shall at the same time inform the European Central Bank.

The assessment period of the European Central Bank for making the decision referred to in § 3 shall be no more than 60 working days to be calculated from the date of confirmation of receipt of the notification and of all documents required in accordance with the list in Article 46, second paragraph.

The Bank may, during the assessment period, although no later than the fiftieth day thereof, either of its own accord or pursuant to a request from the European Central Bank, request further information necessary to complete the assessment. This request shall be made in writing and shall specify the additional information needed. The Bank shall provide the European Central Bank with any supplementary information it receives forthwith.

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The assessment period shall be suspended from the date on which the Bank has requested further information until receipt of the response thereto from the candidate acquirer. This suspension shall last for a maximum of twenty working days. Although the Bank is free to formulate additional requests to complete or clarify information after the deadline stipulated in the previous paragraph, where applicable at the request of the European Central Bank, such requests shall not lead to a suspension of the assessment period.

The Bank can extend the suspension referred to in paragraph 4 to a maximum of thirty working days where:

a) the candidate acquirer is established outside the European Economic Area or is not subject to EU legislation; or


Article replaced by Article 392 of the present Law

[Article 48. In the assessment of the notification and information referred to in Article 46 and the additional information referred to in Article 47, the Bank shall review the suitability of the candidate acquirer and the financial soundness of the envisaged acquisition based on the criteria referred to in Article 18, second paragraph, in order to ensure the sound and prudent management of the credit institution targeted by the envisaged acquisition and taking into consideration the expected influence of the candidate acquirer on the credit institution.

Over the course of the assessment period referred to in Article 47 and at the latest 15 working days before the end of that period, the Bank shall address a draft decision to the European Central Bank including reasons as to whether or not it opposes the envisaged acquisition. The opposition may only be based on substantiated grounds for believing, by virtue of the criteria of Article 18, second paragraph, that the candidate acquirer is not suitable to guarantee sound and prudent management of the credit institution, or on the fact that the information that the candidate acquirer has provided is incomplete.

Where the European Central Bank decides based on the proposal of the Bank, to oppose the envisaged acquisition, it shall inform the candidate acquirer thereof in writing within two working days and without exceeding the assessment period deadline. An appropriate explanatory note on the decision may be made accessible to the public at the request of the candidate acquirer.

Where the European Central Bank does not oppose the envisaged acquisition within the assessment period, that acquisition shall be deemed approved.

The European Central Bank may establish a deadline for the completion of the envisaged acquisition and extend that deadline where applicable.]
[Article 49. To carry out the assessment referred to in Article 48, the Bank shall work in close collaboration with any other competent authority concerned or, depending on the circumstances, in collaboration with the FSMA, if the candidate acquirer is one of the following persons or institutions:

a) a credit institution, an insurance company, a reinsurance company, an investment firm, an alternative investment fund manager or a management company of undertakings for collective investment to which an authorization has been granted pursuant to the law of another Member State or, depending on the circumstances, granted by the FSMA;
b) the parent undertaking of an undertaking as referred to in the description under a)
c) a natural or legal person with the control of an undertaking as referred to in the description under a).

For this purpose, the Bank shall as rapidly as possible share information relevant or essential to the assessment with these authorities. It shall share all relevant information upon request and all essential information of its own accord. In the cases referred to in paragraph 1, the Bank shall always communicate in its draft decision any of the positions or considerations of the competent authority responsible for the candidate acquirer or, depending on the circumstances, of the FSMA. Such positions or considerations shall also be included in the decision of the European Central Bank.

Article replaced by Article 394 of the present Law

Article 50. All natural or legal persons who have decided to cease to have a direct or indirect qualifying holding in a credit institution, shall previously notify the Bank thereof in writing, specifying the amount of the intended holding. A decision by such a person to reduce the size of a qualifying holding shall also be notified to the Bank if such a reduction would result in the percentage of voting rights or capital shares held by that person to fall under the threshold of 20%, 30%, or 50%, or would result in the credit institution ceasing to be its subsidiary.

Article 51. If the previous notifications described in Articles 46 and 50 are not made or if a holding is acquired or increased despite the opposition referred to in Article 48, the President of the Commercial Court of the jurisdiction in which the credit institution has its headquarters, ruling as in summary judgment, can take the measures referred to in Article 516, §§ 1 and 4 of the Companies Code.

The procedure shall be initiated by way of a summons by the Bank. Article 516, § 3, of the Companies Code shall apply.

Article 52. Without prejudice to [Articles 9 and 18] and without prejudice to the Law of 2 May 2007 on disclosure of major holdings, all natural or legal persons who, acting alone or in concert, have directly or indirectly acquired a holding in a credit institution governed by Belgian law, or have directly or indirectly increased their holding in a credit institution governed by Belgian law, by way of which the percentage of the voting rights or capital shares held would reach or cross the threshold of 5% of the voting rights or capital shares without thereby acquiring a qualifying holding, shall notify the Bank thereof in writing within a period of ten working days after the acquisition or increase of that holding.

paragraph 1 amended by Article 8, 1º of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

A similar notification must be provided within a period of ten working days by all natural or legal persons who, acting alone or in concert cease to have a direct or indirect holding of more than 5% of the voting rights or the capital of a credit institution, which did not constitute a qualifying holding.
The notifications referred to in paragraphs 1 and 2, shall disclose the exact identity of the acquirer or acquirers, the number of shares acquired or disposed of and the percentage of the voting rights and of the capital of the credit institution that shall be held after the acquisition or disposal as well as the required information as detailed in the list that the Bank publishes on its website [in accordance with Article 46, paragraph 2].

paragraph 3 amended by Article 8, 2º of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 53. Credit institutions shall notify the Bank as soon as they are made aware of acquisitions or disposals of their shares resulting in a downward or upward crossing of one of the thresholds referred to in Article 46.

They shall also inform the Bank immediately of all information of which they are aware and that can have an influence on the situation of their shareholders or members with respect to the assessment criteria referred to in Article 18, second paragraph. These information obligations also apply to the persons referred to in Article 9. The Bank shall provide the European Central Bank with this information.

Under the same conditions and at least once a year, they shall communicate to the Bank the identity of shareholders or members who, acting alone or in concert, directly or indirectly hold a qualifying holding in their capital, as well as the proportion of capital and how many voting rights they hold. They shall also notify the Bank of how many shares and how many voting rights attached thereto they have received notifications of acquisition or disposal for in accordance with Article 515 of the Companies Code in the event that such a notification to the Bank is not prescribed by the articles of association.]

[Article 54. Where the supervisory authority has grounds to believe that the influence of a natural or legal person who directly or indirectly holds a qualifying holding in a credit institution, could hinder the sound and prudent management of that credit institution, without prejudice to the other measures provided for in the present Law, it can:

1º suspend the exercise of the voting rights attached to the shares that are held by the shareholder or member in question; the supervisory authority can, at the request of all interested parties, permit the abrogation of the measures ordered by it; its decision shall be communicated to the shareholder or member concerned in the most appropriate manner; its decision shall be enforceable as soon as it is notified; the supervisory authority can make its decision public;

2º order the shareholder or member concerned to dispose of the shareholder rights held by him/her/it within a term determined by the supervisory authority.

Should these not be disposed of within the established term, the supervisory authority can request the sequestration of the shareholder rights from the institution or from the person it determines. The sequestrator shall notify the credit institution, which shall amend the register of registered shares accordingly and only accept the exercise of the rights attached thereto through the sequestrator. The sequestrator shall act in the interest of the sound and prudent management of the credit institution and in the interest of the holder of the sequestered shareholder rights. It shall exercise all rights attached to the shares. The amounts collected by the sequestrator as a dividend or otherwise shall only be transferred to the aforementioned holder where that holder has complied with the order referred to in paragraph 1, 2º.

The consent of the aforementioned holder is required to subscribe to capital increases or other (voting) securities, to opt for a dividend payout in company shares, to agree to takeover or exchange bids and to pay up as yet non-paid-up shares. The shareholder rights acquired as part of such transactions shall be added, ipso jure, to the aforementioned sequestration. [...]

27
Paragraph 3 amended by Article 9, 1° of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[The remuneration of the sequestrator is established by the supervisory authority and paid by the aforementioned holder.] The sequestrator can deduct this remuneration from the amounts paid to it in its capacity of sequestrator or paid to it by the aforementioned holder in anticipation of, or after completion of the transactions referred to hereinabove.

Paragraph 4 amended by Article 9, 2° of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Where voting rights are exercised by the original holder or by another person outside the sequestration who acts on behalf of this holder, after the term established in accordance with paragraph 1, 2°, first sentence, notwithstanding the suspension of their exercise in accordance with paragraph 1, 1°, the Commercial Court of the jurisdiction in which the company has its headquarters may, at the request of the supervisory authority, declare null and void all or part of the decisions of the general meeting where the attendance or majority quorum required for the said decisions would not have been reached without the voting rights that have been exercised unlawfully.]

Article replaced by Article 396 of the present Law

CHAPTER III. — General conditions

Section I. — Minimum own funds

Article 55. [Without prejudice to Articles 77 and 78 of Regulation No 575/2013, the own funds of the credit institutions may not drop below the minimum capital amount established in accordance with Article 17, paragraphs 1 and 3.]


Section II. — Management and managers

Subsection I. - Supervision and assessment by the statutory governing body

Article 56. § 1. The statutory governing body shall periodically and at least once a year assess the effectiveness of the organizational structure referred to in Article 21 of the institution [i.e., including the specific organizational structure referred to in Subsection V of Section VI of Chapter II of Title I] of the institution and the conformity thereof with legal and regulatory requirements. The statutory governing body shall ensure that the management committee take the necessary measures to tackle any non-conformity.

§ 1 amended by Article 10 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

§ 2. The statutory governing body shall exercise effective supervision on the management committee and be responsible for the supervision of the decisions made by the management committee and by the senior management of the institution.

§ 3. The statutory governing body shall in particular assess the proper functioning of the independent control functions referred to in Article 35.

§ 4. In the annual report of the statutory governing body, the individual and collective expertise of the members of the Committees referred to in Articles 27 to 31 shall be documented.

§ 5. The statutory governing body shall lay down the general principles of the remuneration policy and assess it regularly and at least once a year, and supervise the
implementation thereof. The statutory governing body may make use of the independent control functions for such an assessment.

§ 6. The statutory governing body shall ensure that the governance memorandum referred to in Article 21, § 3, is updated and that the updated governance memorandum is forwarded to the supervisory authority.

Article 57

§ 1. As part of its tasks as referred to in Article 23, the statutory governing body shall set the risk tolerance of the credit institution for all its operations.

In this respect, the statutory governing body shall approve and regularly review the strategies and policies governing taking, managing, monitoring, and mitigating risks to which the credit institution is exposed or could be exposed, including risks arising from the macro-economic context in which the credit institution operates and which relate to the economic cycle.

The risk tolerance of the institution for all operations concerned shall be communicated to the supervisory authority, which shall be kept informed of any changes in this area.

§ 2. The statutory governing body shall devote a great proportion of its activity to the supervision of the management of all significant risks, in particular those that come under Regulation No 575/2013, those connected to the valuation of assets and the use of external ratings and internal models, and ensure that sufficient resources are allocated to such aspects.

§ 3. The management committee and the persons tasked with the senior management shall provide the statutory governing body with the appropriate information on all significant risks and on all policies relating to the management and control of the institution’s significant risks and any changes thereto.

§ 4. When setting out its risk management policy, the statutory governing body shall establish the criteria that determine whether the credit- and counterparty risk arising from transactions should be deemed major, in which case express notification must be given of these transactions and of major decisions pertaining thereto, within a term that permits the statutory governing body to, where applicable, oppose them.

§ 5. The statutory governing body shall approve the liquidity recovery plan as referred to in Article 8, § 8 of Annex I of the present Law and shall ensure that the internal policies and procedures of the institution are adjusted accordingly.

Article 58

§ 1. Without prejudice to the powers of the statutory governing body, the management committee shall, under the supervision of the statutory governing body, take the necessary measures to ensure compliance with—and implementation of—the provisions of Article 21
§ 1 amended by Article 11, 1° of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

§ 2. The management committee shall report at least once a year to the statutory governing body, the accredited statutory auditor and the supervisory authority on the evaluation of the effectiveness of the organizational structure referred to in Article 21 [, including the specific organizational structure referred to in Subsection V of Section VI of Chapter II of Title I,] and on the measures that, where applicable, are taken to tackle any non-conformity. The report shall substantiate why these measures comply with the legal and regulatory provisions.

§ 2 amended by Article 11, 2° of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

§ 3. Without prejudice to its other tasks, the management committee shall, in particular, ensure that the remuneration policy established by the statutory governing body is correctly executed.

§ 4. The management committee shall also take the necessary measures to ensure that the credit institution controls the risk referred to in Articles 1 to 9 of Annex I of the present Law.

Subsection III. - Appointments, dismissals and exercise of external functions

Article 60

§ 1. Credit institutions shall previously inform the supervisory authority of any proposal to appoint members of the statutory governing body and members of the management committee or, in the absence of a management committee, persons tasked with the senior management, as well as managers of independent control functions.

Within the scope of the reporting requirements pursuant to paragraph 1, credit institutions shall communicate all documents and information to the supervisory authority to allow it to assess whether the persons put forward for appointment possess the professional integrity and suitable expertise required for their role in accordance with Article 19.

Paragraph 1 also applies to the proposed renewal of appointment of the persons referred to in paragraph 1 as well as to non-renewals, removals from office and dismissals.

§ 2. The appointment of the persons referred to in paragraph 1 shall previously be submitted for approval to the supervisory authority.

Where the appointment relates to persons put forward for a function as referred to in paragraph 1 for the first time in an undertaking that falls under the supervision of the supervisory authority pursuant to the SSM Regulation or to Article 36/2 of the Law of 22 February 1998, the Bank shall first consult the FSMA.

The FSMA shall communicate its opinion to the Bank within a week of receipt of the request for an opinion.

§ 3. Credit institutions shall inform the supervisory authority of any distribution of tasks between the members of the statutory governing body and members of the management committee or, in the absence of a management committee, between persons tasked with the senior management.
Material changes in the distribution of tasks as referred to in paragraph 1, shall give rise to the application of paragraphs 1 and 2.

**Article 61**

The persons responsible for the independent control functions referred to in Article 35 may not be removed from their function without the prior approval of the statutory governing body.

The credit institution shall previously inform the supervisory authority thereof.

**Article 62**

§ 1. Members of the statutory governing body and members of the management committee or, in the absence of a management committee, persons tasked with the senior management shall devote sufficient time to the exercise of their function in the institution.

§ 2. Without prejudice to paragraph 1 and Article 21, members of the governing bodies of the credit institution and all persons who take part in the management or running of the institution, regardless of the title under which or capacity in which they do so, may, whether or not in representation of the credit institution, exercise a mandate as administrator or manager or take part in the management or running of a commercial company or a company with a commercial legal form, an undertaking with another Belgian or foreign legal form or a Belgian or foreign public institution with industrial, commercial or financial activity under the conditions and within the limits established in the present Article.

§ 3. The external functions referred to in paragraph 2 shall be governed by the internal rules that the credit institution must introduce and enforce to:

1° prevent persons involved in the senior management of the credit institution no longer being sufficiently available to exercise their senior management role by exercising such a function;

2° prevent conflicts of interest occurring in the credit institution as well as risks associated with the exercise of their function, inter alia in the area of insider dealing;

3° ensure suitable publication of such functions.

By means of a regulation passed pursuant to Article 12bis § 2, of the Law of 22 February 1998, the Bank shall stipulate how these obligations shall be enforced.

§ 4. Company executives entrusted with management who are appointed on the recommendation of the credit institution must be members of the management committee of the credit institution or persons designated by the management committee.

§ 5. Members of the statutory governing body who are not members of the management committee of the credit institution may not exercise a mandate in a company in which the institution has a holding unless they do not take part in the day-to-day management of that company. Where the credit institution is significant within the meaning of Article 3, 30°, the [external functions, insofar as they are exercised in commercial companies other than the credit institution], referred to in paragraph 2 and without prejudice to paragraphs 1 and 3, are moreover limited, unless the mandate in the credit institution is exercised in representation of a Member State, to the following number of mandates:

§ 5 amended by Article 12, 1° of the Law of 18 December 2015, Belgian Official Gazette, 29 December 2015

- either three mandates that may not imply involvement in the day-to-day management; or

- a mandate that does imply involvement in the day-to-day management and a mandate that does not imply involvement in the day-to-day management.
§ 6. [Members of the management committee or, in the absence of a management committee, persons involved in the senior management of the credit institution, may not exercise a mandate that includes involvement in the day-to-day management, except in a company as referred to in Article 89(1) of Regulation No 575/2013, with which the credit institution has close links, in an undertaking for collective investment in the form of a company within the meaning of the Law of 3 August 2012 on certain forms of collective management of investment portfolios which comply with the conditions of [Directive 2009/65/EC, and Financial Vehicle Corporations or in an undertaking for collective investment in the form of a company within the meaning of the Law of 19 April 2014 on alternative investment funds and their managers, or] in a civil family estate company in which they or persons connected with them hold a significant interest. Where the credit institution is significant within the meaning of Article 3, 30°, the external functions, insofar as they are exercised in commercial companies other than the credit institution, referred to in paragraph 2 and without prejudice to paragraphs 1 and 3, are moreover limited to two mandates that may not imply involvement in the day-to-day management, unless the mandate in the credit institution is exercised in representation of a Member State.]


§ 7. In individual cases the supervisory authority can permit a derogation to the maximum number of mandates provided for in [paragraph 5, second sentence and 6, second sentence], by permitting that an additional mandate be exercised that does not imply involvement in day-to-day management. The supervisory authority shall inform the European Banking Authority regularly on the use it makes of this power of derogation.

§ 7 amended by Article 12, 3° of the Law of 18 December 2015, Belgian Official Gazette, 29 December 2015

§ 8. Credit institutions shall promptly notify the supervisory authority of the functions exercised by persons referred to in § 2 outside the credit institution for the purposes of supervision of compliance with the provisions of this Article.

§ 9. For the application of § 5, second sentence, and § 6, second sentence, the exercise of several mandates, whether or not they imply involvement in day-to-day management, in undertakings that form part of the group to which the credit institution belongs or of [another group] shall be deemed to be one single mandate.

§ 9, paragraph 1 amended by Article 12, 4° of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

For the application of this Article, “group” shall be understood to mean a set of undertakings that are formed by one parent undertaking, its subsidiaries, the undertakings in which the parent undertaking or its subsidiaries have a direct or indirect holding within the meaning of Article 3, 26° of the present Law, as well as undertakings forming a consortium and undertakings that are controlled by the latter undertakings or in which these latter undertakings have a holding within the meaning of Article 3, 26° of the present Law.

[For the application of this Article, the supervisory authority may verify by way of the articles of association whether or not external functions are exercised in commercial companies, especially as regards external functions in family estate companies.]

§ 9, paragraph 3 replaced Article 12, 5° of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015
Section III. — Risk management

Subsection I. — Handling risks

Article 63

All credit institutions shall ensure that their risks are controlled with due regard to the provisions of Annex I of the present Law.

Subsection II.- Management of risks related to the provision of investment services

Article 64

All credit institutions shall keep records of all the investment services and activity they carry out in order to allow the supervisory authority and the FSMA to establish whether the institution complies with the provisions of the present Law or its implementing provisions and the legal and regulatory provisions the FSMA must supervise compliance with, and in particular whether the institution meets its obligations vis-à-vis its clients or potential clients.

Article 65

[§ 1. Any use by a credit institution of financial instruments belonging to a client must be with the client’s express prior consent. The use of the client’s financial instruments is subject exclusively to the conditions agreed to by the client.]


[§ 2. The King may, upon the recommendation of the Bank and the FSMA, establish the conditions and rules with which deposits of financial instruments by clients at credit institutions must comply, as well as the conditions and rules for the transactions that the credit institutions may execute as regards these financial instruments, in particular as regards the consent referred to in paragraph 1. More specifically, the King may establish more detailed rules for the granting of the consent referred to in paragraph 1. The King may also determine the rules for the organization, the protection of and the provision of information to clients as regards the receipt of these financial instruments by the credit institution and their deposit with other intermediaries.]


[§ 3.] Where a credit institution holds financial instruments belonging to its clients for safekeeping, it shall take the necessary measures to safeguard the rights of its clients in the event of its insolvency. [It shall also take the necessary measures to ensure compliance with paragraphs 1 and 2.]

[Article 65/1]

§ 1. Credit institutions must keep a record of all data and accounts necessary to enable them at any time to immediately distinguish the assets held for one client from those held for other clients, and from their own assets.

These data and accounts must be kept in such a way as to always be accurate and especially to reflect the financial instruments and monies held for clients.

Credit institutions must periodically verify whether their internal accounts and data are consistent with those of any third-party intermediaries that hold these assets.

§ 2. The King may, upon recommendation from the Bank, establish the conditions and more detailed rules for the requirements referred to paragraph 1, as well as, more generally, the requirements regarding the accounting procedures and accounting rules for the deposit of financial instruments at credit institutions.


Section IV. — Outsourcing

**Article 66**

Where a credit institution outsources operational tasks to third parties that are of critical importance for a continuous and satisfactory service to clients, in particular with regard to investment services and activities, it shall take suitable measures to mitigate any associated operational risk.

The outsourcing referred to in paragraph 1 may not be detrimental to the appropriate nature of the institution’s internal control procedures or to the ability of the supervisory authority to establish whether the institution complies with its legal and regulatory obligations.

The Bank shall publish, upon the recommendation of the FSMA, a policy statement in which it shall state its policy on outsourcing the management of assets of retail clients.

Section V. — The remuneration policy and the implementation thereof

Subsection I. — Principles

**Article 67**

The remuneration policy established pursuant to Article 56, § 5, shall correspond with the business strategy, the objectives, the values and the long-term interests of the institution and shall include measures to prevent conflicts of interest. When setting out and applying a remuneration policy, institutions shall take into account the principles included in Annex II in a manner and to an extent that corresponds with the scale and the internal organization of the institution and with the nature, scope and complexity of its operations.

The remuneration policy shall apply to the categories of members of staff, except for the members of the statutory governing body, whose business activity has a significant influence on the institution’s risk profile, including senior management and persons who exercise risk-taking roles or independent control functions, and staff whose total remuneration puts them at the same level of remuneration as that of senior management or persons exercising a risk-taking function.

**Article 68**

The remuneration policy relates to all remuneration, including variable remuneration and payments from discretionary pensions of the persons referred to in Article 67, second sentence, and shall make a clear distinction, in accordance with the provisions of Annex II, to determine the criteria for establishing:
- the basic fixed remuneration which should in the first place reflect the relevant professional experience and organizational responsibilities as stipulated in the job description that forms part of the employment contract; and

- the variable remuneration, which depends on performance criteria, and which should reflect long-term performance in line with the risks as well as extra work performed in excess of what is described in the job description that forms part of the employment contract.

Article 69
Annex II of the present Law lays down the criteria, rules and obligations to which the remuneration policy of credit institutions and the implementation thereof must adhere, in particular the conditions for the establishment and payment of the variable remuneration.

Article 70
The remuneration practices relating to the persons referred to in Article 67, second paragraph, shall be in line with the remuneration policy established by the institution and comply with the obligations of Annex II. These remuneration practices shall be regularly assessed to verify whether the provisions of Annex II are at all times complied with, taking into account the development of the institution’s situation.

Subsection II. - Credit institutions that have received exceptional government intervention

Article 71
Credit institutions that have received exceptional government intervention shall adjust their remuneration policy and remuneration practices in accordance with the requirements of Annex II.

Section VI. — Transactions subject to limitation or prohibition and payments subject to being declared null and void

Subsection I. - Loans to managers, shareholders and related persons

Article 72
§ 1. Credit institutions may directly or indirectly grant loans, credits or guarantees:

1° to members of their statutory governing body and the members of their management committee or, in the absence of a management committee, to the person tasked with the senior management;

2° to persons referred to in Article 9 as well as members of their various bodies, and persons involved in their senior management;

3° to undertakings or institutions in which the persons referred to in 1° have a qualifying holding or exercise a function as referred to in 1°, with the exception of the undertakings or institutions over which the credit institution or its parent undertaking exercises control;

4° to persons related to the persons referred to in 1°,

under the conditions, for the amounts and with the guarantees that apply to their clients. A notification must expressly be made of such loans, credits or guarantees within a term that permits the statutory governing body to oppose them. Members who have a direct or indirect personal or functional interest may not vote, irrespective of the body tasked with making the decision.

The loans, credits and guarantees referred to in paragraph 1, shall be notified to the supervisory authority in accordance with the frequency and rules that it determines.

If such transactions are not completed under the normal market conditions, the supervisory authority may order that the conditions agreed upon be adjusted as per the date on which the transactions were completed. Failing that, the members of the statutory governing body
who have made the decision shall be jointly and severally liable vis-à-vis the institution for any difference.

The notifications referred to in paragraphs 1 and 2 to the statutory governing body and the supervisory authority need not take place where the loans, credits or guarantees to a particular person, undertaking or institution, in their entirety do not exceed EUR 100,000.

§ 1 replaced by Article 15 of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

§ 2. By way of derogation from the provisions of the Companies Code and notwithstanding § 1, no loans, credits or guarantees may be granted, directly or indirectly, to persons to enable them to directly or indirectly subscribe to shares or other securities that confer the right to dividends of the credit institution or of a company with which a close link exists or that confer the right to acquire such securities, or to acquire such shares or other securities.

Article 73

In the event of bankruptcy of a credit institution and with respect to the inventory, all payments made by the institution in cash or in any other way to the members of its statutory governing body in the form of director’s fees (tantièmes) or of other profit sharing over the two years previous to the moment established by the courts for suspension of payment, shall be null and void and have no further effect.

Paragraph 1 does not apply where the courts establish that no gross negligence whatsoever by these persons has contributed to that bankruptcy.

Subsection II. - Use of funds and assets

Article 74

Credit institutions may not use the funds and assets they hold to directly or indirectly influence public opinion to their own benefit.

This prohibition does not apply to open commercial advertising.

Section VII. — Communication of information on the situation of the credit institution

Article 75

§ 1. Without prejudice to any obligations that apply to listed companies, the supervisory authority shall determine, where applicable by means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, the minimum information that the credit institution must publish on its solvency, liquidity, risk concentration and other risk positions, and on its policy relating to own funds requirements, with reference to the requirements referred to in Articles 94 to 98 and 149 to 152. It shall also determine the minimum frequency and the manner in which such information shall be published.

Credit institutions shall publish the relevant information from the governance memorandum as referred to in Article 21, § 3 and Article 56, § 6, on their website. The said information shall at least contain the shareholder structure and the supervisory structure of the institution or the structure of the group to which it belongs, its governing bodies, organizational structure, including the independent operational control functions, as well as the institution’s objectives and company values, the key aspects of its policy on risk management, prevention of conflicts of interest, integrity and continuity of the operations, as well as the information on its remuneration policy and practices, in accordance with Regulation No 575/2013.

Credit institutions shall also publish their asset yield in their annual report, which is calculated by dividing their net profits by their balance sheet total.
§ 2. Credit institutions shall provide for the necessary rules and procedures to comply with the information obligations referred to in § 1. They shall evaluate the adequacy of their advertising rules including the control of published data as well as the frequency at which they provide information.

§ 3. Credit institutions shall provide for the necessary rules and procedures in order to evaluate whether the information they publish on their organization, their financial situation and risk position to market participants provides a comprehensive insight into their risk profile.

§ 4. In exceptional circumstances the supervisory authority can permit derogations, within the limits of European legislation, to the provisions laid down by or pursuant to this Article.

CHAPTER IV. — Special transactions

Section I. — Changes to the programme of activities

Article 76

Any changes to the activities exercised by the institution must be notified to the supervisory authority in advance, before implementation.

Section II — Strategic decisions, investment decisions, mergers and transfers between credit institutions

Article 77

The following matters are subject to prior consent by the supervisory authority:

1° a credit institution’s strategic decisions;

2° decisions to buy shares representing the capital of an undertaking whose activities are not governed by Article 4, to the value of at least EUR 250 million or a figure amounting to 5% of the capital of the credit institution;

3° mergers between credit institutions or between such institutions and other institutions in the financial sector, and demergers of credit institutions;

4° transfers, between credit institutions or between such institutions and other institutions in the financial sector, of all or part of their activities or network.

The supervisory authority must issue its decision within two months of receipt of the complete information about the plan. It may not withhold its consent except on grounds relating to the institution’s capacity to meet the provisions stipulated in or by virtue of the present Law, or relating to the sound and prudent management of the institution, or if the decision is likely to significantly affect the stability of the financial system. If the authority does not intervene within the above period, consent shall be deemed to have been granted.

Article 78

Any total or partial sale between credit institutions, or between such institutions and other institutions in the financial sector, of the rights and obligations resulting from the operations of the institutions or undertakings concerned, and consented to in accordance with Article 77, is enforceable on third parties from the date on which the supervisory authority’s consent is published in the Belgian Official Gazette.

Sales consented to by the supervisory authority by virtue of Article 77 may not be invalidated or opposed under Article 1167 of the Civil Code, or under Articles 17, 18 or 20 of the Insolvency Act of 8 August 1997.
Section III — Provisions concerning the issue of Belgian covered bonds

Article 79
Belgian covered bonds may only be issued by credit institutions and on the condition that the supervisory authority has given its prior consent.

The prior consent of the supervisory authority shall on the one hand be based on the organizational capacity of the institution to issue and follow-up Belgian covered bonds and on the other hand on the extent to which the provisions established by or pursuant to this Section and Annex III are complied with for a particular issue or issue programme.

Article 80
§ 1. In order to obtain the consent of the supervisory authority with regard to its organizational capacity for issuing and following up Belgian covered bonds, the credit institution that is planning to issue Belgian covered bonds must previously submit a dossier to the supervisory authority with information on the manner in which it intends to regulate the aforementioned transactions. This information must at least contain:

1° a description of the institution’s financial situation and in particular of its credit forecasts, demonstrating that it is sufficiently solvent to protect the interests of other creditors or holders of Belgian covered bonds;

2° a description of the institution’s long-term strategy with particular focus on the institution’s liquidity and on the position that the Belgian covered bonds occupy in this strategy;

3° a description of the tasks and responsibilities within the institution with regard to the issue of Belgian covered bonds;

4° a description of the institution’s risk management policy with regard to Belgian covered bonds with particular focus on the interest risk, the foreign-exchange risk, the credit- and counterparty risk, the liquidity risk and the operational risk;

5° a description of the internal audit’s involvement in the procedure for the issue of Belgian covered bonds, including the audit frequency and audit procedures;

6° a description of the decision-making and reporting procedures for the issue of Belgian covered bonds;

7° a description of the IT systems necessary for the issue of Belgian covered bonds.

The general consent referred to in paragraph 1 with regard to the capacity to issue Belgian covered bonds, shall only be granted if the supervisory authority is convinced that:

a) the issuing institution has a suitable administrative and accounting procedures that enables it to comply with the provisions laid down by or pursuant to this Section and Annex III and in particular to segregate the cover assets; and

b) the issuing institution’s financial situation, in particular its solvency, is sufficient to protect the interests of creditors other than the holders of covered bonds.

The supervisory authority, prior to granting the consent as referred to in § 1, shall request a report from the accredited statutory auditor on the organizational capacity of the credit institution with respect to its obligations arising from this Section and from Annex III of the present Law.

The supervisory authority shall make a decision on a request within three months of the submission of a complete dossier and at the latest within five months of receipt of the request.
The supervisory authority shall notify the credit institution of its decision within ten days by registered letter or letter with recorded delivery.

§ 2. In order to obtain the consent of the supervisory authority for a particular issue or a particular issue programme, the credit institution planning to issue Belgian covered bonds must first submit a dossier to the supervisory authority with information on the envisaged transaction. The supervisory authority shall determine the information that must be provided with the submission of the request. This information must at least contain:

1° the impact of the issue or programme on the liquidity position of the institution;

2° the quality of the cover assets, in particular with regard to the nature of the debtors for these assets and of the business or personal guarantees, collateral or preferential rights with which they are protected, their diversification and their maturity;

3° the extent to which the maturity of the Belgian covered bonds is in line with that of the cover assets;

4° the basis on which continued compliance with the conditions of the § 1, second paragraph can be demonstrated.

The supervisory authority shall confirm receipt of the dossier referred to in paragraph 1 and, within fifteen days of receipt, shall inform the institution whether or not the dossier is complete and can be evaluated or whether further information is necessary.

§ 3. The specific consent to issue Belgian covered bonds or to launch an issue programme for Belgian covered bonds shall only be granted if the supervisory authority is convinced that the following conditions have been met:

1° the institution has the general consent referred to in paragraph 1;

2° the cover assets are:
   a) mortgage loans;
   b) loans to, or guaranteed or secured by (i) central, regional or local governments of OECD countries or (ii) central banks of those States or (iii) public entities of those States or (iv) multilateral development banks or international organizations;
   c) shares issued by securitization vehicles that securitize risk positions on assets predominantly composed of the items in categories a) and/or b);
   d) loans to credit institutions including amounts held at these credit institutions or by the issuing credit institution; and/or
   e) positions arising from one or more cover instruments that are linked with one or more cover assets or with the Belgian covered bonds and amounts paid by virtue of such positions.

Article 81

By way of a Royal Decree deliberated on in the Council of Ministers, the King sets:

1° the minimum conditions that cover assets must meet, in particular with regard to:
   a) the applicable law, the nature of the debtors and where they are located;
   b) the valuation criteria including, where applicable, the part of the credit that must be covered by a mortgage, the priority ranking of the mortgage, the conditions relating to the valuation of the subject of the mortgage, and the conditions as regards the location of the subject of the mortgage;

2° the conditions that the assets referred to in Article 80, § 3, 2°, a), b) and c) must meet and in particular the minimum ratio;
3° for every special fund involved, the rules regarding matching the maturity of the cover assets and the Belgian covered bonds issued by the credit institution;

4° the limit of one or more categories of cover assets that an issue of Belgian covered bonds must comply with and, where applicable, the relationship between the different categories of cover assets that must be complied with;

5° the measures that must be taken by the issuing institution to cover the foreign exchange and interest risks linked to the issue of Belgian covered bonds; and

6° the powers and criteria on which the supervisory authority can base its determination, for each issuing credit institution, of the maximum percentage of Belgian covered bonds that may be issued in relation to its balance sheet total.

**Article 82**

§ 1. The supervisory authority shall make a decision on a request to issue Belgian covered bonds within two months of the submission of a complete dossier and at the latest within three months of receipt of the request.

§ 2. The supervisory authority shall notify the credit institution of its decision within ten days by registered letter or letter with recorded delivery.

§ 3. The supervisory authority shall draw up two lists:

1° a list of the credit institutions that have been granted consent pursuant to Article 80, § 1, to issue Belgian covered bonds;

2° a list detailing the securities issued per institution and the issue programmes for which a special consent as referred to in Article 80, § 2, has been granted. This list shall further be divided based on whether or not the Belgian covered bonds are “Belgian lettres de gage/pandbrieven”.

These lists shall be published on the website of the supervisory authority.

**Article 83**

The lists referred to in Article 82, § 3, and the changes made to them shall be communicated by the supervisory authority to the European Commission, with a view to the application of Article 52, § 4, of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, (recast).

**Article 84**

Annex III of the present Law includes in particular the composition of the legal system for the cover assets, the rights of holders of covered bonds, the conditions for the issue of those securities and the obligations that exist for issuers of covered bonds.

**Section IV. — Opening or acquiring subsidiaries abroad**

**Article 85**

All credit institutions that wish to acquire or set up a subsidiary abroad which exercises activity as referred to in Article 4, directly or through the intermediation of a financial holding company or of a mixed financial holding company, shall notify the supervisory authority thereof. This notification shall include information on the activity, organization, shareholder structure and the management of the undertaking concerned.
Section V. — Exercising activity abroad

Subsection I. - Opening branches abroad

Article 86

All credit institutions that wish to open a branch on the territory of another Member State in order to exercise all or some of the activity listed in Article 4, for which they have an authorization in Belgium, shall notify the supervisory authority thereof.

This notification shall include a programme of activities detailing the nature of the envisaged activity, data on the organizational structure of the branch, the correspondence address in the Member State in question and the name of the senior management of the branch and, where applicable, of the persons responsible for the independent control functions of the branch.

The senior managers of the branch and the persons responsible for the independent control functions of the branch must at all times possess the professional integrity and appropriate expertise required for the exercise of their function. Articles 60 and 61 apply mutatis mutandis to the appointment of senior managers of the branch and, where applicable, of the persons responsible for the independent control functions of the branch.

The supervisory authority can decide to oppose the implementation of the plans, motivated by the negative consequences of the opening of the branch for the organization, the financial situation or the supervision of the credit institution.

The decision of the supervisory authority shall be notified to the credit institution at the latest three months after receipt of the complete dossier including all data referred to in paragraph 2, by registered mail or letter with recorded delivery. If the supervisory authority does not notify its decision within this period, it shall be deemed not to object to the institution’s project.


The supervisory authority shall inform the European Commission and the European Banking Authority of the number and justification of all final decisions pursuant to paragraph 4 to oppose a plan to open a branch in a Member State or against changes to the data referred to in paragraph 2 in accordance with the frequency determined by these latter.

This Article applies to the opening of branches in a third country, with the exception of paragraph 6.

Article 87

If the country in which a branch is to be established is a Member State, the supervisory authority, if it has not opposed the implementation of the plan in accordance with Article 86, paragraphs 4 or 5, shall communicate to the competent authority of the country concerned, within three months of receipt of all the data required pursuant to Article 86, second paragraph, the data received in accordance with these provisions as well as the level and composition of the credit institution’s own funds, the sum of the own funds requirements imposed on it pursuant to Article 92 of Regulation No 575/2013, the identity of its management and rules pertaining to a potential reimbursement for the benefit of the branch’s savers, through the deposit protection scheme that applies to the credit institution.

The Bank shall inform the FSMA within the same period of time of this notification insofar as the activity abroad involves the provision of investment services.

Article 88
If the country in which a branch is to be established is not a Member State, the supervisory authority, in consultation with the competent authority of a third country, shall set rules for the opening and supervision of the branch, as well as for the desired sharing of information, where applicable in compliance with the provisions of Chapter IV/1, section 4 of the Law of 22 February 1998.

[Article 88/1
If the credit institution wishes to call on tied agents established on the territory of another Member State in order to provide, in that Member State, investment services and/or activities as well as ancillary services, it shall inform the supervisory authority thereof and provide it with a work programme, the correspondence address in the Member State in question, the identity of the tied agents they plan to call on, as well as a description of the intended use of those tied agents and of the organizational structure within which they fit, specifying their reporting lines and the names of the persons directly responsible for the tied agents.

Paragraphs 4 and 5 of Article 86 apply.

Unless the supervisory authority opposes the implementation of the project, it shall provide all the information referred to in paragraph 1 to the competent authority of the Member State in question within three months after receipt of the complete dossier including the information referred to in the first paragraph. The provisions of Title I of Book III of the present Law that relate to branches apply to the tied agents.

enters into force on the date stated in Article 93, § 1, paragraph 2 of Directive 2014/65/EU for entry into force of the national provisions transposing the Directive in question

Article 89
All credit institutions that have opened a branch abroad shall inform the supervisory authority and the competent authorities of the host Member State at least one month in advance of any changes to the data provided pursuant to Article 86, second paragraph.

Article 86, paragraphs 4 and 5, shall apply where applicable, as well as Article 87, depending on the changes to the data referred to in Article 86, second paragraph or to the current deposit protection scheme.

[The first paragraph applies mutatis mutandis as regards changes to the information referred to in Article 88/1, paragraph 1.]

enters into force on the date stated in Article 93, § 1, paragraph 2 of Directive 2014/65/EU for entry into force of the national provisions transposing the Directive in question

Subsection II. - Free provision of banking services abroad

Article 90

[§ 1.] All credit institutions that wish to exercise all or part of the activity detailed in Article 4 that they have an authorization for in Belgium, on the territory of another Member State without opening a branch, shall inform the supervisory authority thereof and detail the activity they wish to exercise and the manner in which they intend to regulate the aforementioned activity.


The supervisory authority can oppose the implementation of the project by way of a decision motivated by the negative consequences of the cross-border activity on the organization, the financial situation or the supervision of the credit institution.

The decision of the supervisory authority shall be notified to the credit institution at the latest a month after receipt of the complete dossier, including all data referred to in paragraph 1, by registered letter or letter with recorded delivery. If the supervisory authority does not notify its decision within this period, it shall be deemed not to object to the institution’s project.
§ 2. If the credit institution plans to call on tied agents established in Belgium in order to provide investment services and/or activities as well as ancillary services on the territory of another Member State, it shall communicate the identity of these agents to the Bank.

The Bank shall communicate these details, at the latest one month after receipt, to the competent authority of the host Member State.


[[§ 3.] This Article applies to the exercise of activity in a third country.]


Article 91

The supervisory authority, if it has not opposed the implementation of the plan in accordance with Article 90, shall communicate the notification referred to in this Article to the competent authority of the host State concerned forthwith.

The Bank shall also communicate the information concerned to the FSMA within the same period of time insofar as the activity abroad relates to the provision of investment services.

Subsection III. - Exercise of banking activity by specialized subsidiaries of credit institutions in another Member State

Article 92

Financial institutions governed by Belgian law that are a subsidiary, directly or indirectly, of one or more credit institutions governed by Belgian law and are entitled to regularly exercise the activity in Belgium as detailed in point 2 et seq. of the list in Article 4, may establish branches in other Member States for the exercise of this activity pursuant to the rules stipulated in Articles 86, 87 and 89 or exercise their business without opening a branch pursuant to the rules stipulated in Articles 90 and 91, if they comply with the following conditions:

1° the credit institution(s) that is/are the parent undertaking(s) of these financial institutions in accordance with the present Book, possess an authorization as a credit institution;

2° the financial institutions actually exercise the aforementioned activity on the Belgian territory;

3° the credit institution(s) that is/are the parent undertaking(s) of these financial institutions hold(s) at least 90% of the voting rights attached to the shares in these financial institutions;

4° the parent undertakings demonstrate to the supervisory authority that the management of the financial institutions is sound and prudent;

5° the parent undertakings are joint and several guarantors for the obligations of the financial institutions in accordance with the rules approved by the supervisory authority;

6° the financial institutions are included in the consolidated supervision of the parent institutions in accordance with Title III, Chapter IV, Section II of the present Book, especially with respect to the requirements on own funds, the supervision of major risks and the limits to holding shares as determined by Regulation No 575/2013.

Prior to making the decision referred to in Articles 86 or 90, the supervisory authority shall evaluate whether or not these conditions have been met. It shall provide a statement to that effect along with the communication provided for in Articles 87 or 90. By way of derogation from these provisions, the supervisory authority shall report the amount of own
funds of the financial institution concerned and the consolidated solvency ratio of the credit institutions of which the financial institution is a subsidiary.

If the financial institution referred to in this Article no longer meets the conditions laid down herein, the supervisory authority shall report this immediately to the competent authorities of the Member State or States in which this financial institution operates via a branch or a form of provision of services.

The financial institutions referred to in this Section shall be identified in an Annex to the list of credit institutions as referred to in Article 14.

Subsection IV.- Exercise of activity in a participating Member State

**Article 93**

With respect to the tasks conferred to the European Central Bank pursuant to Article 4 of the SSM Regulation, the provisions relating to the procedures between the competent authorities and the competences concerned shall not apply where the credit institution or its specialized subsidiary as referred to in Article 92 intends to establish a branch on the territory of another participating Member State or exercise activity within the scope of the free provision of services.

CHAPTER V.- Regulatory standards and obligations

**Section I.- Prospective management of own funds and liquidity.**

**Article 94**

§ 1. All credit institutions must have an appropriate policy for own funds and liquidity needs on and for its activity and envisaged activity.

§ 2. The statutory governing body shall lay down a policy to this end for the prospective management of own funds requirements and liquidity of the credit institution that identifies and determines the current and future own funds and liquidity needs of the institution.

This policy shall take into consideration the nature, scale and characteristics of the activity or envisaged activity of the institution and the institution’s risks and risk management policy pertaining thereto.

§ 3. The policy referred to in § 1, shall be implemented by the management committee under the supervision of the statutory governing body. It shall be regularly evaluated by the statutory governing body, which shall update it where necessary.

The supervisory authority can further determine the frequency and methods for such an evaluation, where applicable by means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998.

**Section II. — Combined requirement of a common equity tier 1 capital buffer**

**Article 95**

Without prejudice to compliance with the regulatory own funds requirements referred to in Article 92 of Regulation No 575/2013 or the requirements determined by or pursuant to Articles 98, 149 and 150, a credit institution must comply with the combined requirement of a common equity tier 1 capital buffer as referred to in Article 96. A parent credit institution shall furthermore comply with this requirement on the basis of its consolidated position and in accordance with the methods laid down in [Part 1, Title 2, Chapter 2 of Regulation No 575/2013].

*paragraph 1 amended by Article 15 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015*
A financial holding company governed by Belgian law or a mixed financial holding company governed by Belgian law that owns a credit institution, shall comply with the provisions of the first paragraph on a consolidated basis in accordance with the methods determined in [Part 1, Title 2, Chapter 2 of Regulation No 575/2013].

paragraph 2 amended by Article 15 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Article 96

§ 1. Without prejudice to the methods referred to in §§ 3 to 6, the combined requirement of a common equity tier 1 capital buffer shall be equal to the sum of the following requirements of a common equity tier 1 capital buffer:

1° the common equity tier 1 capital buffer referred to in Article 1 of Annex IV;

2° the credit institution-specific countercyclical common equity tier 1 capital buffer as referred to in Articles 3 to 10 of Annex IV;

3° the common equity tier 1 capital buffer for global systemically important [institutions] (G-SIFIs) or for domestic systemically important [institutions] (D-SIFIs) as referred to in Articles 11 to 15 of Annex IV;

§ 1, 3° amended by Article 16 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

4° the common equity tier 1 capital buffer for systemic or macro-prudential risks as referred to in Articles 16 to 22 of Annex IV.

§ 2. The requirements referred to in § 1 shall be clarified in Annex IV of the present Law.

§ 3. [A parent credit institution, a parent financial holding company governed by Belgian law or a parent mixed financial holding company governed by Belgian law which is, on a consolidated basis, simultaneously subject to the requirement to hold a common equity tier 1 capital buffer for global systemically important financial institutions (G-SIFIs) and a common equity tier 1 capital buffer for domestic systemically important financial institutions (D-SIFIs) in accordance with Articles 13 to 14 of Annex IV, must only comply with the highest requirement.]

§ 3 replaced by Article 17 of the Law of 18 December 2015 - Belgian Official Gazette 29 December 2015

§ 4. [A parent credit institution, a parent financial holding company governed by Belgian law or a parent mixed financial holding company governed by Belgian law which is, on a consolidated basis, simultaneously subject to the requirements of paragraph 3 and to the requirement to hold a common equity tier 1 capital buffer for systemic or macro-prudential risks in accordance with Articles 16 to 22 of Annex IV, must only comply with the highest requirement.]

§ 4 replaced by Article 18 of the Law of 18 December 2015 - Belgian Official Gazette 29 December 2015

§ 5. A credit institution, a parent financial holding company governed by Belgian law or a parent mixed financial holding company governed by Belgian law which is, on an individual or sub-consolidated basis, simultaneously subject to the [requirement to hold a common equity tier 1 capital buffer for domestic systemically important financial institutions (D-SIFIs),] in accordance with Article 14 of Annex IV, and to a requirement to hold a common equity tier 1 capital buffer for systemic or macro-prudential risk, in accordance with Articles 16 to 22 of Annex IV, must only comply with the highest requirement.
However, where the aforementioned requirement to hold a common equity tier 1 capital buffer for systemic or macro-prudential risk only covers the credit institution’s risk exposures in Belgium, this requirement shall be added to the [requirement to hold a common equity tier 1 capital buffer for domestic systemically important financial institutions (D-SIFIs)].

§ 5 amended by Article 19 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

§ 6 [Where a credit institution, a parent financial holding company governed by Belgian law or a parent mixed financial holding company governed by Belgian law forms a part of a group or a subgroup to which a global systemically important financial institution (G-SIFI) or a domestic systemically important financial institution (D-SIFI) belongs, the global requirement referred to in the paragraph 1 to hold a common equity tier 1 capital buffer for this credit institution may be no lower than the sum of:

- the requirements to hold a common equity tier 1 capital conservation buffer as referred to in Article 1 of Annex IV;
- the requirements to hold an institution-specific countercyclical common equity tier 1 capital buffer as referred to in Articles 3 to 10 of Annex IV;
- the amount that results from the requirement to hold a common equity tier 1 capital buffer for domestic systemically important financial institutions (D-SIFIs) referred to in Article 14 of Annex IV, and the requirement to hold a common equity tier 1 capital buffer for systemic or macro-prudential risks as referred to in Articles 16 to 22 of Annex IV, following the methods referred to in paragraph 5, which apply on an individual basis, and where applicable, on a sub-consolidated basis.]

§ 6 replaced by Article 20 of the Law of 18 December 2015 - Belgian Official Gazette 29 December 2015

Section III. — Macro-prudential or systemic risk

Article 97. The Bank is the national authority responsible for the application of Article 458 of Regulation No 575/2013.

Alongside the conditions laid down in Article 458 of Regulation No 575/2013, the regulations laid down by the Bank, adopted in application of the aforementioned Article 458 must be approved by way of a Royal Decree deliberated on in the Council of Ministers.

Section IV. — Regulatory powers of the Bank

Article 98. Without prejudice to the provisions of Regulation No 575/2013, the Bank shall determine, by means of a regulation passed pursuant to Article 12bis § 2, of the Law of 22 February 1998:

a) the rules concerning solvency, liquidity, risk concentration and other restrictions to be observed by all credit institutions, or category of credit institution, if those rules are not defined in Regulation No 575/2013;
b) the mode of application of the rules on solvency, liquidity and risk concentration provided for in Regulation No 575/2013, including the mode of application of the various options offered under this Regulation to the Member States and to the Bank as the competent authority, taking into account the guidelines defined by the European Banking Authority in relation to the said Regulation, and the regulatory technical standards adopted by the European Commission in application of the said Regulation;
c) the rules applicable to the valuation of assets, liabilities and off-balance-sheet items in order to verify compliance with the rules on solvency, liquidity or risk concentration.

The rules referred to in this Article may be quantitative or qualitative in nature.
Section V — Measures intended to reconstitute common equity tier 1 capital

Subsection I. - Restrictions applicable to distributions based on one of the components of common equity tier 1 capital.

Article 99. A credit institution may only make distributions relating to one of the components of common equity tier 1 capital if it complies with the combined requirement of a common equity tier 1 capital buffer as referred to in Article 96.

Moreover, such distributions may not ensue in a drop in common equity tier 1 capital to a level that no longer meets the aforementioned combined requirement of a common equity tier 1 capital buffer.

Article 100. By way of derogation from Article 99, first paragraph, a credit institution that does not meet the combined requirement of a common equity tier 1 capital buffer can nevertheless make a distribution relating to components of common equity tier 1 capital if it complies with the conditions set out in Articles 101 to 103. To this end, the credit institution shall previously calculate the maximum distributable amount (MDA) and communicate this amount to the supervisory authority.

The methods for the calculation of the MDA that must be taken into consideration by the institution are stipulated in Article 1 of Annex V of the present Law.

Article 101. § 1. A credit institution as referred to in Article 100 may only carry out the following operations in proportion to the MDA:

a) make a distribution as a remuneration or make a payment as a reimbursement or repurchase of common equity tier 1 capital;
b) make payments relating to additional tier 1 capital components;
c) commit to a payment of variable remuneration or distributions under a discretionary pension.

§ 2. Furthermore, a credit institution as referred to in Article 100 may only pay a variable remuneration or distributions under a discretionary pension in proportion with the MDA even if the payment obligation was embarked upon at a time at which the institution complied with the combined requirement of a common equity tier 1 capital buffer.

§ 3. If a credit institution intends to carry out one of the operations referred to in §§ 1 and 2, it shall communicate its intention to the supervisory authority and provide the information stated in Article 2 of Annex V, demonstrating compliance with the rules on not exceeding the MDA.

Article 102. Credit institutions shall put in place mechanisms that guarantee that the amount of the distributable profit and, where applicable, the MDA, is calculated accurately. Credit institutions shall also be able to demonstrate the accuracy of this calculation to the supervisory authority should they be required to do so.

Article 103. The limits laid down by this subsection shall only apply insofar as the suspension of payments arising therefrom does not ensue in the conditions for opening winding-up proceedings in application of the provisions of the Bankruptcy Law of 8 August 1997.

Subsection II — Capital conservation plan

Article 104. Where a credit institution does not meet the combined requirement of a common equity tier 1 capital buffer referred to in Article 96, it shall inform the supervisory authority thereof and submit a capital conservation plan that aims to increase own funds or,
where applicable, that includes measures ensuing in a decrease in the institution’s combined requirement for a common equity tier 1 capital buffer by reducing its risk profile. The institution shall submit this plan to the supervisory authority for approval at the latest five working days after it ceased to comply with the aforementioned requirement. The supervisory authority may lay down a longer term, which may be no longer than ten working days, based on the specific situation of the credit institution, taking into account the scale and complexity of its activities.

**Article 105.** § 1. The supervisory authority shall approve the capital conservation plan if it is of the opinion that its implementation can reasonably be expected to permit the institution to effectively comply, within the term it deems appropriate, with the combined requirement for a common equity tier 1 capital buffer.

§ 2. If it is of the opinion that the plan cannot reasonably be expected to comply with the combined requirement for a common equity tier 1 capital buffer within the aforementioned term, the supervisory authority can:

- require that the institution concerned proceed to increase its own funds to the level that it deems necessary within the term and in accordance with the methods it lays down; and/or
- lay down stricter limits on the distributions than those laid down in application of Article 101.

**CHAPTER VI. — Periodic provision of information and accounting rules**

**Article 106.** § 1. Credit institutions shall submit their financial statements to the Bank. Upon the recommendation of the Bank, the King determines:

1° the rules that the credit institutions must observe with respect to accounting, carrying out inventory estimates and drawing up financial statements;

2° the rules that the credit institutions must comply with for drawing up, verifying and publishing their consolidated financial statements as well as for drawing up and publishing the annual report and audit report on these consolidated financial statements.

The Bank can, by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998, lay down the mode of application of the rules contained in the Royal Decrees referred to in paragraph 2.

§ 2. Credit institutions shall periodically submit a detailed financial statement to the supervisory authority. Such a statement shall be drawn up in accordance with the rules established by the supervisory authority, which shall also determine the reporting frequency. Moreover, the supervisory authority can request other figures or explanations in order to be able to assess whether the provisions of the present Law, of the implementing decrees and regulations thereof and of Regulation No 575/2013 are complied with.

The management committee shall certify to the supervisory authority that the aforementioned periodic statements submitted by the institution at the end of the first half-year and at the end of the financial year are in line with its accounting and the inventories. As such, the periodic statements must be:

- complete; they must include all data from the accounting and the inventories on the basis of which they were drawn up, and
- accurate; they must be in exact agreement with the data from the accounting and inventories on the basis of which the periodic statements were drawn up.
The management committee shall confirm that it has taken the necessary steps to ensure that the aforementioned statements have been drawn up following the supervisory authority’s guidelines and in accordance with the accounting and valuation rules for drawing up the financial statements, or, for the periodic reporting statements not pertaining to the end of the financial year, in accordance with the accounting and valuation rules for drawing up the financial statements for the last financial year.

§ 3. The members of the statutory governing body shall be jointly and severally liable vis-à-vis the company as well as vis-à-vis third parties for all damage ensuing from infringement of the provisions laid down in application of § 1, second paragraph.

With respect to infringements in which the members of the statutory governing body have played no role, these members shall only be discharged from the liability referred to in the first paragraph where no fault can be attributed to them and where they have reported such infringements, depending on the circumstances, at the first general meeting or at the next meeting of the statutory governing body after such an infringement has come to their attention.

§ 4. For certain categories of credit institution or in exceptional circumstances, the supervisory authority can permit derogations from the rules referred to in § 1, second paragraph and § 2, first paragraph.

§ 5. The decrees and regulations referred to in this Article shall be adopted after consultation with the credit institutions through the professional associations that represent them.

Article 107. The Bank shall periodically, and at least four times a year, publish a set of totals for credit institutions in accordance with the rules it lays down after consulting the credit institutions through the professional associations that represent them.

CHAPTER VII. — Recovery plans

Section I. — Drawing up recovery plans

Article 108. [§ 1. The credit institution for which no group recovery plan is drawn up, shall draw up and keep updated a recovery plan specifying the measures that could be taken by the institution in order to restore its financial situation following a significant deterioration.

The credit institution shall communicate this recovery plan to the supervisory authority.

§ 2. Credit institutions for which a group recovery plan is drawn up, must draw up a recovery plan on an individual basis if the competent authorities have decided so in accordance with Article 435, § 1 or § 3, Article 436, § 3, or within the meaning of Article 8, paragraphs 2 or 4 of Directive 2014/59/EU.]

Article replaced by Article 3 of the Royal Decree of 26 December 2015 - Belgian Official Gazette, 31 December 2015

Article 109. The recovery plan shall cover various scenarios of serious macroeconomic or financial crisis, including systemic events, crises specific to the credit institution, and, if necessary, crises affecting entities within the group to which the credit institution belongs.

The recovery plan shall not provide for any extraordinary government intervention but if necessary shall contain an analysis indicating how and when the credit institution may resort to the facilities of central banks. The plan shall list the assets of the credit institution that may be classified as security for that purpose.
Article 110. § 1. The recovery plan shall contain a grid of quantitative and qualitative indicators concerning a potential deterioration in the financial situation of the credit institution, with details of the points in respect of which the institution shall consider whether the corrective measures provided for in the plan are to be taken.

To this end, the recovery plan shall define appropriate procedures for regular monitoring of changes in the indicators mentioned in paragraph 1, and in order to examine the corrective measures to be taken, including any subsequent escalation procedure.

§ 2. The indicators mentioned in § 1 shall include a progressive scale of thresholds indicating the proportion of encumbered assets of the credit institution, determined by the supervisory authority in accordance with paragraph 2. The recovery plan shall indicate the corrective measures to be considered if each of the thresholds is crossed.

In order to guarantee an adequate structure for the exercise of the preferential right mentioned in Article 389 while preserving the credit institution’s access to sources of finance, the supervisory authority shall determine, for each credit institution, a progressive scale of thresholds for its proportion of encumbered assets, in accordance with the definitions of the implementing technical standards referred to in Article 100(2) of Regulation No 575/2013.

In order to determine the scale mentioned in paragraph 2, the supervisory authority shall take into account the credit institution’s level of deposits, referred to in Article 389, the nature of its activities, and the structure of its balance sheet.

By means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998 and approved by way of a Royal Decree deliberated on in the Council of Ministers, the Bank shall determine the minimum and maximum thresholds for the scales mentioned in paragraph 2, taking into account international developments in this matter and the relevant benchmarks.

§ 3. The credit institution may, if the statutory governing body deems it appropriate in light of the circumstances:

1° take the measures referred to in its recovery plan even if the relevant indicator has not been met;

2° not take measures referred to in its recovery plan even if the relevant indicator has been met.

The credit institution shall inform the supervisory authority forthwith of any decision to be taken with regard to a recovery plan measure, or the decision not to take such a measure despite the relevant indicator being met.

§ 4. Without prejudice to other powers conferred on it by the present Law, the supervisory authority can task the credit institution with taking one or more of the corrective measures included in its recovery plan if the institution fails to take appropriate measures on its own initiative.

Article 111. The credit institution shall update the recovery plan at least once a year and in any case after any changes in its legal or organizational structure, in its activities or financial situation that could have a significant impact on the plan or require changes to be made thereto.

The supervisory authority may ask the credit institution to update the resolution plan more frequently. [The supervisory authority shall in any case require an update to the recovery plan if the hypotheses described in the recovery plan are different to the circumstances that have led to the measures being taken as referred to in Article 234, § 2.]
**Article 112.** By means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, [the Bank may stipulate further rules pertaining to:]

1° the minimum contents of the recovery plan;

2° the information to be submitted to the supervisory authority by the credit institutions and the frequency of communication of that information.

[The supervisory authority may oblige the credit institutions to keep detailed information regarding financial contracts to which they are a party.]

**Article 113.** [§ 1. The supervisory authority may exempt the following institutions from the obligations pursuant to the present Section:

1° institutions that are a member of an institutional protection scheme, which is understood to mean a mutual guarantee scheme set up by certain credit institutions on a voluntary basis;

2° credit institutions referred to in Article 239, § 1;]

§ 2. Where the supervisory authority grants an exemption pursuant to paragraph 1, it shall apply the requirements specified in the present Section on the basis of the overall situation of either the institutional protection scheme and the exempt members thereof, or the central institution and the credit institutions affiliated thereto as referred to in Article 239.

§ 3. The institutions which come, pursuant to Article 6, paragraphs 4 and 5, under b) of the SSM Regulation, under the direct supervision of the European Central Bank or whose work forms an important part of the Belgian financial system, may not be exempted by virtue of paragraph 1. For the application of this paragraph, the work of an institution is deemed to form an important part of the Belgian financial system if the following conditions are met:

1° the total value of its assets is greater than EUR 30,000,000,000; or

2° the ratio of its total assets and the gross domestic product is greater than 20%.

§ 4. The supervisory authority may permit a credit institution to derogate from its obligations under this Section concerning the contents of the recovery plan, the frequency of the plan’s updates, the information to be provided by the credit institution, and the periods stipulated in Article 114 § 2, or Article 416, insofar as such a derogation is justified in light of the impact that the credit institution’s failure and liquidation under the liquidation procedure would have on the financial markets, on other credit institutions, on the financing conditions and on the economy in general. The supervisory authority shall in particular take into consideration the nature of the credit institution’s work, its shareholder structure, legal form, risk profile, scale and legal status, interconnectedness to other credit institutions or to the financial system in general, the scope and complexity of its work and whether or not it provides investment services or activity.

The supervisory authority may at any time withdraw a derogation granted under paragraph 1. It shall evaluate the necessity and benefit of maintaining the derogations granted at least once a year and after any change in the legal or organizational structure, activities or financial situation of the credit institution concerned.
§ 5. The derogations granted pursuant to paragraph 4 may under no circumstances relate to the obligations pertaining to the progressive scale of thresholds for the proportion of encumbered assets, as referred to in Article 110, § 2, paragraphs 2 and 3.

Article replaced by Article 22 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Section II — Assessment of recovery plans

Article 114. § 1. The recovery plan shall be examined and approved by the statutory governing body of the credit institution before it is submitted to the supervisory authority.

§ 2. The credit institution shall submit its first recovery plan to the supervisory authority no later than six months after the date of its authorization.

Subject to the provisions of paragraph 3, the credit institution shall submit an updated plan to the supervisory authority no later than two months after the occurrence of the event that gave rise to the obligation to update the plan, it being understood that the supervisory authority can extend this term up to a maximum of six months.

If the event that gave rise to the obligation to update the plan was a change in the financial situation of the credit institution, such that it would have a significant impact on the plan, the credit institution shall inform the supervisory authority forthwith and shall submit an updated plan by the deadline communicated by the supervisory authority.

§ 3. The supervisory authority shall send the recovery plan, and all updated plans, to the resolution authority.

The resolution authority may, within thirty days of receipt of the plan, inform the supervisory authority of its recommendations on any measures set out in the plan that could negatively affect the resolvability of the credit institution.

Article 115. § 1. During the six months after receipt of the recovery plan, the supervisory authority shall examine it and consider whether or not it meets the requirements provided in or by virtue of Articles 108 - 113.

To that end the supervisory authority shall, in particular, evaluate whether or not the recovery plan enables it to be reasonably expected that:

1° the implementation of the measures set out in the plan are of a nature to maintain or restore the viability and financial situation of the credit institution or of the group to which it belongs, taking into account any preparatory measures that the institution has taken or intends to take;

2° the plan, and the different options provided for therein, can be implemented within a short period of time and, in a situation of financial crisis, avoiding wherever possible any adverse effects on the financial system, including in scenarios that involve the simultaneous implementation of recovery plans by other institutions.

When evaluating the recovery plan, the supervisory authority will pay particular attention to the adequacy of the credit institution’s capital and financing structure with regard to the level of complexity of its organization and to its risk profile.

§ 2. If the supervisory authority considers that there are significant omissions in the recovery plan or that there are significant impediments to its implementation, it will inform the credit institution and, having given the institution an opportunity to express its point of view, will ask it to within two months submit a revised plan that eliminates the omissions or impediments. The supervisory authority may prolong the aforementioned two-month period by up to one month.
§ 3. If the supervisory authority considers that the plan, revised in accordance with § 2, does not sufficiently remedy the omissions or impediments identified, it may ask the credit institution, within thirty days from notification of its findings to the institution, to make specific changes to its recovery plan.

**Article 116.** § 1. If the credit institution fails to follow up the request made under Article 115, § 2, within the stipulated period, or if the supervisory authority considers that the recovery plan revised and submitted in accordance with Article 115, § 2, does not remedy the omissions or impediments that it has identified and that these cannot duly be remedied by an order issued in accordance with Article 115, § 3, the supervisory authority shall inform the credit institution and ask it to decide, over the next thirty days, on the changes it can make to its operations in order to remedy the omissions or impediments.

§ 2. If the supervisory authority considers that the changes proposed by the credit institution under § 1 do not remedy the omissions or impediments identified it may, without prejudice to any other measures proposed by or by virtue of this law, ask the credit institution to take any measures deemed necessary and proportionate in order to remove the omissions or impediments.

The supervisory authority may, in particular, ask the credit institution to:

1° reduce its risk profile including its liquidity risk;

2° allow rapid recapitalization measures;

3° review its strategy and structure;

4° modify its financing strategy in order to strengthen the resilience of its key activities and critical functions;

5° modify its governance structure.

The decision of the supervisory authority shall be communicated to the credit institution in writing.

**CHAPTER VIII – Structure of activities**

**Section I. - Scope and definitions**

**Article 117.** This Chapter applies to credit institutions governed by Belgian law collecting deposits or issuing debt instruments which are covered by the Belgian deposit protection scheme referred to in Article 380.

**Article 118.** § 1. For the purposes of application of this Chapter and the decrees and regulations issued in implementation thereof, the following meanings shall apply:

1° dealing on own account: the trading of financial instruments using own capital in the context of a trading book as defined in Article 4, paragraph 1, (86) of Regulation No 575/2013;

2° on a consolidated basis: on the basis of the consolidated situation of the group or sub-group formed by a credit institution and its Belgian and foreign subsidiaries;

3° consolidation perimeter: the group or sub-group formed by a credit institution and its Belgian and foreign subsidiaries;

4° trading entity: any undertaking linked to a credit institution outside of its consolidation perimeter, whose trading for own account activities exceed the thresholds stipulated in a Regulation issued by the Bank under Article 12bis § 2, of the Law of 22 February 1998.
§ 2. For the matters relevant to this Chapter all the Royal Decrees referred to in Article 12bis, § 2, third paragraph of the Law of 22 February 1998 shall be deliberated on in the Council of Ministers.

Section II — Prohibition on trading for own account

Article 119. From 1 January 2015, any credit institution shall be prohibited from exercising trading for own account, whether directly or through its Belgian or foreign subsidiaries.

Article 120. For the purposes of this Chapter, trading for own account shall include own account operations and commitments not backed by adequate guarantees, agreed with:

a) [AIFs which use leverage on a substantial basis as referred to in Article 111 of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision] or similar investment vehicles that meet the characteristics provided for in a regulation of the FSMA; or

b) undertakings for collective investment investing in or exposed to one or more of the institutions or vehicles as referred to in point a) above a threshold stipulated in a regulation issued by the Bank under Article 12bis, § 2, of the Law of 22 February 1998.

Article 121. § 1. Subject to Article 123, the prohibition imposed in Article 119 shall not apply to transactions in financial instruments forming part of the following activities, provided that such transactions meet the conditions set out in § 2:

1° providing investment and ancillary services to clients as defined in Article 2, 1°, 2, 2 and 4 to 8, and 2° of the Law of 25 October 2016, intended to meet the clients’ finance, hedging or investment needs;


2° market making activities consisting of the regular, continuous presence on a regulated market or in a multilateral trading facility of which it is a member, of a market participant offering fixed purchase and sale prices for financial instruments backed by a commitment on its part to act as counterparty to those prices on minimal quantities in order to provide liquidity to the market concerned, provided that the market participant is approved as a market maker by the market operator or investment firm that operates the market or the multilateral trading facility in question;

3° activities for the hedging of the credit institution’s risks or that of its subsidiaries, including the risks linked to the activities mentioned in 1°, 2°, 4° and 5°;

4° The sound and prudent management of the liquid assets of the credit institutions and of its subsidiaries;

5° The purchase and sale of financial instruments acquired as long-term holdings.

§ 2. In order to be exempted from the prohibition under Article 119, the transactions in financial instruments referred to in § 1, must meet the following conditions:

1° they must be made within the risk limits and in accordance with the framework limits stipulated in application of Article 122;

2° for transactions in connection with the activities mentioned in § 1, 1° to 3°, the credit institution must show that they are necessary for the purposes of fulfilling its role as intermediary with its clients;
3° for transactions in connection with the activities mentioned in § 1, 4° and 5°, the credit institution must show that they are necessary for the purposes of the sound and prudent management of the liquid assets or investments in question.

**Article 122.** By means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, the Bank shall stipulate the risk limits and framework measures required for the transactions in financial instruments mentioned in Article 121, § 1.

The Regulation mentioned in paragraph 1 shall also define:

1° The governance and risk management rules for each category of transaction mentioned in Article 121, § 1;

2° The specific internal control procedures implemented by the credit institutions with a view to guaranteeing compliance with the conditions and limits stipulated by or by virtue of Articles 121-124;

3° The specific periodic reporting obligations of the credit institutions that allow the supervisory authority to check compliance with the above conditions and limits.

**Article 123.** § 1. The transactions in financial instruments mentioned in Article 121 § 1, which are not within the risk limits stipulated in application of Articles 121 and 122, shall be considered as prohibited trading for own account activities if, individually or on a consolidated basis, the market risks linked to those operations exceed the threshold set in accordance with § 2.

§ 2. The threshold mentioned in § 1 shall be stipulated in terms of the ratio of own funds requirements for market risks linked to the transactions mentioned in § 1, and the total regulatory own funds of the credit institution, either individually or on a consolidated basis as the case may be.

The ratio mentioned in paragraph 1 may not exceed one per cent. By way of a Decree deliberated on in the Council of Ministers, the King may adjust that limit to reflect changes in the needs of the real economy.

The supervisory authority shall stipulate the threshold mentioned in § 1, separately for each credit institution, in accordance with the maximum ratio mentioned in paragraph 2, having particular regard to its activities and risk profile, and the impact of the threshold on the ability of the credit institution to play its role in supporting the real economy.

§ 3. By means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, the Bank shall define further rules for the calculation of the ratio mentioned in § 2.

Such a regulation may, under the conditions defined therein:

1° exclude, from the calculation of the aforementioned ratio, the own funds requirements generated by intra-group transfers intended to centralize the risk management at the level of each credit institution;

2° allow the supervisory authority to grant the credit institution a period within which to regularize its situation in exceptional circumstances partly beyond its control.

**Article 124.** By way of derogation from Article 119, the supervisory authority may authorize a credit institution, under conditions to be defined by the authority, to continue the runoff management of portfolios of financial instruments that were managed in such a way prior to 1 January 2014.

**Article 125.** The credit institution is responsible for proving to the supervisory authority that its activities, or those of its subsidiaries, as the case may be, meet the conditions and limits stipulated by or by virtue of Articles 121-124.
Article 126. § 1. Within 30 days of identifying a crossing of the threshold mentioned in Article 123, the credit institution shall submit, for the approval of the supervisory authority, a plan setting out in detail how it intends to reduce, terminate or sell off its trading operations or those of its subsidiaries with a view to complying with the provisions of this Chapter.

§ 2. To that end, the trading for own account activities of the credit institution or of its subsidiaries may be transferred in whole or in part to one or more affiliated enterprises outside of the credit institution’s consolidation perimeter.

If the trading for own account activities are transferred to an affiliated enterprise governed by Belgian law it must have obtained an authorization as a stockbroking firm [in accordance with the Law of 25 October 2016].


Article 127. § 1. If a credit institution fails to submit a plan as required by Article 126, § 1, or if the supervisory authority considers that the plan cannot guarantee long-term compliance with the provisions of this Chapter, the supervisory authority may ask the credit institution to take any corrective measures it considers necessary, including the termination or sale of its trading for own account activities.

§ 2. In its assessment of the plan mentioned in Article 126, § 1, the supervisory authority shall take into account the plan’s effects on the stability of the financial system and on the functioning of the real economy.

§ 3. If the trading for own account activities are transferred to an undertaking linked to the credit institution, the supervisory authority may make its approval of the plan mentioned in Article 126, § 1, subject to conditions intended to mitigate the risks linked to the exercise of those activities by that undertaking.

§ 4. After the supervisory authority has approved the plan mentioned in Article 126, § 1, it shall inform the credit institution of its decision and publish the decision on its website.

Section III. — Relations with trading entities

Article 128. All trading entities governed by Belgian law must comply with the prudential requirements that apply on an individual basis and, where applicable, on the basis of the consolidated situation of the group or sub-group formed by the entity and its Belgian and foreign subsidiaries, and may not benefit from any exemption or derogation by virtue of their inclusion in the consolidation area of a larger group that includes one or more credit institutions.

Article 129. § 1. For the application of the regulatory own funds requirements and the limits for major risk exposures, the exposures of credit institutions to linked trading entities shall be treated as exposures to third parties.

The exposures mentioned in paragraph 1 may not be exempted fully or partially from the limits on major risk exposures by virtue of Article 400(2)(c) or (f) of Regulation No 575/2013.

§ 2. By means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, the Bank may make the exposures referred to in § 1, subject to a limit on major risk exposures of less than 25%, in accordance with Article 395(6) of Regulation No 575/2003, and may require them to be subject to sufficient credit protection.

Article 130. A credit institution may not acquire or hold, directly or indirectly, qualifying holdings in trading entities unless the amount of those holdings is deducted from the total
of the components of common equity tier 1 capital with the prior authorization of the supervisory authority.

**Article 131.** § 1. The members of the management committee or, in the absence of such a committee, the persons responsible for the senior management of a credit institution, may not exercise any mandate or executive function within a trading entity.

§ 2. Without prejudice to Article 524 of the Companies Code, the board of directors of a trading entity governed by Belgian law shall have at least one independent director within the meaning of Article 526ter of the said Code.

At least half of the non-executive members of the board of directors of a trading entity governed by Belgian law shall not exercise any mandate or other executive function within an undertaking linked to the trading entity.

**Section IV. — Other provisions**

**Article 132.** The provisions of this Chapter shall apply without prejudice to any other measures that may be imposed by the supervisory authority or by the resolution authority in application of the present Law.

**Article 133.** The King may, by way of a Decree deliberated on in the Council of Ministers passed after consultation with the Bank, take any measures that may be useful to guarantee the transposition of the provisions arising from international treaties or acts passed by virtue of such treaties in the matters governed by the provisions of this Chapter.

The powers conferred to the King under the first paragraph end on 31 December 2015.

The decrees passed pursuant to the present Article may amend, supplement, replace or repeal the existing provisions of the legal provisions in force.

Such decrees shall be abrogated ipso jure if they are not ratified during the twelve months following their publication in the Belgian Official Gazette.

**TITLE III. — Supervision of credit institutions**

**CHAPTER I. — Supervision by the supervisory authority and by the FSMA**

**Article 134.** § 1. In accordance with the distribution of competences provided for by the SSM Regulation, the supervisory authority shall ensure that every credit institution works in accordance with the provisions of the present Law, its implementing decrees and regulations and directly applicable European regulations, without prejudice to the powers conferred on the FSMA by virtue of Article 45, § 1, first paragraph, 3° and § 2, of the Law of 2 August 2002.

§ 2. The supervisory authority shall, in the exercise of its general tasks, duly take into consideration the potential effect of its decisions on the stability of the financial system of all other Member States concerned, especially in emergency situations, based on the information available at the time.

**Article 135.** The supervisory authority can request any information for the fulfilment of its supervisory task, on the organization, operation, situation and transactions of credit institutions[, as well as all recordings of telephone conversations or electronic communication or other data traffic reports held by the credit institution].


It can undertake on-site inspections, take cognizance of and copy, on the spot, any data in the possession of the institution,
1° to assess compliance with the legal and regulatory provisions and the provisions of the directly applicable European regulations relating to the status of credit institutions, as well as to assess whether the accounting and financial statements, and the statements and information submitted to it by the institution, are accurate and truthful;

2° to be able to verify the appropriate nature of the management structures, the administrative and accounting procedures, the internal control and the management of the institution with regard to the prospective management of the institution’s own funds requirements and liquidity;

3° to ascertain that the management of the institution is sound and prudent and that its position or its transactions are not of a nature so as to be able to endanger its liquidity, profitability or solvency.

The prerogatives referred to in the first and second paragraphs also include access to the agendas and minutes of the meetings of the various bodies of the institution and of their internal committees as well as all associated documents and the results of the internal and/or external opinions on the operation of the aforementioned bodies.

Article 136. [As part of the supervision and in particular the inspections] the supervisory authority’s staff are authorized to obtain any information and explanation from the managers and staff of the credit institution that they deem necessary for the exercise of their tasks and can request meetings to this end with the managers or staff of the institution they indicate.


Article 136/1. Without prejudice to Article 66, paragraph 2, the supervisory authority may, in the case of outsourcing, also exercise its inspection prerogatives as referred to in Article 135, paragraph 2, at the undertakings which credit institutions call on in their capacity of service providers (subcontracting - outsourcing), to ascertain whether or not the conditions under which the services are provided could prejudice the credit institution’s compliance with its legal and regulatory obligations. The prerogatives referred to in Articles 136 and 140 may also be exercised mutatis mutandis vis-à-vis those service providers.

The competent authorities of another Member State which have supervisory powers over credit institutions that call on service providers (subcontracting - outsourcing) established in Belgium may exercise the prerogatives referred to in paragraph 1 vis-à-vis these service providers, where applicable through persons which they authorize thereto. If they so request, the supervisory authority may exercise these prerogatives on their behalf.]


Article 137. Credit institutions must inform the FSMA and the supervisory authority forthwith whenever they start or stop systematic internalizer services within the meaning of Article 3, 66°.

Article 138. Without affecting the powers conferred to the European Central Bank pursuant to the SSM Regulation, the Bank and the FSMA shall enter into a Memorandum of Understanding with a view to the efficient and consolidated supervision of credit institutions. This MoU shall be published on their respective websites.

This MoU shall determine the methods of cooperation between the FSMA and the Bank in all cases in which the law provides for opinion, consultation, information or any other contact between the two institutions or in which consultation between the two institutions is necessary to ensure a uniform application of the law.
Article 139. Relations between a credit institution and a particular client do not come under the powers of the supervisory authority unless the supervision of the institution so requires.

Article 140. The supervisory authority can undertake the inspections referred to in Article 135, second paragraph, at branches of credit institutions governed by Belgian law established in another Member State, after prior notification to the competent authorities of that State as well as all inspections undertaken with the aim of collecting data on-site or to examine the management of the branch as well as all data that could facilitate the supervision of the credit institution especially in the area of liquidity, solvency, [deposit protection and investor protection], mitigating major risks, administrative and accounting procedures and internal control.


With the same aim and after the notification to the authorities referred to in paragraph 1, it can task an expert it designates to carry out any useful checks and investigations. The remuneration and costs of that expert shall be borne by the institution.

It can also request that these authorities carry out the checks and investigations referred to in the first paragraph.

CHAPTER II. — Prudential supervision procedure

Section I. — Prudential supervision programme

Article 141. § 1. The supervisory authority shall draw up its programme of supervision every year based on the results of the examination and evaluation procedure of credit institutions carried out under Article 142. This programme of supervision determines:

1° the manner in which the supervisory authority intends to carry out its tasks and allocate its resources;

2° which credit institutions will have to be subject to stricter supervision and which measures must be taken for this purpose in accordance with § 3;

3° the programme for the on-site inspections, including for branches and subsidiaries of the institutions established in another Member State, in accordance with Article 140 and/or 162, 183, § 2, and 214;

§ 2. The programme of supervision shall be drawn up for the credit institutions whose review and evaluation procedure referred to in Article 142 or the results of the stress tests referred to in Articles 143, § 1, 1° [and 7°.] and 148, point to significant risks for their financial solidity or to breaches of the provisions of the present Law, its implementing decrees or regulations or the directly applicable European directives.


The programme of supervision shall also apply to global systemically important financial institutions (G-SIFIs) or systemically important financial institutions (SIFIs) as referred to in Article 12 of Annex IV.

The supervisory authority can also at any time include any other credit institution in its programme of supervision for which it deems it necessary to specifically monitor compliance by the institution with the present Law, its implementing decrees and regulations and the directly applicable European directives.

§ 3. The measures referred to in § 1, 2°, may in particular include the following:

1° increasing the number or frequency of on-site inspections at a credit institution;
2° undertaking themed inspections for specific risks;
3° requiring additional or more frequent reporting;
4° undertaking additional or more frequent examinations of the operational, strategic or development plans of a credit institution;
5° imposing its permanent presence within the credit institution.

§ 4. Where the circumstances so require, the supervisory authority shall adapt the content of its programme of supervision as referred to in § 1.

Section II — Prudential review and evaluation process

Article 142. The supervisory authority shall investigate whether the provisions of the present Law, of its implementing decrees and regulations and of Regulation No 575/2013 are complied with based on the criteria under Article 143. It shall evaluate the risks to which the credit institution is or could be exposed, the risks that, where applicable, have come to light during stress tests carried out under Article 148, the appropriate nature, in light of the risks identified, of the prospective management of the own funds and of the liquidity as referred to in Article 94, and the risks that this institution poses for the financial system.

The supervisory authority shall establish the frequency and scope of this evaluation, taking into account the scale and the system relevance of the institution in question, as well as the nature, scale and complexity of its activity. For institutions that fall under its programme of supervision under Article 141, the evaluation shall be updated at least once a year.

The supervisory authority shall inform the European Banking Authority forthwith of the results of the evaluation referred to in paragraph 1, if it appears from that evaluation that a credit institution could pose a system risk in application of the criteria referred to in Article 23 of Regulation No 1093/2010.

Article 143. § 1. The review and evaluation carried out by the supervisory authority pursuant to Article 142 shall not only aim to establish whether the credit and market risks and the operational risks as referred to in Articles 5 to 7 of Annex I are controlled, but shall also in particular pertain to the following aspects:

1° the results of the stress tests carried out in accordance with Article 177 of Regulation No 575/2013 by credit institutions applying the Internal Rating system;
2° the exposure to concentration risk and its control by the institution, including compliance with the requirements laid down in Article 3, Annex I, in Part 4 of Regulation No 575/2013 and in the regulations laid down by the Bank pursuant to Article 98;
3° the soundness, appropriate nature and method of enforcement of the policies and procedures followed by the institution with a view to controlling residual risk linked to the use of credit risk mitigation techniques;
4° the extent to which the own funds held by the credit institution relating to the assets it has securitized are sufficient in light of the economic substance of the transaction, including the degree of risk transfer.

The supervisory authority shall assess whether the institution concerned, by offering tacit support, retains part of the risk linked to the assets that are the subject of the securitization transaction. If it is established that an institution has lent its tacit support more than once, the supervisory authority can take the measures it deems necessary, taking into consideration the fact that in such a case, the probability is greater that the institution also offers such support in the future for a securitization transaction;
5° the exposure to and the measurement and control by the institution of the liquidity risk, including:

- drawing up analyses based on other scenarios than those provided for by Regulation No 575/2013 and by the regulations established by the Bank pursuant to Article 98;
- managing factors that could reduce the liquidity risk (in particular the scale, composition and quality of the liquidity buffers);
- introducing effective crisis plans.

The supervisory authority shall subject the institution’s global liquidity risk management to a thorough evaluation and shall ensure that the internal methods for the evaluation of liquidity risks are solid. The supervisory authority shall in this respect take into consideration the role of the institution on the financial markets and the impact that its decisions could have on the stability of the financial system in the other Member States concerned;

6° the impact of the diversification effects of the risks and/or risk exposures and the manner in which those effects are integrated into the risk evaluation system;

7° the results of the stress tests carried out by the institution that uses an internal model for calculating own funds requirements for the market risk, in accordance with Part 3, Title IV, Chapter 5 of Regulation No 575/2013 and the regulations laid down by the Bank pursuant to Article 5, § 5, of Annex I;

8° the geographical location of the institution’s exposures;

9° the institution’s business model;

10° the assessment of system risk, in accordance with the criteria referred to in Article 23 of Regulation 1093/2010;

11° the reliable and prudent nature of the valuation rules used by the credit institution. The value adjustments carried out in accordance with Article 105 of Regulation No 575/2013 must allow the institution to quickly sell or hedge its positions under normal market conditions without leading to significant losses;

12° the exposure of the institution to the interest risk linked to its non-trading book activity. Without prejudice to Article 149, measures must at all times be taken by the supervisory authority if a sudden and unexpected change in interest rates could reduce the economic value of an institution by more than 20% of its own funds;

13° the exposure of the institution to leverage risks as revealed by indicators of excessive leverage, in particular the leverage ratio established in accordance with Article 429 of Regulation No 575/2013;

In its assessment of the adequacy of the institution’s leverage ratio and of the appropriate nature of the provisions, strategies, procedures and mechanisms applied with a view to controlling the leverage risk, the supervisory authority shall take into consideration the business model of the institution concerned;

14° the organizational structure of the credit institution as referred to in Article 21 and the capacity of the members of the statutory governing body and of the management committee to exercise their tasks.

§ 2. The supervisory authority can establish the quantitative and qualitative criteria based on which it assesses the scale of the risks and the appropriate nature of their treatment by the credit institution, where applicable by means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998.
Section III. — Examination of internal approaches and methods

Article 144. § 1. The supervisory authority shall regularly and at least every three years examine whether the internal approaches for the calculation of regulatory own funds requirements comply with Regulation No 575/2013 and with the regulations established pursuant to Articles 1, § 6 and 5, § 5 of Annex I. It shall also examine whether the credit institutions that have received authorization to use such approaches comply with the conditions for this use that had been previously established by the supervisory authority. It shall in particular take into consideration changes in the activity of the institution and the application of those approaches to new products.

§ 2. The supervisory authority shall review and evaluate in particular whether the institutions that use internal approaches as referred to in § 1, use well-developed techniques and practices, which are updated.

Article 145. § 1. If the supervisory authority establishes that the internal approach used by a credit institution contains significant omissions in terms of identifying risks, it shall request that the institution take the appropriate measures to remedy this situation and limit the consequences thereof and shall lay down, where applicable, an increase of the multiplication factors or of the specific own funds requirements pursuant to Article 149.

§ 2. If a great number of overshootings, within the meaning of Article 366 of Regulation No 575/2013, indicate that an internal market risk model is insufficiently accurate, the supervisory authority can withdraw the authorization to use that internal model or lay down specific measures to ensure that this model is improved as rapidly as possible.

§ 3. Where it establishes that a credit institution that has been granted authorization to use an internal approach for the calculation of regulatory own funds requirements no longer meets the conditions for the use of this approach, the supervisory authority shall require that the institution submit a plan with a time schedule for meeting the conditions anew or that the institution demonstrate that the effect of non-compliance with the conditions is negligible, having regard to Regulation No 575/2013.

The supervisory authority shall require that the plan for meeting the conditions anew be amended if it is of the opinion that the implementation thereof is unable to lead to compliance with the conditions or if it is of the opinion that the term for meeting the conditions laid down by the credit institution anew is inadequate or unrealistic. If the supervisory authority is of the opinion that the institution will be unable to meet the conditions for the use of the internal approach within the term that it deems appropriate, it shall withdraw the authorization to use the aforementioned internal approach or shall limit such use to the domains in which the conditions are met or can be met within the term that the supervisory authority deems appropriate.

Article 146. Notwithstanding Article 145, if the supervisory authority establishes that the non-compliance of the internal approach could lead to the credit institution no longer meeting its regulatory own funds requirements, it shall lay down, in accordance with Article 234, § 2, 1°, additional own funds requirements in order to remedy this situation within the term that it determines.

Article 147. § 1. Credit institutions that have received authorization to use an internal approach for the calculation of the risk volume or of the own funds requirements, with the exception of the operational risk, shall report the results of the calculations of their internal approach for their exposures or positions included in the benchmark portfolios annually or at the request of the supervisory authority. This information must include an explanation of the methods used.
§ 2. For the report referred to in § 1, credit institutions can use the template drawn up by the European Banking Authority, except for the report of results of the calculations for specific portfolios that the supervisory authority can ask for if applicable, which must be reported separately.

§ 3. The supervisory authority shall carry out a comparative analysis of the quality of the internal approaches that are reported to it at least once a year. It shall request that corrective measures be put in place if it establishes that the internal approach used by a credit institution significantly derogates from the other approaches used in the sector and if it demonstrates that this approach leads to undervaluation of the own funds requirements for the institution concerned, which cannot be attributed to differences in the underlying risks to which this institution is exposed.

Section IV. — Stress tests

Article 148. If it is of the opinion that the stress tests carried out in accordance with Article 23 of Regulation No 1093/2010 produce unsatisfactory results, the supervisory authority shall subject the credit institution to specific prudential stress tests, taking into consideration the idiosyncrasies of the banking and financial sector in Belgium, in order to facilitate the review and evaluation procedure referred to in Article 142.


Section V. — Prudential measures

Article 149. Based on the results of the review and evaluation that is carried out in accordance with Article 142, the supervisory authority can lay down specific own funds requirements to the credit institution over and above the own funds requirements laid down by or pursuant to Regulation No 575/2013, the regulations laid down pursuant to Article 98 and Article 95, to take into consideration the risks to which the institution is or could be exposed. The supervisory authority shall determine how the institution concerned must comply with this specific own funds requirement.

In doing so, the supervisory authority shall take the following into consideration:

a) the quantitative and qualitative aspects of the policy for prospective management of the credit institution’s own funds requirements as referred to in Article 94, § 2;

b) all provisions, procedures and mechanisms established by the institution in accordance with Article 21;

c) the results of the examination of the internal approaches and internal methods referred to in Section III and of the prudential stress tests carried out pursuant to Article 148;

d) the risks that the institution poses for the stability of the financial system in Belgium and other Member States.

Article 150. The specific own funds requirements referred to in Article 149 can also be imposed in the following cases:

1° the institution poses risks that are not covered or only partly covered by the own funds requirements established in accordance with the provisions of Regulation No 575/2013, and with the regulations established pursuant to Article 98 and Article 95;

2° the results of the stress tests carried out in accordance with Article 377(5) of Regulation No 575/2013 point to a significant insufficiency of own funds requirements for the correlation trading portfolio as referred to in Article 338 of that Regulation;

3° based on the review and evaluation procedure referred to in Article 142, the supervisory authority is of the opinion that the minimum own funds requirements established pursuant to Regulation No 575/2013, and the regulations established pursuant to Article 98 and
Article 95, or established by the institution itself pursuant to Article 94, are likely to underestimate the actual risks of the institution.

Article 151. Where it is of the opinion that the liquidity risk to which the credit institution is or could be exposed justifies such a measure, the supervisory authority can lay down specific liquidity rules to an institution over and above the liquidity rules established in Regulation No 575/2013 and in the regulations established pursuant to Article 98. In doing so, the supervisory authority shall take the following into consideration:

1° the institution’s business model;

2° the result of the review and evaluation procedure referred to in Article 142, in particular where the supervisory authority decides that the minimum liquidity requirements established in Regulation No 575/2013 and the regulations established pursuant to Article 98, or established by the institution itself pursuant to Article 94, underestimate the actual risks run by the institution or those it is feared could be run;

3° the organizational structure and the measures that the institution has implemented to guarantee that risks are under control, in particular the liquidity risk referred to in Article 8 of Annex I;

4° the existence of a systemic liquidity risk for the financial system in Belgium or in other Member States.

Article 152. The supervisory authority can decide to set a term for the measures laid down in accordance with Articles 149 and 151. The application of these provisions is without prejudice to the application of other provisions of the present Law, in particular Article 234.

Article 153. The supervisory authority shall inform the European Banking Authority of:

1° the effectiveness of its review and evaluation procedure as referred to in Article 142;

2° the method used to ensure that the decisions made pursuant to Articles 143 to 151 and 234 are based on the review and evaluation procedure carried out in accordance with Article 142.

Section VI. — Credit institutions with similar risk profiles

Article 154. If the supervisory authority establishes, on the basis of the review and evaluation procedure referred to in Article 142, that credit institutions that have similar risk profiles because their business models or the location of their risk exposures is similar, are or could be exposed to similar risks or they pose similar risks to the financial system, it can lay down the measures referred to in Articles 75, 149 to 151 and 234 in a similar or identical manner or request that such measures be laid down.

The credit institutions referred to in paragraph 1 can be identified using the criteria referred to in Article 23 of Regulation No 1093/2010.

Where the supervisory authority uses the option stipulated in paragraph 1, it shall inform the European Banking Authority of the same.
CHAPTER III. — Supervision of activity conducted in another Member State

Section I. — Definitions

Article 155. The following definitions shall apply to this Chapter:

1° home Member State: the Member State in which the credit institution has been granted authorization, in this case Belgium;

2° host Member State: the Member State in which the Belgian credit institution has a branch or provides services;

3° the supervisory authority: the supervisory authority in its capacity of competent authority of the home Member State.

Section II. — Supervision of activity

Article 156. § 1. The supervision conducted by the supervisory authority in accordance with Title III, Chapter I, also relates to the activity that the credit institutions conduct through the establishment of a branch or the free provision of services in another Member State.

The supervision referred to in the first paragraph is without prejudice to the consolidated supervision.

§ 2. The supervisory authority shall, in the exercise of its general tasks, duly take into consideration the potential effect of its decisions on the stability of the financial system of all other Member States concerned, especially in emergency situations, based on the information available at the time.

Section III. — Exceptional measures

Article 157. § 1. Where the competent authorities of another Member State in which a Belgian credit institution has established a branch or performs activity as referred to in Article 4 within the scope of the free provision of services, notify the supervisory authority that the Belgian legal provisions established pursuant to Directive 2013/36/EU or Regulation No 575/2013, are not being complied with or there is a significant risk of non-compliance, the supervisory authority shall as quickly as possible take all appropriate measures, in particular those referred to in Articles 234 to 236, or have these measures taken to remedy this irregular situation.

The supervisory authority shall communicate these measures to the competent authority of the host Member State forthwith.

§ 1 replaced by Article 397 of the present Law

§ 2. If the supervisory authority withdraws the authorization of a credit institution that conducts activity in another Member State through the establishment of a branch or the free provision of services, it shall notify the competent authority of the host Member State forthwith.

§ 3. If the competent authority of the host Member State has taken protective measures in an emergency situation in anticipation of the supervisory authority taking appropriate measures or reorganization measures, the latter can submit its disagreement with a measure to the European Banking Authority in accordance with Article 19 of Regulation No 1093/2010 in order to request assistance.

Section IV. — Cooperation

[Article 158. § 1. For the purpose of maintaining supervision of credit institutions’ activity conducted in other Member States via a branch, the supervisory authority shall work in
close cooperation with the competent authority of the host Member State. The supervisory authority shall provide the competent authority of the host Member State with all information relating to the management and ownership of the credit institutions concerned that could facilitate the supervision of these credit institutions and the examination of the conditions for granting an authorization to those credit institutions, as well as all the information that could facilitate the monitoring of these credit institutions, in particular in the area of liquidity, solvency, deposit guarantees, mitigation of major risks, other factors that could have an effect on the systemic risk they represent, administrative and accounting procedures and internal control mechanisms.

§ 2. The supervisory authority shall provide the competent authority of the host Member State with all details and findings forthwith relating to the liquidity supervision that is exercised in accordance with Articles 412 to 414 of Regulation No 575/2013, Articles 149, 151, 234, § 2, and Article 8 of Annex I of the present Law on the activity that a Belgian credit institution exercises via its branches, insofar as these details and findings are relevant for the protection of depositors or investors in the host Member State concerned.

§ 3. The supervisory authority shall inform the competent authority of the host Member State forthwith if liquidity stress arises or if liquidity stress could reasonably be expected to arise. In this notification, other further details shall be provided on the schedule and implementation of a recovery plan and on all prudential supervisory measures taken in connection therewith.

§ 4. At the request of the competent authority of the host Member State, the supervisory authority shall report on and explain how account was taken of the details and findings communicated by the competent authority of the host Member State.

If the supervisory authority does not agree with the measures that must be taken by a competent authority of the host Member State to prevent further infringements in order to protect the interests of depositors, investors and other persons to whom services are provided or to safeguard the stability of the financial system, it may submit the matter to the European Banking Authority in accordance with Article 19 of Regulation No 1093/2010.

§ 5. The supervisory authority may also submit cases in which a request for cooperation, in particular for sharing relevant information, is rejected, or not honoured within a reasonable period of time, to the European Banking Authority in accordance with Article 19 of Regulation No 1093/2010.]

*Article replaced by Article 398 of the present Law*

*Section V. — Significant branches*

**Article 159.** If the consolidating supervisor of the host Member State makes a request to the supervisory authority for a branch of a credit institution governed by Belgian law in another Member State to be considered significant within the meaning of Article 51 of Directive 2013/36/EU, the supervisory authority shall do everything within its power to come to a joint decision along with the competent authority of the host Member State and with the consolidating supervisor, if the supervisory authority itself does not have this capacity on the designation of a branch as significant.

Joint decisions as referred to in paragraph 1 shall be put in writing with a full statement of reasons and sent to the competent authorities concerned of the host Member States.

If no joint decision has been made within two months of receipt of a request referred to in paragraph 1, the supervisory authority must accept the decision by the competent authority of the host Member State as to whether or not to consider the branch significant—made at the latest within an additional term of two months—as final, and apply that decision.
Article 160. § 1. The supervisory authority shall send the competent authorities of the host Member States in which a significant branch is established, the information referred to in Article 180, § 2, second paragraph, 3° and 4°, and shall complete the tasks referred to in Article 172, § 1 in cooperation with those competent authorities.

§ 2. If the supervisory authority is made aware of an emergency situation within the meaning of Article 36/14, § 1, 1°, paragraph 2 of the Law of 22 February 1998, it shall warn the authorities referred to in that same paragraph forthwith.

§ 3. The supervisory authority shall communicate the results of the risk assessments as referred to in Article 142 and, where applicable, in Article 174 § 2, of institutions with significant branches to the competent authorities of the Member States in which such branches are established. It shall also communicate the decisions by virtue of Articles 146, 149, 150, 151 and 234 insofar as these assessments and decisions are relevant to the branches.

§ 4. If relevant for the liquidity risks in the currencies of the Member State concerned, the supervisory authority shall consult the competent authorities of the Member States where significant branches are established on the operational measures required pursuant to Article 57, § 5.

Article 161. § 1. If no college of competent authorities is set up within the meaning of Article 178, the supervisory authority shall set up a college of competent authorities for a credit institution with significant branches in other Member States, which it shall chair, to facilitate the cooperation by virtue of Articles 158 and 160. The supervisory authority shall lay down the rules in writing for setting up and operating the college after consulting the competent authorities concerned of the host Member States. The supervisory authority shall decide which competent authorities of the host Member States shall participate in a meeting or the activity of the college.

§ 1 amended by Article 399, 1° of the present Law

§ 2. In its decision regarding the participation in the college, the supervisory authority shall take into consideration the relevance of the supervisory activity to be planned or coordinated for the competent authorities concerned and in particular the consequences that this decision could have for the stability of the financial system in the Member States concerned as referred to in Article 134, § 2, and 156, § 2 as well as the obligations referred to in Article 160.

§ 2 amended by Article 399, 2° of the present Law

§ 3. The supervisory authority shall fully inform all members of the college in advance on the organization of meetings, the main points of the agenda and the activity to be considered. It shall also fully inform all members of the college in a timely manner on the measures taken during these meetings or on the action taken to implement them.

Section VI. — On-site inspections

Article 162. § 1. The supervisory authority can check information referred to in Article 158 and carry out on-site inspections of branches of credit institutions that exercise their activity in another Member State through a branch, after prior notification to the competent authority of the host Member State, and where applicable, making use of an expert it designates.

§ 2. For the inspection of branches, the supervisory authority can also make use of the other procedures referred to in Article 214.

§ 3. When drafting its programme for prudential supervision as referred to in Article 141, the supervisory authority shall duly take into consideration the information and findings it
has received from the competent authority of the host Member State, and shall also pay heed to the stability of the financial system of the Member States in which the branches of the credit institution concerned are established.

§ 4. The on-site inspections of branches by the supervisory authority shall occur in accordance with the law of the Member State in which the inspection takes place.

Section VII. — Situations in which a Belgian credit institution has established a branch in a participating Member State

Article 163. For the tasks conferred on the European Central Bank pursuant to Article 4 of the SSM Regulation, in the cases in which it is the supervisory authority of a credit institution that has established one or more branches on the territory of one or more participating Member States, the provisions on the subject of cooperation and sharing of information between the competent authorities shall not apply where the European Central Bank is the only competent authority concerned.

CHAPTER IV. — Group supervision

Section I. — Definitions

Article 164. § 1. Without prejudice to the definitions included in Article 3 of the present Law, the following definitions shall apply for this Chapter and its implementing decrees and regulations:

1° financial institution: institutions for post office cheques and giro services, alternative investment fund managers, management companies of undertakings for collective investment, settlement institutions as referred to in Article 36/1, 14° of the Law of 22 February 1998 and institutions whose business is the operational management, in whole or in part, of services provided by such settlement institutions shall be considered equivalent to financial institutions;

2° financial conglomerate: a group or subgroup of which at least one of the subsidiaries is a regulated undertaking and meets the following conditions:

a) where a regulated undertaking heads a group or subgroup:

i) this undertaking is a parent undertaking of an undertaking in the financial sector, an undertaking with a participation in an undertaking in the financial sector, or an undertaking linked to an undertaking in the financial sector in the form of a consortium;

ii) at least one of the entities in the group or subgroup is an undertaking in the insurance sector and at least one of the entities in the group is an undertaking in the banking sector or the investment services sector, and

iii) the consolidated and/or aggregate activities of the entities in the insurance sector and of the entities in the banking sector and investment services sector belonging to the group or subgroup are significant within the meaning of Article 186, § 3 of the present Law; or

b) where no regulated undertaking heads the group or subgroup:

i) the activity of the group or subgroup mainly occurs in the financial sector within the meaning of Article 186, § 2;

ii) at least one of the entities in the group or subgroup is an undertaking in the insurance sector and at least one of the entities in the group or subgroup is an undertaking in the banking sector or the investment services sector, and

iii) the consolidated and/or aggregate activities of the entities in the insurance sector and of the entities in the banking sector and investment services sector belonging to the group or subgroup are significant within the meaning of Article 186, § 3;
3° the financial sector: the sector made up of one or more of the following undertakings:

a) a regulated undertaking that is a credit institution, a financial institution, an undertaking that provides ancillary services; these undertakings belong to the same financial sector, which is called the “banking sector”;

b) a regulated undertaking that is an insurance or reinsurance company, an insurance holding company; these undertakings belong to the same financial sector, which is called the “insurance sector”;

c) [a regulated undertaking that is an investment firm, an undertaking that provides ancillary services within the meaning of Article 2, 2° of the Law of 25 October 2016, a financial institution within the meaning of Article 2, 30° of the Law of 25 October 2016; these undertakings belong to the same financial sector, which is called the “investment services sector];

§ 1, 3°, c) replaced by Article 29, 1° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

4° undertakings that provide ancillary services: an undertaking, the core business of which is to own or manage immovable property, manage data-processing services or similar activity that is of a nature to be a supporting activity to the core business of one or more credit institutions.

§ 2. [Without prejudice to Article 3 of the present Law and § 1 of the present Article, the following definitions shall apply to the consolidated supervision as stipulated in Sections II and IV of the present Chapter and their implementing decrees and regulations:

1° parent credit institution in a Member State: a credit institution that has a credit institution, a stockbroking firm, or a financial institution as a subsidiary or that holds a participation in a credit institution, stockbroking firm, or financial institution and is not a subsidiary of another credit institution or stockbroking firm to which authorization has been granted in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

2° Belgian parent credit institution: a credit institution governed by Belgian law that has a credit institution, stockbroking firm, or a financial institution as a subsidiary or that holds a participation in such a credit institution, stockbroking firm or financial institution and is itself not a subsidiary of another credit institution or stockbroking firm headquartered in Belgium, or of a financial holding company or mixed financial holding company headquartered in Belgium;

3° EEA parent credit institution: a parent credit institution that is not a subsidiary of another credit institution or stockbroking firm to which an authorization has been granted in one of the Member States or of a financial holding company or mixed financial holding company established in one of the Member States;

4° Belgian EEA parent credit institution: a parent credit institution governed by Belgian law that is not a subsidiary of another credit institution or stockbroking firm to which an authorization has been granted in one of the Member States or of a financial holding company or mixed financial holding company established in one of the Member States;

5° parent financial holding company in a Member State: a financial holding company that is itself not a subsidiary of a credit institution or stockbroking firm to which authorization has been granted in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

6° EEA parent financial holding company: a parent financial holding company that is not a subsidiary of a credit institution or stockbroking firm to which authorization has been
granted in one of the Member States, or of a financial holding company or mixed financial holding company established in one of the Member States;

7° Belgian EEA parent financial holding company: a parent financial holding company governed by Belgian law that is not a subsidiary of a credit institution or stockbroking firm to which authorization has been granted in one of the Member States, or of a financial holding company or mixed financial holding company established in one of the Member States;

8° parent mixed financial holding company in a Member State: a mixed financial holding company that is itself not a subsidiary of a credit institution or stockbroking firm to which authorization has been granted in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

9° EEA parent mixed financial holding company: a parent mixed financial holding company that is not a subsidiary of a credit institution or stockbroking firm to which authorization has been granted in one of the Member States, or of a financial holding company or mixed financial holding company established in one of the Member States;

10° Belgian EEA parent mixed financial holding company: a parent mixed financial holding company governed by Belgian law that is not a subsidiary of a credit institution or stockbroking firm to which authorization has been granted in one of the Member States, or of a financial holding company or mixed financial holding company established in one of the Member States;

11° EEA parent institution: a parent undertaking that is a credit institution or stockbroking firm in a Member States that is not a subsidiary of another credit institution or stockbroking firm to which an authorization has been granted in one of the Member States or of a financial holding company or mixed financial holding company established in one of the Member States.


§ 3. Without prejudice to Article 3 of the present Law and § 1 of the present provision, the following definitions shall apply to the supplementary conglomerate supervision as stipulated in Sections III and IV of the present Chapter and their implementing decrees and regulations:

1° competent authorities: the national authorities in Member States that are tasked pursuant to laws, regulations or administrative provisions with exercising supervision of regulated undertakings, whether on an individual or group-wide basis;

2° relevant competent authorities:

a) the competent authorities responsible for sectoral consolidated supervision of regulated undertakings that form part of a financial conglomerate and in particular of the parent undertaking that heads a sector;

b) the coordinator, if it does not belong to the authorities referred to under a);

c) other competent authorities concerned which are considered relevant by the authorities under a) and under b).

Until entry into force of the regulatory technical standards to be laid down in accordance with Article 21a, paragraph 1, under b) of Directive 2002/87/EC, in the decision referred to in point c), consideration shall in particular be taken of the market share that the regulated undertaking of the financial conglomerate has in another Member State, in particular if this amounts to more than 5%, and of the interests of all regulated undertakings in the financial conglomerate established in another Member State.
3° coordinator: the competent authority tasked with exercising the supplementary conglomerate supervision;

4° the European Financial Conglomerates Committee: the Committee established by Article 21 of Directive 2002/87/EC;


6° a group: a set of undertakings formed by a parent undertaking, its subsidiaries, the undertakings in which the parent undertaking or its subsidiaries have a direct or indirect participation and the undertakings forming a consortium and undertakings controlled by the latter undertakings or in which the latter undertakings hold a participation;

7° sectoral legislation: the present Law[, the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies,[the Law of 25 October 2016, the Law of 19 April 2014 on alternative investment funds and their managers,][...] the Law of 3 August 2012 on certain forms of collective management of investment portfolios as well as the implementing decrees and regulations of these laws, with the exception of the provisions on the supplementary conglomerate supervision of regulated undertakings in a financial conglomerate; the equivalent national legislation and supervisory practices in other countries;


9° intra-group transactions: transactions that are executed directly or indirectly, whether or not against payment, between regulated undertakings and other undertakings in a financial conglomerate or natural or legal persons with close links with these undertakings and that do or do not relate to the performance of a contractual obligation;

10° risk concentration: all positions taken by undertakings in a financial conglomerate with a loss potential, which are large enough to threaten the financial situation in general and the solvency in particular of the regulated undertakings in the financial conglomerate and that are caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other major risks, or a combination or interaction of these risks.
Section II. — Consolidated supervision of credit institutions

Subsection I. — Scope

Article 165. To the extent and in the manner laid down by Sections II and IV of the present Chapter and the implementing decrees and regulations thereof, credit institutions governed by Belgian law:

1° that are a parent undertaking are subject to supervision on the basis of their consolidated position;

2° that have a financial holding company in a Member State as a parent undertaking or a parent mixed financial holding company in a Member State, are subject to supervision on the basis of the consolidated position of the parent financial holding company or the mixed parent financial holding company.

Article 166. Without prejudice to Articles 167 to 169, the levels of consolidated supervision and their relationship with the supervision on individual credit institutions shall form the object and scope of the consolidated supervision laid down in Part 1, Title II, Chapter 2 of Regulation No 575/2013[...].


Article 167. § 1. Belgian parent credit institutions shall, on a consolidated basis, meet the obligations laid down in Article 94 to the extent and in the manner as determined in Part 1, Title II, Chapter 2, Sections 2 and 3 of Regulation No 575/2013.

§ 2. Credit institutions governed by Belgian law under the control of a parent financial holding company or a parent mixed financial holding company in a Member State, shall meet the obligations laid down in Article 94 to the extent and in the manner as determined in Part 1, Title II, Chapter 2, Sections 2 and 3 of Regulation No 575/2013 on the basis of the consolidated situation of the financial holding company or mixed financial holding company concerned.

By way of derogation from paragraph 1, where several credit institutions headquartered in the European Economic Area are under the control of a financial holding company or a parent mixed financial holding company in a Member State, paragraph 1 shall apply to the credit institution governed by Belgian law insofar as the supervisory authority is tasked with consolidated supervision pursuant to Article 171.

§ 3. Credit institutions governed by Belgian law that are subsidiaries, shall apply the requirements of Article 94 on a sub-consolidated basis where they themselves or their parent undertaking if they are a financial holding company or a parent mixed financial holding company in a Member State, have [a credit institution, a stockbroking firm or a financial institution] as a subsidiary in a third country or where they have a participation in such an undertaking.


Article 168. § 1. Belgian parent credit institutions and credit institutions governed by Belgian law that are under the control of a financial holding company or a mixed financial holding company in a Member State, must comply with Articles 21, 27 to 42, 56 to 59 and 63 to 71 on a consolidated or sub-consolidated basis to ensure that their arrangements, processes and mechanisms required by these provisions are consistent and well-integrated, the influence on each other of the undertakings included in the consolidated whole can be assessed and all data and information relevant for the supervision can be obtained. They shall also enforce these arrangements, processes and mechanisms on their subsidiaries that
do not come under the present Law. These arrangements, processes and mechanisms shall also be consistent and well-integrated and these subsidiaries must also be able to provide all data and information relevant for the supervision.

§ 2. The obligations arising from the Articles mentioned in § 1 for subsidiaries from third countries, shall not apply if the Belgian parent credit institution or the credit institutions governed by Belgian law that are under the control of an EEA parent financial holding company or of an EEA parent mixed financial holding company can demonstrate to the supervisory authority that the application thereof would be unlawful pursuant to the laws of that country.

§ 3. Credit institutions governed by Belgian law which are parent undertakings shall annually publish a description of their legal structure and their rules for the business organization that apply [at a consolidated level], including the information referred to in Article 18 and in § 1 of the present Article, either through a full statement or through reference to similar information already published.


Article 169. For credit institutions governed by Belgian law, the supervisory authority shall apply the review and evaluation procedure referred to in Articles 142 to 148 and the supervision measures referred to in Articles 149 to 152 and 234 to 236 to the requirements on periodic reporting and accounting rules referred to in Article 106, § 1 and § 2, first paragraph in accordance with the extent of application of the requirements of the aforementioned Regulation established in Part I, Title II, Chapter II of Regulation No 575/2013 and the extent and manner of application established in Articles 167 and 168 with regard to the process for internal assessment of the capital adequacy and the arrangements, processes and mechanisms for credit institutions.

Article 170. § 1. Without prejudice to the application of Article 49 of Regulation No 575/2013, every provision of the present Section that applies on the basis of a consolidated position of the financial holding company governed by Belgian law also applies to the level of a mixed financial holding company governed by Belgian law insofar as:

1° the banking sector is the most important sector within the financial conglomerate;

2° at least one of the subsidiaries is a credit institution

3° the supervisory authority exercises both the consolidated supervision and the supplementary conglomerate supervision.

For the application of paragraph 1, the scale of the banking sector is measured in accordance with Article 186, § 3.

[…]

§ 1, paragraph 3 abrogated by Article 738, 1° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

[For the application of this paragraph, the supervisory authority in its capacity of consolidating supervisor shall obtain the agreement of the competent authorities concerned which are tasked with the supervision of subsidiaries and of the group supervisory authority of the insurance sector.]

§ 1, paragraph 4 which becomes paragraph 3, replaced by Article 738, 2° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

[…]

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§ 1, previous paragraph 5 abrogated by Article 738, 3° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

[§ 1/1. Without prejudice to the application of paragraph 2, where a credit institution governed by Belgian law which heads up a financial conglomerate or a mixed financial holding company governed by Belgian law is subject to similar provisions as those of the present Chapter relating on the one hand to the consolidated supervision and on the other hand to the supplementary conglomerate supervision, in particular with respect to the risk-related supervision, the supervisory authority may decide only to apply to this credit institution or mixed financial holding company the relevant provisions relating to the supplementary conglomerate supervision.]

§ 1/1 inserted by Article 738, 4° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

§ 2. Where a credit institution forms part of a financial conglomerate in which the banking sector is the main sector and on which the supervisory authority exercises both the consolidated supervision and the supplementary conglomerate supervision, it can decide, after consultation with the competent authorities concerned, to apply the following measures:

1° with respect to the obligations and powers relating to risk-related supervision, as laid down in Articles 167 to 169, or parts thereof, the group as defined in Article 164, § 3, [and which forms the financial conglomerate.] shall, by way of derogation, be taken into account as relevant scope for the consolidated supervision;

§ 2, 1° amended by Article 738, 5° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

2° for compliance with Articles 191 to 194, the group risks arising from intra-group transactions and risk concentration within the financial conglomerate shall be handled as an additional risk category for the application of Annex I. These risks shall be treated on a sufficiently specific basis with due regard to the guidelines or standards that the European Supervisory Authorities issue and to the quantitative or qualitative measures referred to in the aforementioned Articles;

3° for compliance with Article 195, the stress tests referred to can be integrated at the level of the financial conglomerate in the stress tests required based on Article 148.

§ 3. The practical methods for the application of § 2 shall be laid down in writing in a coordinating regulation [...] with the relevant competent authorities within the meaning of Article 164, § 3 within the college in the composition required based on Article 199

§ 3 amended by Article 738, 6° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

[§ 4. In its capacity of consolidating supervisor, the supervisory authority shall inform the EBA and the European Insurance and Occupational Pensions Authority of the agreement reached pursuant to § 1, 3°, the decision made pursuant to paragraph 1/1 and the coordinating regulations taken pursuant to § 3.]

§ 4 inserted by Article 738, 7° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

Subsection II.- Measures for facilitating consolidated supervision

Article 171. § 1. The consolidated supervision of a credit institution governed by Belgian law as referred to in Article 165, shall be exercised as follows:

1° if it is a Belgian parent credit institution or a Belgian EEA parent credit institution, by the supervisory authority;
2° if its parent undertaking is a Belgian parent financial holding company or a Belgian parent mixed financial holding company or a Belgian EEA parent financial holding company or a Belgian EEA parent mixed financial holding company, by the supervisory authority, without prejudice to points [3° to 7°];

§ 1, 2° amended by Article 33, 1° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

3° if its parent undertaking is a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State or an EEA parent financial holding company or EEA parent mixed financial holding company, with a subsidiary that is a credit institution or stockbroking firm in the Member State of its registered office, by the competent authority of the Member State;

§ 1, 3° replaced by Article 33, 2° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

4° if several financial holding companies or mixed financial holding companies, with a head office in various Member States are parent undertakings of credit institutions or stockbroking firms in various Member States including a credit institution governed by Belgian law, and a credit institution or stockbroking firm is located in each of these other Member States, by the competent authority of the credit institution or stockbroking firm with the highest balance sheet total;

§ 1, 4° replaced by Article 33, 3° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

5° if several credit institutions or stockbroking firms in various Member States, including a credit institution governed by Belgian law, have the same financial holding company or mixed financial holding company as their parent undertaking and none of these credit institutions or stockbroking firms have been granted authorization in the Member State in which the financial holding company or mixed financial holding company is established, by the competent authority for the credit institution or stockbroking firm with the highest balance sheet total. For the application of the present Law, this credit institution shall be deemed to be a credit institution controlled by an EEA parent financial holding company or an EEA parent mixed financial holding company;

§ 1, 5° replaced by Article 33, 4° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

[6° if its parent undertaking is an EEA parent institution, by the competent authority of the Member State in which the EEA parent institution has its registered office;]

§ 1, 6° inserted by Article 33, 5° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

[7° if its parent undertaking is a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State or an EEA parent financial holding company or an EEA parent mixed financial holding company, with no credit institution or stockbroking firm as a subsidiary in the Member State of its registered office, by the supervisory authority.]

§ 1, 7° inserted by Article 33, 5° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

§ 2. In exceptional circumstances, the supervisory authority and the competent authorities concerned can mutually agree to waive the application of the criteria provided for in § 1, [3° to 7°] if the application thereof would be inappropriate for the purposes of the efficient
organization of consolidated supervision of the credit institutions concerned and the relative interest of the activity thereof in the different Member States. They may designate another competent authority to exercise supervision on a consolidated basis.


In such cases, the competent authorities, including the supervisory authority, shall offer the financial holding companies or mixed financial holding companies concerned, or the credit institution with the highest balance sheet total, depending on the circumstances, the opportunity to state their opinion on the subject of this decision, before making their decision.

For the application of paragraph 1, the supervisory authority shall enter into agreements with the competent authorities concerned, where applicable, in accordance with the provisions of Articles 36/14, § 1, 3°, and 36/16, § 2 of the Law of 22 February 1998.

[Without prejudice to Article 212, where the supervisory authority became or is designated as the consolidating supervisor for the exercise of consolidated supervision pursuant to Article 111, paragraph 5 of Directive 2013/36/EU of a credit institution which is governed by the law of another Member State, and the parent undertaking of which is a financial holding company or a mixed financial holding company governed by Belgian law, [without a credit institution or stockbroking firm governed by Belgian law being present in the consolidated whole, the provisions that apply to the credit institution as referred to in Article 165, 2°, shall apply mutatis mutandis].]


If the supervisory authority is tasked with the consolidating supervision, it shall inform the European Commission, the EBA, and the financial holding companies, mixed financial holding companies or the credit institution with the highest balance sheet total of the group.

Article 172. § 1. Without prejudice to the other powers and tasks conferred on the supervisory authority by or pursuant to the present Law and by Regulation No 575/2013, in its capacity of consolidating supervisor, it shall take on the following tasks:

1° coordinating the collection and dissemination of information that is relevant or essential for the purposes of its supervision, under normal business conditions and in emergency situations;

2° planning and coordinating, in cooperation with the competent authorities concerned, the supervisory activity under normal business conditions, including the activity referred to in the present Section and Section IV of the present Chapter insofar as this activity, with regard to Section IV, relates to the consolidating supervision;

3° planning and coordinating the supervisory activity, in cooperation with the competent authorities concerned and where necessary, with the central banks of the European System of Central Banks, for emergency situations and preparing for emergency situations, including adverse developments in credit institutions and on the financial markets, where possible using the existing communication channels, for facilitating crisis management. The aforementioned planning and coordination also includes exceptional measures, joint evaluations, implementing contingency plans and communicating with the public.

§ 2. If a competent authority concerned does not cooperate sufficiently with the supervisory authority, in its capacity of consolidating supervisor, for the exercise of the tasks referred to in § 1, the supervisory authority can submit the matter to the EBA to request its assistance pursuant to Article 19 of Regulation No 1093/2010.
Article 173. If a competent authority of another Member State, in its capacity of consolidating supervisor, fails to execute the tasks referred to in Article 112 of Directive 2013/36/EU, the supervisory authority may submit the matter to the EBA to request its assistance pursuant to Article 19 of Regulation No 1093/2010.

Article 174. § 1. In its capacity of consolidating supervisor, the supervisory authority shall do everything within its power to arrive to a joint decision with the authorities competent [for the supervision of subsidiaries of an EEA parent institution] or an EEA parent financial holding company or EEA parent mixed financial holding company on:

§ 1, paragraph 1 amended by Article 34, 1° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

1° the application of Articles 94 and 142 to define whether [the consolidated own funds at a consolidated level] are sufficient for its financial situation and risk profile and how much in own funds is necessary for the application of Articles 149 and 150, [for every entity within the consolidated whole] and on a consolidated basis.

§ 1, paragraph 1, 1° amended by Article 34, 2° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

2° the measures for handling important matters and material findings in connection with the liquidity supervision, including of those in connection with the appropriateness of the organization and the handling of risks, as required in accordance with Article 8 of Annex I and with the need for institution-specific liquidity requirements in accordance with Article 151 of the present Law.

§ 2. The joint decisions as referred to in § 1 shall be made:

1° for the application of § 1, 1°, within four months of the supervisory authority in its capacity of consolidating supervisor submitting a report in its capacity of consolidating supervisor to the competent authorities concerned with [the risk assessment on a consolidated basis], in accordance with Articles 94, 142, 149 and 150.

§ 2, paragraph 1, 1° amended by Article 34, 3° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

2° for the application of § 1, 2°, within one month of the supervisory authority, in its capacity of consolidating supervisor submitting a report in its capacity of consolidating supervisor in accordance with Article 151 and Article 8 of Annex I to the competent authorities with the assessment of the liquidity risk profile [on a consolidated basis].

§ 2, paragraph 1, 2° amended by Article 34, 4° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

In the joint decision, the risk assessments that the competent authorities concerned have carried out in accordance with Articles 73 and 97 of Directive 2013/36/EU with regard to subsidiaries shall be duly taken into consideration.

In cases of a difference of opinion, the supervisory authority, in its capacity of consolidating supervisor shall consult the EBA at the request of a competent authority concerned or on its own initiative. In such cases, it shall take into account the opinion of the EBA and, where it significantly derogates from that opinion, explain the reasons.

The joint decisions shall be put into writing with a full explanation of reasons. In its capacity of consolidating supervisor, the supervisory authority shall forward that document to the EEA parent credit institution, the EEA parent financial holding company or the EEA parent mixed financial holding company.
§ 3. If the supervisory authority, in its capacity of consolidating supervisor, and the competent authorities concerned do not arrive at a joint decision within the term referred to in § 2, the following shall apply:

1° with regard to the consolidated level, the decision made on the application of the Articles referred to in points 1° and 2° of § 1, by the supervisory authority in its capacity of consolidating supervisor after due evaluation of the risk assessment of subsidiaries carried out by the competent authorities concerned If one of these competent authorities concerned has submitted the matter to the EBA within one of the terms referred to in § 2 in accordance with Article 19 of Regulation No 1093/2010, the supervisory authority, in its capacity of consolidating supervisor, shall defer its decision pending a decision by the EBA. It shall make its decision in accordance with the decision of the EBA.

2° with regard to the individual or sub-consolidated level, the supervisory authority shall, in its capacity of consolidating supervisor, formulate its views and reservations before the competent authorities concerned tasked with the supervision of subsidiaries of the EEA parent credit institution, the EEA parent financial holding company or the EEA parent mixed financial holding company make their decision on the application of the Articles referred to in points 1° and 2° of § 1 for those levels. In its capacity of consolidating supervisor, the supervisory authority can submit matters to the EBA until the end of the terms referred to in § 2, and as long as no joint decision has been made in accordance with Article 19 of Regulation 1093/2010.

In its capacity of consolidating supervisor, the supervisory authority shall attach decisions made on an individual or sub-consolidated level to the decision on a consolidated level and shall provide the full document to all competent authorities concerned and to the EEA parent credit institution, the EEA parent financial holding company or the EEA parent mixed financial holding company.

§ 4. Without prejudice to Article 176, 2°, decisions regarding the application of Articles 149 to 151 can be updated in exceptional circumstances if a competent authority concerned tasked with [the supervision of a subsidiary of an EEA parent institution], an EEA parent financial holding company or an EEA parent mixed financial holding company makes a written request to the supervisory authority in its capacity of consolidating supervisor, including a full statement of reasons.


The update can be effected on a bilateral basis between the supervisory authority, in its capacity of consolidating supervisor, and the competent authority concerned.

Article 175. § 1. In its capacity of competent authority for the supervision of a credit institution governed by Belgian law that is a subsidiary of an EEA parent credit institution, an EEA parent financial holding company or an EEA parent mixed financial holding company, the supervisory authority shall do everything within its power to make a joint decision with the consolidating supervisor on the applications and measures referred to in Article 174, § 1.

The supervisory authority shall forward the risk assessment made for the subsidiary as referred to in paragraph 1 pursuant to Articles 94 and 142 to the consolidating supervisor.

In cases of a difference of opinion, it can ask the consolidating supervisor to consult the EBA.

§ 2. In the absence of a joint decision as referred to in § 1, the following shall apply:

1° in its capacity as referred to in § 1, the supervisory authority shall make the decision on the application of the provisions stated in Article 174, § 1, on an individual or a sub-
consolidated basis for the subsidiaries for which it is the competent authority. For this, it shall duly take into consideration the views and reservations expressed by the consolidating supervisor and shall defer its decision if the consolidating supervisor or another competent authority has submitted the matter to the EBA in accordance with Article 19 of Regulation No 1093/2010. In such a case, it shall make its decision in accordance with that of the EBA.

2° in its capacity as referred to in § 1, the supervisory authority shall forward its views and reservations on the decision that this consolidating supervisor shall make on the application of the provisions referred to in Article 174, § 1, for the consolidated level to the consolidating supervisor. In its capacity of consolidating supervisor, the supervisory authority can submit matters to the EBA until the end of the terms referred to in Article 174, § 2, and as long as no joint decision has been made in accordance with Article 19 of Regulation 1093/2010.

§ 3. Without prejudice to Article 176, 2°, the supervisory authority can, in its capacity as referred to in § 1, ask, in exceptional circumstances, that the decisions on the application of Articles 149 to 151 be updated. It shall make such a request in writing, with a full statement of reasons, to the consolidating supervisor.

The update can be effected on a bilateral basis between the supervisory authority and the consolidating supervisor.

**Article 176.** Joint decisions and decisions made in the absence of a joint decision, as referred to in Articles 174 and 175:

1° shall be recognized by the supervisory authority as final and, depending on the case, applicable in Belgium;

2° shall be updated on an annual basis.

**Article 177.** In order to facilitate and achieve effective supervision, the supervisory authority, in its capacity of consolidating supervisor, shall enter into the necessary written cooperation agreements and Memoranda of Understanding with the competent authorities concerned. In such agreements, extra tasks can be conferred on the supervisory authority in its capacity of consolidating supervisor and procedures can be laid down for making decisions and for cooperation with the competent authorities concerned.

**Article 178.** § 1. The supervisory authority shall, in its capacity of consolidating supervisor, set up colleges of competent authorities to facilitate the supervision of subsidiaries and more in particular the exercise of the tasks referred to in Articles 172 to 176 of the present Law and in Article 114 of Directive 2013/36/EU and, where necessary, ensure appropriate coordination and cooperation with the competent authorities from third countries.

The EBA shall be deemed the competent authority for the application of this provision.

Within the colleges of competent authorities, the supervisory authority shall, in its capacity of consolidating supervisor, execute the following tasks along with the competent authorities concerned:

1° mutual sharing of information and, in accordance with Article 21 of Regulation 1093/2010, sharing of information with the EBA;

2° coming to an agreement, where applicable, on the allocation of tasks and transfer of responsibilities on a voluntary basis;

3° laying down programmes for prudential supervision as referred to in Article 99 of Directive 2013/36/EU, on the basis of a group risk assessment in accordance with Article 97 of Directive 2013/36/EU.
4° increasing the efficiency of the supervision by eliminating unnecessary duplication of supervisory requirements, which can, inter alia, occur by way of the information requests as referred to in Article 114 and Article 117, paragraph 3, of Directive 2013/36/EU;

5° they shall apply the prudential requirements of Directive 2013/36/EU and of Regulation No 575/2013 consistently to all entities in a group of credit institutions;

6° in the application of Article 172, § 1, 3° of the present Law, they shall take into consideration the work of other fora established in this field.

§ 2. The supervisory authority, in its capacity of consolidating supervisor, and the competent authorities concerned that take part in the colleges of competent authorities, and the EBA shall work closely together. The set up and operation of colleges is without prejudice to the rights and obligations of the competent authorities within the scope of Directive 2013/36/EU, Regulation No 575/2013 and of Regulation No 2014/65/EU.


§ 3. After consultation of the competent authorities concerned, the supervisory authority shall, in its capacity of consolidating supervisor, establish the rules for the set up and operation of colleges in the written agreements referred to in Article 177.

§ 4. The supervisory authority may, in its capacity of consolidating supervisor, invite the following authorities to be involved in the colleges it sets up:

1° authorities competent for the supervision [of subsidiaries] of a parent credit institution governed by Belgian law or an EEA parent financial holding company or an EEA parent mixed financial holding company subject to the consolidated supervision it exercises;


2° the competent authorities of a host Member State where significant branches are established within the meaning of Article 51 of Directive 2013/36/EU;

3° where applicable, central banks of the European System of Central Banks;

4° the authorities of third countries, insofar as requirements are complied with, in particular with regard to equality, arising from the professional secrecy rules provided for in Directive 2013/36/EU.

§ 5. In its capacity of consolidating supervisor, the supervisory authority shall chair the college meetings and decide which competent authorities take part in the meetings or activity of the college. The supervisory authority shall fully inform all members of the college in advance on the organization of meetings, the main points of the agenda and the activity to be considered. It shall also fully inform all members of the college in a timely manner on the measures taken during these meetings or on the action taken to implement them.

§ 6. In its decision, the supervisory authority shall, in its capacity of consolidating supervisor pursuant to § 5, take into consideration the relevance of the supervisory activity to be planned or coordinated for those authorities, and in particular the consequences that this decision can have for the stability of the financial system in the Member States concerned, as referred to in Article 134, § 2, as well as with the obligations referred to in Article 160.

§ 7. The supervisory authority shall, in its capacity of consolidating supervisor, inform the EBA of the activity of the college of competent authorities, including of the activity in emergency situations and shall communicate all the information to that authority that is relevant for supervisory convergence.
§ 8. In cases of a difference of opinion between the supervisory authority, in its capacity of consolidating supervisor, and the competent authorities concerned, on the operation of the colleges of competent authorities, it may submit the matter to the EBA to request assistance in accordance with Article 19 of Regulation 1093/2010.

Article 179. In its capacity of competent authority of [subsidiaries governed by Belgian law of an EEA parent institution], an EEA parent financial holding company, or an EEA parent mixed financial holding company, the supervisory authority shall take part in colleges of competent authorities established by the consolidating supervisor.


In cases of a difference of opinion between the supervisory authority, in its capacity as referred to in paragraph 1, and the consolidating supervisor or other competent authorities concerned, on the operation of colleges of supervisory authorities, it may submit the matter to the EBA to request assistance in accordance with Article 19 of Regulation No 1093/2010.

Article 180. § 1. [For the exercise of the consolidated supervision, the supervisory authority shall work closely with the competent authorities that have granted authorization to the entities included in the consolidated supervision. It may communicate confidential information to or request confidential information from these competent authorities, where it is essential or relevant for the exercise of the supervisory tasks entrusted to it or to these competent authorities pursuant to Directive 2013/36/EU, Regulation No 575/2013 and Directive 2014/65/EU. For this purpose they shall share all relevant information with each other upon request and share all essential information of their own accord.]

§ 1, paragraph 1 replaced by Article 37, 1° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

The supervisory authority shall, in its capacity of consolidating supervisor, provide all relevant information to the competent authorities for the supervision of subsidiaries of EEA parent institutions, EEA parent financial holding companies or EEA parent mixed financial holding companies. When determining the quantity of information to be provided, consideration shall be taken of the importance of these subsidiaries within the financial system of those Member States.

§ 2. The information referred to in § 1, shall be deemed essential where it could significantly influence the assessment of the financial solidity of a credit institution[, a stockbroking firm] or a financial institution.


For the application of § 1, the following shall be considered essential information:

1° information on the legal structure and the rules for the business organization of the group, including the management structure, in accordance with Articles 22 and 168, § 1, encompassing all regulated entities, unregulated entities, unregulated subsidiaries, significant branches belonging to the group and parent undertakings, as well as the identification of the competent authorities for the regulated entities in the group;

2° information on the procedures for collecting information from the [entities that form part of the consolidated whole], as well as for the review of such information;

3° information on unfavourable developments in [entities that form part of the consolidated whole], that could have serious negative consequences for the credit institutions [and stockbroking firms] in the group;

§ 2, paragraph 2, 3° amended by Article 37, 4° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

4° major sanctions and extraordinary measures taken by the competent authorities in accordance with Directive 2013/36/EU including laying down a specific own funds requirement or restrictions to the application of an Advanced Measurement Approach for the calculation of own funds requirements pursuant to Article 312(2) of Regulation No 575/2013.

§ 3. For the application of this provision, the supervisory authority shall act in its capacity of competent authority for the supervision of credit institutions governed by Belgian law that are subsidiaries of an EEA parent credit institution, an EEA parent financial holding company or an EEA parent mixed financial holding company, where possible in contact with the consolidating supervisor where it needs information on the application of approaches and methodologies as described in Directive 2013/36/EU and in Regulation No 575/2013 and this information could already be available to the consolidating supervisor.

§ 4. In the following cases, the supervisory authority can submit the matter to the EBA:

1° a competent authority has not provided essential information;

2° a request for cooperation, in particular for sharing relevant information, has been rejected or not honoured within a reasonable period of time.

Article 181. The supervisory authority shall consult the other competent authorities concerned by the consolidated supervision prior to making a decision on:

1° changes to the shareholder structure or the organizational or management structure of credit institutions in a group, which require approval or authorization by the competent authorities in accordance with the provisions of Directive 2013/36/EU.

2° major sanctions and extraordinary measures taken by the competent authorities in accordance with Directive 2013/36/EU including laying down a specific own funds requirement or restrictions to the application of an Advanced Measurement Approach for the calculation of own funds requirements pursuant to Article 312(2) of Regulation No 575/2013.

The supervisory authority may also decide not to consult other competent authorities in emergency situations or where its decisions could in this way be rendered counterproductive. In such cases it shall inform the other competent authorities thereof forthwith after making this decision.

By way of derogation from the second paragraph, the supervisory authority must always, in its capacity of competent authority for the supervision of [subsidiaries governed by Belgian law of an EEA parent institution], an EEA parent financial holding company, or an EEA parent mixed financial holding company, consult the consolidating supervisor where it intends to make a decision as referred to in paragraph 1, 2°.


Article 182. If a credit institution, [a stockbroking firm,] a financial holding company, a mixed financial holding company or a mixed financial holding company governed by Belgian law is a parent undertaking of one or more undertakings that are insurance companies or of other undertakings that provide investment services for which an authorization system applies, the supervisory authority shall work closely with the
authorities that are officially tasked with the supervision of insurance companies or other companies that provide investment services. Without prejudice to their respective powers, the supervisory authority can request or provide any information to these authorities that would facilitate the fulfilment of their respective tasks and the supervision of the activity and of the financial situation of all undertakings subject to their supervision.


Subsection III. — Other applications

Article 183. § 1. If a mixed-activity holding company has one or more subsidiaries that are credit institutions governed by Belgian law, the supervisory authority can request the data and information it deems useful for its supervision of these credit institutions on an individual or consolidated basis, either directly from the mixed-activity holding company or through the aforementioned subsidiaries. In the latter case, the mixed-activity holding company remains jointly responsible with the reporting credit institution for the accuracy and timely communication of the information provided.

If the mixed-activity holding company referred to in paragraph 1 is an undertaking governed by Belgian law, it shall have appropriate administrative and accounting procedures and internal control for the purposes of guaranteeing the accuracy and compliance with current rules of the records and information.

§ 2. The supervisory authority can inspect the records and information pursuant to § 1, on-site.

If the mixed-activity holding company or one of its subsidiaries is established in a Member State other than Belgium, the on-site inspections of the information shall occur in accordance with the procedure stipulated in Article 214. If the mixed-activity holding company or one of the subsidiaries thereof is an insurance company, the procedure laid down in Article 182 can also be followed.

Where the mixed-activity holding company or one of its subsidiaries has its headquarters outside the European Economic Area, the methods for applying the provisions of § 1 shall be laid down in agreements between the supervisory authority and the foreign competent authorities concerned, where applicable in accordance with Article 36/16, § 2 of the Law of 22 February 1998.

§ 3. The supervisory authority can have the records and information pursuant to § 1 verified for accuracy and completeness:

1° where the reporting undertaking is a company governed by Belgian law, by the accredited statutory auditor of this undertaking;

2° where the reporting undertaking has its headquarters outside Belgium, by the accredited statutory auditor of the credit institution governed by Belgian law that is a subsidiary of the mixed-activity holding company.

With respect to the records and information coming from mixed-activity holding companies and their subsidiaries, the rights referred to in Article 211 shall apply mutatis mutandis to the accredited statutory auditors.

§ 4. The records and information referred to in § 1 must in particular enable the supervisory authority to assess the following aspects: the solidity of the credit institutions governed by Belgian law, the influence of the mixed-activity holding company in the area of these credit institutions, and the transactions between the credit institutions with the mixed-activity holding company and its subsidiaries, without prejudice to the provisions of Part 4 of Regulation No 575/2013.
§ 5. The credit institutions referred to in § 1 shall have the appropriate risk management processes and internal control mechanisms, including thorough reporting and accounting systems, with a view to the appropriate recognition, measurement, monitoring and oversight of transactions with their parent mixed holding company and its subsidiaries. They must also, alongside the transactions referred to in Article 394 of Regulation No 575/2013, report all other major transactions with these entities. These procedures and major transactions shall be overseen by the supervisory authority.

§ 6. If the nature and scale of the transactions referred to in § 5 constitute a threat for the financial situation of the credit institution governed by Belgian law concerned, the supervisory authority shall take appropriate measures. It shall apply, mutatis mutandis, the principles underlying Articles 205 to 207 as regards the compatibility with the general company law. Without prejudice to any other measures, it can put a stop to such transactions.

Article 183/1. [A credit institution governed by Belgian law which forms a consortium with one or more other undertakings falls under a consolidated supervision that applies to all undertakings in the consortium and their subsidiaries. The provisions that apply to credit institutions as referred to in Article 165, 2° apply.]

Article inserted by Article 740 of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

Article 184. The provisions on the subject of cooperation and sharing of information between the competent authorities of the different Member States for the application of the consolidated supervision on the basis of the present Law and of Regulation No 575/2013 shall not apply where the European Central Bank is the only competent authority concerned pursuant to the SSM Regulation.

Section III. — Supplementary conglomerate supervision

Subsection I. — Scope

Article 185. To the extent and in the manner laid down by Sections III and IV of the present Chapter and the implementing decrees and regulations thereof, credit institutions governed by Belgian law:

1° that head up a financial conglomerate; or

2° that have as their parent undertaking a mixed financial holding company with headquarters in a Member State,

shall be subject to supplementary conglomerate supervision.

If several regulated undertakings are subsidiaries of the mixed financial holding company referred to in paragraph 1, 2°, the supplementary conglomerate supervision shall only apply to the credit institution governed by Belgian law insofar as the supervisory authority, pursuant to Article 196, is competent for the supplementary conglomerate supervision.

Article 186. § 1. In order to determine whether a group is a financial conglomerate within the meaning of Article 164, § 1, 2°, the thresholds stipulated in the following paragraphs shall apply.

§ 2. The activity of a group shall be considered to principally take place in the financial sector within the meaning of Article 164, § 1, 2°, point b) i), if the ratio between the joint balance sheet total of the undertakings in the group that belong to the financial sector, and the joint balance sheet total of all the undertakings that belong to the group is greater than 40%.
§ 3. The activity of undertakings that belong to a group from the same financial sector shall be considered significant within the meaning of Article 164, § 1, 2°, point a) iii) or point b) iii), if,

1° either the average of the following two ratios is greater than 10%: the ratio between the joint balance sheet total of all undertakings in the group that belong to the same financial sector and the joint balance sheet total of all undertakings that belong to the group from the financial sector, and the ratio between the joint solvency requirements of all undertakings in the group that belong to the same financial sector and the joint solvency requirements of all undertakings that belong to the group from the same financial sector; or

2° the joint balance sheet total of the undertakings that belong to the smallest financial sector in the group is greater than 6 billion euros;

For the purposes of paragraph 1:

1° the banking sector and the investment services sector shall be considered together and as belonging to the same financial sector;

2° the smallest financial sector in a financial conglomerate is the financial sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average.

§ 4. The relevant competent authorities may jointly decide not to regard a group as a financial conglomerate. They may also decide not to apply the decisions and provisions of Articles 7, 8, 9 and 9bis of Directive 2002/87/EC if they are of the opinion that the inclusion of the group in the supplementary conglomerate supervision or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision in the following cases:

1° if the group reaches the threshold referred to in § 3, first paragraph, point 2° but the average referred to in § 3, first paragraph, 1° remains under 10%;

2° if the group reaches the threshold referred to in § 3, first paragraph, 1°, but the smallest sector does not exceed the 6 billion euros referred to in § 3, first paragraph, 2°.

Decisions made pursuant to paragraph 1 shall be communicated to the other competent authorities and shall, except under exceptional circumstances, be made public by the competent authorities.

§ 5. For the application of § 2 to § 4, the relevant competent authorities can make joint decisions on:

1° excluding an undertaking for the calculation of thresholds, for the same reasons as they can be excluded pursuant to Article 190, § 2, second paragraph, from the calculation of the supplementary solvency requirements, unless the entity has moved from a Member State to a third country and there is evidence that the entity changed its location in order to avoid regulation;

2° designating a group that no longer meets the thresholds under § 2 to § 4 but that has met them for the past three consecutive years, as a financial conglomerate to prevent a sudden change of supervisory regime, or to decide otherwise or review an earlier decision because of persistent significant changes to the group’s structure;

3° excluding one or more participations in the smallest sector if such participations are decisive for the identification of a financial conglomerate, and are collectively of negligible interest with respect to the objectives of supplementary conglomerate supervision.
If a group is designated as a financial conglomerate in accordance with § 2 to § 4, the decisions as referred to in paragraph 1 of this section shall be made based on the proposal of the supervisory authority if it is the coordinator.

§ 6. For the application of § 2 and § 3, first paragraph, 1°, the relevant competent authorities can under exceptional circumstances mutually agree to replace or supplement the balance sheet total as a parameter with one or more of the other parameters stipulated as follows if they are of the opinion that these other parameters better reflect the business of the group in view of the objectives of the supplementary conglomerate supervision; these other parameters are: the income structure, activity that is off-balance sheet for the group and total assets under management. The supervisory authority in its capacity of coordinator shall determine the manner in which these parameters are calculated.

§ 7. If a financial conglomerate subject to supplementary conglomerate supervision no longer meets one or more of the thresholds stipulated in § 2 to § 4, the thresholds shall be replaced as follows for the following three years: 40% becomes 35%, 10% becomes 8% and EUR 6 billion becomes EUR 5 billion to avoid sudden regime shifts.

By way of derogation from paragraph 1, the supervisory authority can decide, in its capacity of coordinator and after having obtained the agreement of the other relevant competent authorities, not to or no longer to apply these lower thresholds in the aforementioned period of three years, bearing in mind the objectives of the supplementary conglomerate supervision.

§ 8. The calculations referred to in the present Article on the joint balance sheet total shall be made on the basis of the aggregate balance sheet total of the undertakings that belong to the group on the basis of their most recent financial statements in accordance with the provisions laid down by the supervisory authority, if it is the coordinator. Undertakings in which the group has participations shall be included in the amount of their balance sheet total corresponding to the aggregated proportional share held by the group. If consolidated financial statements are drawn up for a particular group or parts of the group, these shall be used for the calculations.

The solvency requirements referred to in this Article shall be calculated in accordance with the provisions of the sectoral legislation that applies for the regulated undertakings concerned.

§ 9. The competent authorities shall, on an annual basis, reassess waivers of the application of supplementary conglomerate supervision and shall review the quantitative indicators set out in this Article, as well as the risk-based assessments of financial groups.

Article 187. § 1. The supervisory authority shall verify whether the credit institutions that have received an authorization to pursue business in accordance with Belgian law, form part of a financial conglomerate. To this end, the supervisory authority shall work closely with the competent authorities of the other regulated undertakings belonging to this group that have received authorization to pursue business in accordance with European law. If the supervisory authority is of the opinion that the group concerned is a financial conglomerate and is not already subject to supplementary conglomerate supervision, it shall communicate this to the other competent authorities concerned and to the Joint Committee.

§ 2. The supervisory authority shall inform, in its capacity of coordinator, the parent undertaking of the group, or in the absence of a parent undertaking, the regulated undertaking with the greatest balance sheet total in the most important financial sector in the group, of the identification of the group as a financial conglomerate, as well as of its designation as coordinator. It shall also inform the competent authorities of other regulated undertakings belonging to the group that have received an authorization to pursue business
in accordance with European law, the competent authorities of the country in which the mixed financial holding company has its head office, the Joint Committee, as well as—to the extent that it deems this necessary in light of the objectives of the supplementary conglomerate supervision—the authorities of third countries.

**Article 188.** The credit institutions referred to in Article 185 shall comply with the requirements of Articles 191 to 195 at the level of the financial conglomerate. This scope of the supplementary conglomerate supervision shall correspond to all undertakings, whether regulated or unregulated, that form part of the group as defined in Article 164, § 3, taking the credit institution that heads up the financial conglomerate or the mixed financial holding company with headquarters in the European Economic Area as a starting point.

**Article 189.** Where a financial conglomerate itself forms part of another financial conglomerate subject to supplementary conglomerate supervision, the supervisory authority, in its capacity of coordinator, can exclude, in whole or in part, the credit institutions referred to in Article 185 that form part of the subgroup, from the supplementary conglomerate supervision if the objectives thereof are sufficiently attained by the supplementary conglomerate supervision of the other financial conglomerate.

**Article 190.** § 1. Without prejudice to the application of Article 49 of Regulation No 575/2013, the credit institutions referred to in Article 185 shall be subject to supplementary solvency supervision at a group level. The supplementary supervision relates to:

1° compliance with the requirement that there permanently be own funds available at the financial conglomerate level at least equal to the solvency requirements; the own funds and solvency requirements at the financial conglomerate level shall be calculated using one of the methods stipulated in Annex VI;

2° the adequacy of the management procedures and the internal control procedures relating to the group’s solvency position in accordance with the provisions of Article 194;

3° the adequacy of the strategies relating to own funds.

The provisions referred to in paragraph 1 shall be overseen by the supervisory authority, in its capacity of coordinator, in accordance with Subsection II. It shall ensure that the calculation referred to in paragraph 1 is made at least once a year. The results of the calculation and the records used for making it shall be presented to the supervisory authority by the credit institution, by the mixed financial holding company or by one of the regulated undertakings belonging to the financial conglomerate, which the supervisory authority designates, after consultation with the other relevant competent authorities and with the financial conglomerate.

§ 2. By way of derogation from the scope of the supplementary conglomerate supervision stipulated in Article 188, all undertakings in the group belonging to the financial sector shall be included in the supplementary solvency supervision for the application of § 1, first paragraph, 1°.

By way of derogation from paragraph 1, the supervisory authority in its capacity of coordinator can decide in the following cases to exclude a particular undertaking from the scope of the supplementary solvency supervision under § 1, first paragraph, 1°:

1° if the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral legislation relating to the obligations of the competent authorities to refuse authorization if the effective exercise of their supervisory tasks is hindered;

2° if the undertaking is of negligible interest with respect to the objectives of supplementary conglomerate supervision on regulated undertakings in a financial conglomerate;
3° if the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the supplementary conglomerate supervision.

If several undertakings may be excluded from the calculation pursuant to paragraph 2, 2°, they must nevertheless be included where, collectively, they are of non-negligible interest.

In the case referred to under paragraph 2, 3°, the other relevant competent authorities shall by consulted by the supervisory authority in its capacity of coordinator prior to making a decision, except in urgent cases.

**Article 191.** § 1. The credit institutions referred to in Article 185 are subject to supplementary supervision on risk concentration.

The supplementary supervision relates to:

1° identifying and reporting significant risk concentrations;

2° the adequacy of the management procedures and the internal control procedures relating to the group’s risk concentration in accordance with the provisions of Article 194.

For the supervision, particular attention will be paid to the following aspects: the risk contagion in the group, the existence of conflicts of interest, circumvention of sectoral legislation, as well as the level or scale of risk concentration.

§ 2. For the application of § 1, second paragraph, 1°, the supervisory authority shall, in its capacity of coordinator, establish the thresholds, in consultation with the other relevant competent authorities and after consulting the financial conglomerate, for identifying and reporting each significant risk concentration within the financial conglomerate. It shall lay down the thresholds on the basis of one or both of the following parameters: the regulatory own funds and the technical reserves.

If no thresholds are laid down, risk concentrations shall be regarded as significant if they are greater than 10% of the solvency requirements of the financial conglomerate concerned.

§ 3. Without prejudice to the provisions of § 1, the supervisory authority can, in its capacity of coordinator, impose restrictions or other equivalent supervisory measures for controlling the risk concentration at the financial conglomerate level. In order to prevent circumvention of the sectoral legislation on risk concentration, it can also decide, in accordance with Article 170, to apply, mutatis mutandis, the sectoral provisions on the subject at the financial conglomerate level. It shall consult the other relevant competent authorities beforehand.

**Article 192.** § 1. The credit institutions referred to in Article 185 are subject to supplementary supervision on intra-group transactions.

The supplementary supervision relates to:

1° identifying and reporting significant intra-group transactions;

2° the adequacy of the management procedures and the internal control procedures relating to intra-group transactions in accordance with the provisions of Article 194.

For the supervision, particular attention will be paid to the following aspects: the risk contagion in the group, the existence of conflicts of interest, circumvention of sectoral legislation, as well as the level or scale of intra-group transactions.

§ 2. For the application of § 1, second paragraph, 1°, the supervisory authority shall, in its capacity of coordinator, establish the appropriate thresholds, in consultation with the other relevant competent authorities and after consulting the financial conglomerate, for identifying and reporting significant intra-group transactions. It shall lay down the
thresholds on the basis of one or both of the following parameters: the regulatory own funds and the technical reserves.

If no thresholds are laid down, intra-group transactions shall be regarded as significant if they are greater than 5% of the solvency requirements of the financial conglomerate concerned.

§ 3. Without prejudice to the provisions of § 1, the supervisory authority can, in its capacity of coordinator, impose restrictions or other equivalent supervisory measures for achieving the objectives of the supplementary conglomerate supervision of intra-group transactions. In order to prevent circumvention of the sectoral legislation on intra-group transactions, it can also decide, in accordance with Article 170, to apply, mutatis mutandis, the sectoral provisions on the subject at the financial conglomerate level. It shall consult the other relevant competent authorities beforehand.

**Article 193.** § 1. For the supplementary conglomerate supervision stipulated in Articles 190 to 192, the following statements must be provided to the supervisory authority, in its capacity of coordinator, following the methods it determines and at least twice a year:

1° accounting statements relating to the financial situation of the financial conglomerate containing at least the balance sheet and the profit and loss account;

2° a statement demonstrating compliance with the standards laid down in or in implementation of Article 190, § 1, first paragraph, 1°, Article 191, § 3, and Article 192, § 3, and a statement showing the significant risk concentrations and significant intra-group transactions referred to in Article 191, § 1, second paragraph, 1°, and Article 192, § 1, second paragraph, 1°.

To this end, the supervisory authority shall determine, in its capacity of coordinator and in consultation with the other relevant competent authorities, the categories of transactions, risks and positions that must be reported for monitoring risk concentration and significant intra-group transactions; it can for this purpose take into account the specific group and risk management structure of the financial conglomerate concerned.

§ 2. The statements referred to in § 1 shall be provided by the credit institution, by the mixed financial holding company or by the regulated undertaking belonging to the financial conglomerate, designated by the supervisory authority after consultation with the other relevant competent authorities and with the financial conglomerate.

**Article 194.** § 1. The credit institutions referred to in Article 185 shall ensure that the financial conglomerate possesses appropriate risk management and internal control procedures and appropriate administrative and accounting procedures.

In particular, these risk management and internal control procedures must be available at a consolidated and sub-consolidated level in the parent undertakings referred to in Article 185, regardless of whether they relate to the credit institution or the mixed financial holding company that heads up the financial conglomerate, and in all regulated undertakings belonging to the financial conglomerate to ensure that the risk management and internal control procedures are cohesive and well-integrated, the influence of the undertakings belonging to the group on the regulated undertakings can be assessed, and all records and information important for the supplementary conglomerate supervision can be obtained. These parent undertakings shall also apply these risk management and internal control procedures to their unregulated subsidiaries. These risk management and internal control procedures shall also be cohesive and well-integrated and these subsidiaries must also be able to provide the records and information relevant to the supervision.

§ 2. The risk management procedures shall include:
1° appropriate governance and management, with approval and periodic evaluation of the strategy and the policy by the competent bodies with regard to all major risks incurred at the financial conglomerate level;

2° an appropriate solvency policy, which in particular anticipates for the group, the future effects of the business strategy followed on the group’s risk profile, and the solvency requirements referred to in Article 190;

3° appropriate procedures that guarantee that the risk management and monitoring systems are sufficiently integrated in the group’s organization and that the systems used in the group’s undertakings are in line with each other so that risks may be correctly identified, monitored and controlled at the financial conglomerate level;

[4° regularly updated rules to contribute to achieving and, where applicable, developing appropriate recovery and resolution mechanisms and plans.]

§ 2, 4° replaced by Article 741 of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

§ 3. The internal control procedures shall include:

1° appropriate procedures for monitoring the solvency at a group level so that all major risks are correctly identified and monitored and the own funds are sufficient in light of the risks incurred;

2° the adequacy of the procedures and systems for the identification, measurement, monitoring and control of intra-group transactions and risk concentrations.

§ 4. Credit institutions shall have an appropriate accounting and administrative organization that guarantees accuracy and compliance with the applicable rules of the records and information provided for the supplementary conglomerate supervision and the preparation of financial statements.

Credit institutions must ensure a transparent group structure. To this end, the credit institution, the mixed financial holding company or the regulated undertaking belonging to the financial conglomerate designated by the supervisory authority, in its capacity of coordinator, after consultation with the other relevant competent authorities and with the financial conglomerate, shall:

1° regularly communicate to the supervisory authority distinctive features of their legal structure, their policy for business organization and their management structure applicable to all regulated undertakings, unregulated subsidiaries and significant branches;

2° annually provide a description, accessible to the public, of the legal structure, the policy for business organization and the management structure at the financial conglomerate level, and ensure that all regulated undertakings also publish this information, whether by full disclosure or by reference to equivalent information.

Article 195. The supervisory authority shall assess, in its capacity of coordinator, at least once the year the need for stress tests at a financial conglomerate level. It shall make its assessment in line with the stress test organized for the greatest financial sector represented in the financial conglomerate and consult with the other relevant competent authorities.

For the application of these stress tests, the supervisory authority shall take into consideration the parameters that could identify specific risks linked to the financial conglomerates.

The supervisory authority shall share the results of the stress tests with the Joint Committee.
Subsection II.- Measures for facilitating supplementary conglomerate supervision

Article 196. § 1. In order to guarantee appropriate supplementary conglomerate supervision, one single coordinator shall be designated from the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office, which shall be responsible for the coordination and implementation of the supplementary conglomerate supervision.

§ 2. The supplementary conglomerate supervision of the credit institutions referred to in Article 185, first paragraph, shall be exercised as follows:

1° by the supervisory authority in the case referred to in Article 185, first paragraph, 1°;

2° if a Belgian mixed financial holding company heads a financial conglomerate, by the supervisory authority, without prejudice to points 3° to 7°;

3° if at least one other Belgian regulated undertaking has the same Belgian mixed financial holding company heading the financial conglomerate as a Belgian credit institution, by the competent authority tasked with the prudential supervision of the Belgian regulated undertaking with the highest balance sheet total;

4° if the mixed financial holding company heading the financial conglomerate has its headquarters in a Member State other than Belgium and has a subsidiary in that Member State that is a regulated undertaking, by the competent authority of that country;

5° if the mixed financial holding company heading the financial conglomerate has its headquarters in a Member State other than Belgium and has at least two subsidiaries in that Member State that are regulated undertakings, with a different competent authority for each, by the competent authority of the regulated undertaking in the most important financial sector;

6° if several mixed financial holding companies, with headquarters in several countries head the financial conglomerate and there is a regulated undertaking in each of these Member States, by the competent authority of the regulated undertaking with the highest balance sheet total if the activity of these undertakings take place in the same financial sector, or by the competent authority of the regulated undertaking in the most important financial sector;

7° if at least two regulated undertakings with headquarters in a Member State have the same mixed financial holding company and parent undertaking and none of these undertakings have an authorization in the country in which the mixed financial holding company has its headquarters, by the competent authority of the regulated undertaking with the highest balance sheet total in the most important financial sector.

§ 3. The supervisory authority and the other relevant competent authorities can in exceptional circumstances mutually agree to derogate from the competence regime stipulated in § 2, if the application thereof, given the structure of the financial conglomerate and the relative importance of the group’s business in the different Member States, would not be appropriate, and task another competent authority with the supplementary conglomerate supervision. They shall consult the financial conglomerate on the matter prior to making a decision.

§ 3 amended by Article 743, 1° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

[Where the supervisory authority is designated pursuant to Article 11, paragraph 3 of Directive 2002/87/EC as the coordinator for the exercise of the supplementary conglomerate supervision of a credit institution which is governed by the law of another Member State, and the parent undertaking of which is a mixed financial holding company]
governed by Belgian law, without a credit institution governed by Belgian law or another regulated undertaking governed by Belgian law which is individually subject to the supervision of the supervisory authority being present in the group that forms the financial conglomerate, the provisions that apply to the credit institutions as referred to in Article 185, paragraph 1, 2° shall apply mutatis mutandis to the aforementioned holding company, subject to derogations hereto in the agreement between the competent authorities as referred to in Article 11, paragraph 3 of Directive 2002/87/EC.]

§ 3, paragraph 2 inserted by Article 743, 2° of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016

Article 197. § 1. The tasks of the supervisory authority in its capacity of coordinator, shall include:

1° coordinating the collection and dissemination of information that is relevant or essential for the purposes of its supervision, under normal circumstances and in emergency situations, including the dissemination of information that is important for the supervision by a competent authority pursuant to the sectoral legislation;

2° supervising and evaluating the financial situation of the financial conglomerate;

3° supervising compliance with the provisions of Article 190 to 192 on the subject of solvency, risk concentration and intra-group transactions, and of compliance with the reporting obligations referred to in Article 193;

4° supervising and evaluating the structure, the organization and the internal control procedures of the financial conglomerate, as referred to in Article 194;

5° planning and coordinating supervisory activity, under normal circumstances and in emergency situations, in collaboration with the other relevant competent authorities;

6° taking measures and imposing sanctions with respect to the mixed financial holding company;

7° other tasks, measures and decisions allocated to it by or pursuant to the provisions of the present Section and Section IV of the present Chapter, insofar as these provisions, with regard to Section IV, relate to the supplementary conglomerate supervision and of Directive 2002/87/EC.

§ 2. The relevant competent authorities, where applicable in consultation with other competent authorities, can agree to allocate other supervisory tasks to the supervisory authority in its capacity of coordinator, outside those referred to in § 1.

§ 3. Where the supervisory authority acts as competent authority without acting as coordinator, it shall work alongside the other competent authorities and with the coordinator, without prejudice to the provisions of Section IV of the present Chapter insofar as it relates to the supplementary conglomerate supervision, with a view to the exercise of the tasks referred to in Article 11 of Directive 2002/87/EC.

Article 198. § 1. Without prejudice to the Memoranda of Understanding and coordinating regulations referred to in the other provisions of the present Section, the supervisory authority, as the coordinator, shall enter into agreements with other competent authorities, which are necessary for achieving the supplementary conglomerate supervision as provided for in the present Section and in Section IV of the present Chapter. These agreements shall regulate where necessary the methods for exercising this supervision, including the methods for cooperation and sharing of information between competent authorities. They can in particular regulate procedures for decision-making between the relevant competent authorities.
§ 2. Without prejudice to the delegation of specific supervisory powers and responsibilities in accordance with the sectoral legislation, the designation of the supervisory authority as coordinator is without prejudice to the tasks and responsibilities, referred to in the sectoral legislation, of the competent authorities concerned.

**Article 199.** § 1. In its capacity of coordinator, the supervisory authority shall set up a college for the supplementary conglomerate supervision to shape the required cooperation and exercise of its tasks as coordinator by virtue of the present section and Section IV of the present Chapter and, subject to confidentiality requirements and EU law, the appropriate coordination and cooperation with the relevant supervisory authorities of third countries.

§ 2. Where the relevant competent authorities already participate in a college established pursuant to Article 116 of Directive 2013/36/EU or Article 248(2) of Directive 2009/138/EC, the college shall function at a financial conglomerate level within the college established for the most important financial sector. The banking sector and investment services sector shall for this purpose be considered together.

The rules for the coordination referred to in § 1 shall be detailed separately in the written coordination rules established for the sectoral college. In its capacity of coordinator, the supervisory authority shall decide, as the Chair of this sectoral college, which other competent authorities shall take part in a meeting or an activity of that college.

**Article 200.** § 1. The supervisory authority and the other competent authorities shall work closely together.

They shall mutually share the confidential information useful for the exercise of the supervision pursuant to the sectoral legislation and the supplementary conglomerate supervision.

§ 2. Without prejudice to their responsibilities as described in the sectoral legislation, the authorities referred to in § 1, first paragraph, irrespective of whether they are established in the same country or not, shall provide each other with all information that is essential or relevant for the exercise of the supervisory tasks pursuant to the sectoral legislation and Directive 2002/87/EC. In this respect, it shall share all relevant information upon request and all essential information of its own accord.

This cooperation shall include at least collecting and disseminating information on the following aspects:

1° the disclosure of the legal structure, the policy for the organization of the business and of the management structure of the group, encompassing all regulated undertakings, unregulated subsidiaries and significant branches within the meaning of Article 51 of Directive 2013/36/EU belonging to the financial conglomerate, holders of qualifying holdings at the level of the final parent undertaking, as well as of the competent authorities for the regulated undertakings in the group;

2° the strategy followed by the financial conglomerate;

3° the financial situation of the financial conglomerate, in particular the sufficiency of the own funds, the intra-group transactions, risk concentration and profitability;

4° the major shareholders and the management of the financial conglomerate;

5° the organization and risk management and internal control procedures at the financial conglomerate level.

6° the procedures for the collection of information from undertakings in a financial conglomerate, as well as for the verification of such information;
7° unfavourable developments in regulated undertakings or in other undertakings of the financial conglomerate that could have serious negative consequences for the regulated undertakings;

8° important sanctions and exceptional measures taken by the competent authorities in accordance with the sectoral legislation or Directive 2002/87/EC.

The supervisory authority can also share information with the ESRB with respect to the exercise of the supervision of Belgian credit institutions belonging to a financial conglomerate.

§ 3. Without prejudice to its responsibilities as described in the sectoral legislation, the supervisory authority, shall, prior to making a decision on the matters described as follows, consult on these matters if the decision affects the supervisory tasks of other competent authorities:

1° changes to the shareholder structure or the organizational or management structure of regulated undertakings in a financial conglomerate, which require approval or authorization by the competent authorities;

2° important sanctions or exceptional measures envisaged.

The supervisory authority can decide not to consult on matters in urgent cases or if such consultation could threaten the effectiveness of its decisions. In such a case, the supervisory authority shall inform the other competent authorities forthwith.

Article 201. For the application of Article 213 with regards to supplementary conglomerate supervision, where the information requested in implementation of the sectoral legislation is already reported to another competent authority, the supervisory authority, in its task as coordinator, shall wherever possible turn to that authority for obtaining that information.

Subsection III. — Other applications

Article 202. If in cases other than those referred to in Article 185, an undertaking has a participation or other capital ties with one or more other undertakings, or exercise significant influence on such undertakings, outside a participation or other capital ties, and one of the aforementioned undertakings is a credit institution governed by Belgian law, the supervisory authority, in its capacity of relevant competent authority, can mutually decide along with the other relevant competent authorities of countries to exercise supplementary conglomerate supervision on the regulated undertakings in the group. The relevant competent authorities shall jointly determine the methods for this supplementary conglomerate supervision and more in particular which Articles of the present Section and Section IV of the present Chapter on supplementary conglomerate supervision shall apply. They shall make their decision with due regard to the objectives of the supplementary conglomerate supervision as laid down in the present Section and shall take into consideration the international principles on the subject of supplementary conglomerate supervision.

The competent authority tasked with the supplementary conglomerate supervision of the group shall be designated mutatis mutandis with the provisions of Article 196. If the financial conglomerate is a group without a parent undertaking heading the group, or in another of the aforementioned situations, the supplementary conglomerate supervision shall be exercised by the competent authority tasked with the supervision of the regulated undertaking with the highest balance sheet total in the most important financial sector.

For the application of the provisions of paragraph 1, the conditions of Article 164, § 1, 2°, a), ii) and iii) or b), ii) and iii) must be complied with.
If supplementary conglomerate supervision is opted for pursuant to paragraph 1, the provisions of Article 187, § 2, shall apply mutatis mutandis.

Section IV. — Common rules

Subsection I. — Principles

Article 203. § 1. The supervisory authority can, where applicable, further determine, by means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, the practical methods for consolidated supervision, as included in Section II of the present Chapter and in the present Section, or for supplementary conglomerate supervision, as included in Section III of the present Chapters in the present Section.

§ 2. With a view to a consolidated supervision and supplementary conglomerate supervision that is as efficient as possible, the supervisory authority can permit individual derogations from the provisions of, depending on the circumstances, Section II and III of the present Chapter and the present Section and, where applicable, from the regulations laid down pursuant to Article 12bis, § 2, of the Law of 22 February 1998, insofar as these remain in line with the relevant provisions on the subject from Directive 2013/36/EU and Directive 2002/87/EC. In such a case, it shall inform the European Commission and, with respect to the consolidated supervision, the EBA.

Article 204. The consolidated supervision and the supplementary conglomerate supervision shall not ensue in individual supervision being exercised of a financial holding company or of a mixed financial holding company and of any other undertakings included in the scope of these types of supervision.

The consolidated supervision and the supplementary conglomerate supervision is nevertheless without prejudice to the individual supervision of each regulated undertaking that falls under the scope of the consolidated supervision or the supplementary conglomerate supervision. Account can also be taken of the implications of the consolidated supervision or of the supplementary conglomerate supervision for determining the content and the methods of the individual supervision of credit institutions.

Subsection II. — Parent undertakings, in particular financial holding companies and mixed financial holding companies

Article 205. § 1. Where the supervisory authority exercises consolidated supervision or supplementary conglomerate supervision, pursuant to Article 171 or Article 196, on a credit institution referred to in Article 165 and Article 185, the parent undertakings governed by Belgian law referred to in the aforementioned Articles shall be responsible for compliance with the obligations relating to the consolidated supervision or the supplementary conglomerate supervision.

When exercising the coordination and the supervision with which it has been tasked as head of the consolidated whole or the financial conglomerate, the parent undertakings referred to in paragraph 1 shall issue guidelines to the undertakings belonging to the consolidated whole or to the financial conglomerate with a view to complying with the obligations arising from the consolidated supervision or the supplementary conglomerate supervision and on ensuring the stability of the consolidated whole or the financial conglomerate. Such guidelines may not conflict with the Companies Code and its implementing decrees and are without prejudice to the supervision on an individual basis of credit institutions belonging to the consolidated whole or the financial conglomerate.

§ 2. Where the supervisory authority exercises consolidated supervision or supplementary conglomerate supervision, pursuant to Article 171 or Article 196, on a credit institution governed by Belgian law which has a financial holding company or mixed financial holding company as a parent undertaking headquartered outside Belgium, this credit
institution shall be jointly responsible with its parent undertaking for compliance with the obligations of the consolidated supervision or the supplementary conglomerate supervision.

The credit institution must obtain cooperation from the parent undertaking referred to for setting up an appropriate governance structure that contributes to the consolidated supervision or the supplementary conglomerate supervision being exercised as efficiently as possible and shall ensure that the influence of the parent undertaking does not conflict with the Companies Code and its implementing decrees and is without prejudice to the supervision on an individual basis that applies to the credit institution, or the consolidated supervision or supplementary conglomerate supervision.

§ 3. The internal governance memorandum required pursuant to Article 21, must specify, at the consolidated level or at the financial conglomerate level, how the principles included in § 1 and § 2 are complied with.

§ 4. In the cases referred to in § 1, the parent undertakings concerned that are responsible for the reporting obligations pursuant to Article 106, § 1 and § 2, first paragraph, and Article 193 of the present Law shall also provide, at the request of the supervisory authority, all additional information useful for the exercise of the consolidated supervision or the supplementary conglomerate supervision. Article 106, § 3, shall apply mutatis mutandis.

§ 5. Where the supervisory authority exercises the consolidated supervision or the supplementary conglomerate supervision pursuant to Article 171 or Article 196, in cases other than those referred to in § 1 and § 2, it can further determine, on a case-by-case basis, how the principles of § 1 to § 4 shall apply mutatis mutandis.

§ 6. For the application of § 1, § 2, and § 5, the supervisory authority shall consult the other competent authorities where necessary.

Article 206. § 1. Where a competent authority other than the supervisory authority exercises the consolidated supervision or the supplementary conglomerate supervision of a credit institution governed by Belgian law, this credit institution must ensure that the influence of its parent undertaking does not conflict with the Companies Code and its implementing decrees and is without prejudice to the supervision on an individual basis to which this credit institution is subject.

Article 207. Where a competent authority of another Member State exercises the consolidated supervision or the supplementary conglomerate supervision of a credit institution that is the subsidiary of a financial holding company or a mixed financial holding company governed by Belgian law, the supervisory authority shall ascertain, where it is requested to do so by the competent authority, how it can lend its cooperation for the application of the measures that would exist in the Member State of that competent authority with a view to the inclusion of financial holding companies and mixed financial holding companies in the consolidated supervision or supplementary conglomerate supervision.

Article 208. § 1. The management committee, or where applicable, the senior management of the parent undertakings referred to in Article 165 and Article 185 governed by Belgian law, that are included in the consolidated supervision or the supplementary conglomerate supervision exercised by the supervisory authority, shall declare the reporting referred to in Article 205, § 4, to be in line with the accounting and inventories. To this end, the statements are required to be complete, which means that they include all records from the accounting and inventories on the basis of which these statements were drawn up, and accurate, which means that the records from the accounting and inventories on the basis of which these statements were drawn up are reflected accurately. The management committee, or where applicable, the senior management, shall confirm that it has taken the
necessary steps to ensure that the aforementioned statements have been drawn up pursuant to the applicable rules and in accordance with the accounting and valuation rules for drawing up the financial statements, or, for the periodic reporting statements not pertaining to the end of the financial year, pursuant to the accounting and valuation rules for drawing up the consolidated financial statements for the last financial year.

§ 2. Article 59, § 2, shall apply mutatis mutandis to the management committee, or where applicable to the senior management of the parent undertakings referred to in § 1 with regard to the measures as included in:

1° Article 21 with respect to the consolidated whole;
2° Article 194 with respect to the financial conglomerate.

Article 209. The provisions of Article 225 of the present Law relating to the task of accredited statutory auditor at a credit institution on an individual basis shall apply mutatis mutandis to credit institutions referred to in Article 165, 1°, or Article 185, first paragraph, 1°, for the consolidated supervision and the supplementary conglomerate supervision to which these credit institutions are subject.

Article 210. § 1. The task of the statutory auditor as referred to in the Companies Code shall be entrusted:

1° in a financial holding company or a mixed financial holding company governed by Belgian law as referred to in Article 165, 2°, included in the consolidated supervision exercised by the supervisory authority, to one or more auditors or one or more auditing firms which are, in accordance with Article 223 of the present Law, accredited by the Bank for the task of statutory auditor of a credit institution. Articles 220, 221, 222, third paragraph, 223, 224, 225, paragraphs 2 to 5 of the present Law shall apply mutatis mutandis.

2° in a mixed financial holding company governed by Belgian law referred to in Article 185, paragraph 1, 2°, included in the supplementary conglomerate supervision exercised by the supervisory authority, to one or more auditors or audit firms accredited by the Bank in accordance with, [depending on the circumstances, Articles 222 and 578 of the present Law, accredited by the Bank for the task of statutory auditor of a credit institution. Articles 220, 221, 222, third paragraph, 223, 224, 225, paragraphs 2 to 5 of the present Law shall apply mutatis mutandis.

The panel of auditors of the audit firms appointed by a mixed financial holding company must be composed in such a way as to be accredited, whether individually or collectively, in each of the financial sectors in which the financial conglomerate has significant activity. The Bank can determine, by reference to the thresholds referred to in Article 186, what must be understood as activity of significance. The provisions of the sectoral legislation on the subject of audit supervision shall apply mutatis mutandis.


§ 2. The statutory auditors appointed to the holding companies referred to in § 1, shall lend their cooperation to, depending on the circumstances, the consolidated supervision or the supplementary conglomerate supervision with which the supervisory authority is tasked, at their own and sole responsibility and in accordance with the present section, following the rules of the trade and the guidelines of the supervisory authority. To this end:

1° they shall assess the adequacy of the internal control measures as referred to in Articles 21, § 1, 2° to 9°, 41 and 66 for the consolidated supervision or the appropriate nature of the risk management procedures, the internal control procedures, and the administrative and
accounting procedures as referred to in Article 194 for the supplementary conglomerate supervision. They shall communicate their findings on the subject to the supervisory authority;

2° they shall report to the supervisory authority on:

a) the results of the limited review of the statements that the financial holding company or mixed financial holding company submits to the supervisory authority for its consolidated position, or of the statements referred to in Article 193 that the mixed financial holding company submits to the supervisory authority at the end of the first half-year in which it is confirmed that they have no knowledge of any facts that would indicate that these statements at the end of the half-year were not drawn up in all material respects in accordance with the supervisory authority’s current guidelines. Furthermore, they shall confirm that these statements at the end of the half-year, are, in all material respects, in line with the accounting and inventories with respect to the accounting records, in terms of completeness, which means that they include all records from the accounting and inventories on the basis of which these statements were drawn up, and in terms of accuracy, which means that the records from the accounting and inventories on the basis of which these statements were drawn up are reflected accurately; and confirm that they have no knowledge of any facts that would indicate that these statements at the end of the half-year were not drawn up in all material respects in accordance with the accounting and valuation rules for drawing up the consolidated financial statements relating to the last accounting year; the supervisory authority can further specify the statements referred to herein;

b) the results of the audit of the statements that the financial holding company or mixed financial holding company submits to the supervisory authority at the end of the financial year for its consolidated position or of the statements referred to in Article 193 that the mixed financial holding company submits to the supervisory authority, in which it is confirmed that these statements were drawn up, in all material respects, in accordance with the supervisory authority’s current guidelines. Furthermore, they shall confirm that these statements at the end of the financial year, are, in all material respects, in line with the accounting and inventories with respect to the accounting records, in terms of completeness, which means that they include all records from the accounting and inventories on the basis of which these statements were drawn up, and in terms of accuracy, which means that the records from the accounting and inventories on the basis of which these statements were drawn up are reflected accurately; and confirm that they have no knowledge of any facts that would indicate that these statements at the end of the financial year were not drawn up in all material respects in accordance with the accounting and valuation rules for drawing up the consolidated financial statements relating to the last accounting year; the supervisory authority can further specify the statements referred to herein;

3° they shall provide a special report to the supervisory authority at its request on:

a) for the consolidated supervision: the organization, activity and financial structure of the consolidated whole;

b) for the supplementary conglomerate supervision: the aspects referred to in points 1° and 2° of this section and in Articles 190 to 192.

The costs for drawing up these reports shall be borne by the financial holding company or the mixed financial holding company, or by the credit institution governed by Belgian law or by both together.

4° they shall report to the supervisory authority, within the scope of their task with the financial holding company or mixed financial holding company, or an audit task with an enterprise affiliated with the financial holding company or the mixed financial holding
company, at their own initiative the moment any of the following matters come to their attention:

a) decisions, facts or developments that significantly influence or could significantly influence the aspects referred to in 3°;

b) decisions or facts relating to the financial holding company or mixed financial holding company that could indicate an infringement of the Companies Code, the articles of association, or the present Law;

c) other decisions or facts that could lead to a refusal of certification of the consolidated financial statements or to formulating a reservation.

§ 3. Where the parent undertaking is a financial holding company or a mixed financial holding company referred to in Article 165, 2°, of Article 185, first paragraph, 2°, with headquarters in another Member State, which is included either in the consolidated supervision or the supplementary conglomerate supervision exercised by the supervisory authority, the task specified in § 2, shall be exercised mutatis mutandis by the statutory auditor appointed to this holding company for an equivalent task. In the absence of such a statutory auditor, the task referred to shall be exercised by the statutory auditor appointed to:

a) the credit institution governed by Belgian law that is the subsidiary of the financial holding company referred to, or the mixed financial holding company for the consolidated supervision, or

b) the regulated undertaking governed by Belgian law that comes under the supervision of the supervisory authority and that is a subsidiary of the mixed financial holding company referred to, for the supplementary conglomerate supervision.

Article 211. The statutory auditor appointed to credit institutions, financial holding companies or mixed financial holding companies governed by Belgian law in accordance with Article 209 and 210, shall have access to view, for the exercise of their tasks as provided for in the present Articles, all documents and files that concern the subsidiaries included in the consolidated position or in the financial conglomerate, and the undertakings referred to in Article 213 § 1, second paragraph.

The provisions of Article 35 of the Law of 22 February 1998 shall apply to the information they have taken cognizance of in application of paragraph 1.

Article 212. Without prejudice to the principle included in Article 204, first paragraph, and where the consolidated supervision or the supplementary conglomerate supervision is exercised by the supervisory authority, the following Articles of the present Law shall apply mutatis mutandis to the financial holding company or mixed financial holding company governed by Belgian law: Articles 18, 19, 20, 24, § 1, it being understood that at least three members of the management committee are members of the statutory governing body, and § 3 and § 4, 25 and 26, 46 to 54, 60, 61 and [62, §§ 1 to 4, § 5, first sentence, and §§ 6 to 9.], and 71, [77.] 234, § 1 and 236, § 1, 1° to 5°, and with respect to the consolidated supervision, Article 168, § 3.


Subsection III.- Measures to facilitate group supervision

Article 213. § 1. Without prejudice to the periodic reporting applicable, the supervisory authority must be given access by the credit institutions, financial holding companies and
mixed financial holding companies concerned, their subsidiaries and all other undertakings included in the consolidated whole or in the financial conglomerate, to seek, directly or indirectly, all information that is useful, depending on the circumstances, for the consolidated supervision or supplementary conglomerate supervision it exercises.

The subsidiaries excluded from the consolidation in accordance with Article 19 of Regulation No 575/2013, or the undertakings excluded from the supplementary conglomerate supervision in accordance with Article 190, § 2, must provide the supervisory authority, in its capacity of consolidating supervisor or coordinator, all records and information it deems useful for its consolidated supervision or supplementary conglomerate supervision.

Undertakings that control, either exclusively or with other undertakings, a credit institution governed by Belgian law and the subsidiaries of these undertakings must, if the undertakings do not fall under the scope of the consolidated supervision or the supplementary conglomerate supervision, provide the supervisory authority and the other competent authorities all records and information useful for the supervision of this credit institution.

§ 2. The supervisory authority can require that the information referred to in § 1 on undertakings with headquarters in a Member State other than Belgium, be communicated by the credit institution, financial holding company or mixed financial holding company established pursuant to Belgian law, or that information on undertakings with headquarters in a third country be communicated to it by a credit institution, financial holding company or mixed financial holding company with headquarters in a Member State.

§ 3. If a credit institution governed by Belgian law is excluded from the consolidated whole or the financial conglomerate by another competent authority that acts as consolidating supervisor or coordinator, the supervisory authority can require that the parent undertaking heading up the consolidated whole or the financial conglomerate provide it with the records and information it deems useful for its supervision of the credit institution.

Article 214. § 1. The supervisory authority can verify compliance with the obligations provided for in Sections II and III of the present Chapter and the present Section, and the accuracy and completeness of the records and information provided, on-site in the premises of the undertakings referred to in Article 213, § 1, and, for the consolidated supervision, in the undertakings as referred to in Article 182, the mixed-activity holding company and its subsidiaries, and undertakings providing ancillary services. It can confer this task on statutory auditors or accredited foreign experts at the expense of these undertakings.

§ 2. Where the undertakings referred to in § 1 have their headquarters in another Member State, the supervisory authority shall request that the competent authority of that Member State conduct this inspection. The supervisory authority shall conduct this inspection itself if it receives the authorization to do so from the competent authority of that Member State. Where the latter wishes to conduct the inspection itself, or appoints an accredited auditor or an expert for that task, the supervisory authority can nevertheless take part in the inspection if it wishes to do so.

§ 3. Where the undertakings referred to in § 1 have their headquarters in a third country, the methods for on-site inspection shall be regulated in Memoranda of Understanding that the supervisory authority has entered into with the foreign authorities concerned or that the European Commission has entered into with the foreign authorities concerned in accordance with the provisions of Article 48 of Directive 2013/36/EU.
Article 215. Without being able to invoke restrictions of a private law nature, in particular with respect to confidentiality agreements or the nature of their links, the following undertakings shall share the records and information necessary:

1° for the consolidated supervision: the undertakings included in the consolidated supervision as well as the subsidiaries of credit institutions, financial holding companies or mixed financial holding companies and mixed-activity holding companies and their subsidiaries excluded from the consolidated supervision in accordance with Article 19 of Regulation No 575/2013;

2° for the supplementary conglomerate supervision: the undertakings included in the supplementary conglomerate supervision as well as on the undertakings excluded from the supplementary conglomerate supervision in accordance with Article 190, § 2, second paragraph that belong to a financial conglomerate.

Article 216. § 1. If the parent undertaking and one or more credit institutions that are subsidiaries thereof are located in different Member States, the supervisory authority and the other competent authorities shall mutually share all useful information that could be necessary for, or could facilitate, the consolidated supervision or the supplementary conglomerate supervision.

The obtainment, sharing or holding of information by the supervisory authority and the competent authorities with a view to facilitating the consolidated supervision, or the supplementary conglomerate supervision for undertakings stated in Article 214, shall under no circumstances mean that the supervisory authority exercises separate supervision of these undertakings.

§ 2. If the supervisory authority does not itself exercise, in the case of a parent undertaking governed by Belgian law, the consolidated supervision or the supplementary conglomerate supervision by virtue of Article 171 or Article 196, the competent authorities tasked with the supervision may ask it to request information useful for that supervision from the parent undertaking, and forward that information to them.

§ 3. If the supervisory authority does exercise the consolidated supervision or the supplementary conglomerate supervision by virtue of Article 171 or Article 196, and the parent undertaking has its headquarters in a Member State other than Belgium, the supervisory authority may ask the competent authority of that Member State to request information useful for that supervision from the parent undertaking, and forward that information to it.

§ 4. Where the supervisory authority wishes to obtain, for the supervision on an individual basis of a credit institution, information that has already been reported to another competent authority that acts as consolidating supervisor or coordinator, it shall, wherever possible, go to that authority to obtain that information.

§ 5. If the supervisory authority needs, in its capacity of consolidating supervisor or coordinator, information that has already been reported to another competent authority, it shall wherever possible contact that authority so that the authorities included in the supervision are not informed twice.

Article 217. § 1. Credit institutions, financial holding companies, mixed financial holding companies and their subsidiaries, and mixed-activity holding companies and their subsidiaries established pursuant to Belgian law, shall provide the records and information to another supervisory authority which it deems useful for the consolidated supervision or the supplementary conglomerate supervision with which it is tasked, either directly or indirectly.
Where this relates to the competent authority, the first paragraph shall apply within the scope of its supervision as provided for by European legislation.

Where this authority comes under a third country and the obligation to provide information arises from Memoranda of Understanding that the supervisory authority has entered into with the foreign authority concerned, paragraph 1 shall apply mutatis mutandis.

§ 2. Supervisory authorities reserve the right, within the scope of their consolidated supervision or supplementary conglomerate supervision, to review the records and information they have obtained, on-site in undertakings referred to in Article 213, § 1 with headquarters in Belgium, or to task accredited statutory auditors or experts accredited by them with such a task under the following conditions:

1° where this concerns a competent authority, the provisions of Article 214, § 2, shall apply mutatis mutandis;

2° where this concerns an authority that comes under a third country, the provisions of Article 214, § 3, shall apply mutatis mutandis.

Article 218. In its capacity of consolidating supervisor or coordinator, the supervisory authority shall draw up lists of the financial holding companies and the mixed financial holding companies that are included in the consolidated supervision it exercises and of the mixed financial holding companies that are included in the supplementary conglomerate supervision it exercises.

It shall forward these lists to the competent authorities of the other Member States, to the EBA for the consolidated supervision and to the EBA and the European Insurance and Occupational Pensions Authority for the supplementary conglomerate supervision, and to the European Commission.

Subsection IV. — Parent undertakings from third countries

Article 219. § 1. Credit institutions governed by Belgian law with a parent undertaking

- that is a parent credit institution, a financial holding company or a mixed financial holding company, or

- a regulated undertaking heading a financial conglomerate or a mixed financial holding company,

with headquarters in a third country that is not already subject to or included in the scope of the consolidated supervision in accordance with Section II of the present Chapter and the present Section or the supplementary conglomerate supervision, in accordance with Section III of the present Chapter and the present Section, exercised by the supervisory authority or another competent authority shall be subject, depending on the circumstances, to the consolidated supervision or a supplementary conglomerate supervision pursuant to the provisions of the present Article.

§ 2. The supervisory authority shall verify whether the credit institutions referred to in § 1 are subject to supervision by an authority from a third country that is equivalent to:

1° the consolidated supervision by virtue of the provisions of Section II of the present Chapter and the present Section, or

2° the supplementary conglomerate supervision by virtue of the provisions of Section III of the present Chapter and the present Section.

This shall be done either on the supervisory authority’s own initiative or at the request of the parent undertakings referred to in § 1 or of the credit institution governed by Belgian law.
Prior to making a decision, the supervisory authority shall consult the other competent authorities concerned and, for the consolidated supervision, the EBA, on whether the supervision referred to is equivalent.

With respect to this equivalence, the supervisory authority shall take into consideration:

1° the guidelines issued by the European Banking Committee for the consolidated supervision in accordance with Directive 2013/36/EU and Regulation No 575/2013;

2° the guidelines drawn up by the Joint Committee in accordance with Articles 16 and 56 of Regulation No 1093/2010, Regulation No 1094/2010 or Regulation No 1095/2010 on the supplementary conglomerate supervision in accordance with Directive 2002/87/EC.

§ 3. If pursuant to the provisions, mutatis mutandis, of Article 111 of Directive 2013/36/EU or Article 10 of Directive 2002/87/EC, a competent authority other than the supervisory authority is the consolidating supervisor or coordinator, the verification and consultation shall be done by this other competent authority and the supervisory authority can communicate findings and conclusions on the equivalence referred to in § 1 to this other competent authority.

Where, with regard to supplementary conglomerate supervision, the supervisory authority has a difference of opinion on a decision made by another competent authority by virtue of paragraph 1, depending on the circumstances, Article 19 of Regulation No 1093/2010, or Regulation 1094/2010 or Regulation No 1095/2010 shall apply.

§ 4. Where the procedure in §§ 2 and 3 leads to the conclusion of no equivalence, the credit institution concerned governed by Belgian law shall be subject to consolidated supervision or supplementary conglomerate supervision, pursuant to the provisions, mutatis mutandis, of § 2, first paragraph, by the supervisory authority if it is the competent authority that would be tasked with the consolidated supervision or the supplementary conglomerate supervision pursuant to the provisions, mutatis mutandis, of Article 171 or Article 196 respectively.

By way of derogation from the first paragraph, the supervisory authority, after consulting the other competent authorities concerned, can also decide to apply another appropriate supervisory method that should meet the objectives behind the provisions referred to in § 2, first paragraph.

The supervisory authority can, in particular, require that credit institutions governed by Belgian law and any other regulated undertakings established under the law of a Member State, be included in a group headed up by a financial holding company or a mixed financial holding company governed by the law of a Member State, and apply the provisions of:

1° Section II of the present Chapter and the present Section on the basis of the consolidated position of this financial holding company or mixed financial holding company,

2° Section III of the present Chapter and the present Section at the level of the financial conglomerate headed up by this mixed financial holding company.

In such a case, the supervisory authority shall inform the other competent authorities concerned, the European Commission and, with respect to the consolidated supervision, the EBA, of all decisions made pursuant to paragraphs 2 and 3.

For the application of the paragraphs 1 to 4, the supervisory authority shall enter into the necessary agreements [with the relevant competent authorities].

§ 4, paragraph 5 amended by Article 747 of the Law of 13 March 2016 - Belgian Official Gazette, 23 March 2016
CHAPTER V. — Audit supervision

**Article 220.** The task of statutory auditor as referred to in the Companies Code may only be entrusted, in credit institutions governed by Belgian law, to one or more auditors or one or more audit firms accredited for that purpose by the Bank in accordance with Article 222.

In credit institutions that are not required to have a statutory auditor pursuant to the aforementioned Code, the general meeting shall appoint one or more accredited auditors or one or more audit firms as referred to in paragraph 1. They shall fulfil the duties of statutory auditor and bear that title. The provisions of the Companies Code relating to statutory auditors of public limited companies (naamloze vennootschap/société anonyme) apply to the appointment and the task of statutory auditor in these institutions. For the application of the Companies Code relating to the aforementioned, the general meeting shall replace the general meeting of shareholders in companies in which this is provided for by law.

Credit institutions may appoint deputy statutory auditors who would take over the statutory auditor’s task in the event of his/her prolonged absence. The provisions of the present Article and of Article 221 shall apply to these deputy statutory auditors.

The accredited statutory auditors appointed in accordance with the present Article shall certify the consolidated financial statements of the credit institution.

**Article 221.** Accredited audit firms shall use the services of an accredited auditor they designate in accordance with Article 6 of the Law of 22 July 1953 establishing an Institut des réviseurs d’entreprises/Instituut der Bedrijfsrevisoren (Institute of company auditors) and organizing public supervision of this profession, for exercising the task of statutory auditor as referred to in Article 220. The provisions of the present Law and its implementing decrees that regulate the appointment, task, obligations and prohibitions for statutory auditors as well as the sanctions, other than criminal sanctions that apply to them, shall apply both to the audit firms and to the accredited auditors who represent them.

An accredited audit firm may appoint a deputy representative from its members who meets the conditions for appointment.

**Article 222.** By means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the Bank shall regulate the accreditation of auditors and audit firms:

The accreditation regulations shall be passed after consultation with the accredited auditors via the professional associations that represent them.

The Institut des réviseurs d’entreprises/Instituut der Bedrijfsrevisoren (Institute of company auditors) shall inform the Bank of any disciplinary proceedings initiated against an accredited auditor or an accredited audit firm for omissions in the exercise of the task at a credit institution as well as any disciplinary measures against an accredited auditor or an accredited audit firm, with a statement of the reasons.

**Article 223.** The aforementioned consent of the supervisory authority shall be required for the appointment of accredited statutory auditors and deputy accredited statutory auditors at credit institutions. This consent must be requested by the company body proposing the appointment. For the appointment of an accredited audit firm, such consent shall apply both to the firm and to its representative.

A renewal of the mandate shall also be subject to approval.

Where a statutory auditor is appointed pursuant to the law by the President of the Commercial Court or the Court of Appeal, this person shall be selected from a list of accredited auditors, which has been approved by the supervisory authority.
**Article 224.** The supervisory authority can at any time retract its consent, in accordance with Article 223, to an accredited statutory auditor, deputy accredited statutory auditor, accredited audit firm or representative or deputy representative of such a firm by way of a decision motivated by reasons relating to their status or their task as accredited auditor or accredited audit firm, as provided for by or pursuant to the present Law. The task of the statutory auditor shall end with this retraction.

Before an accredited statutory auditor resigns, the supervisory authority and the credit institution shall be notified thereof in advance, with a statement of the reasons.

The accreditation Regulation sets out the procedure to be followed.

In the event of absence of a deputy accredited statutory auditor or a deputy representative of an accredited audit firm, the credit institution or the accredited audit firm shall find a replacement with due regard to Article 223, within a period of two months.

Any proposal to dismiss an accredited statutory auditor in a credit institution from his/her task, as governed by Articles 135 and 136 of the Companies Code, shall be submitted for an opinion to the supervisory authority. Such an opinion shall be communicated to the general meeting.

**Article 225.** Accredited statutory auditors shall lend their assistance to the supervision of the supervisory authority at their own and sole responsibility and in accordance with the present Article, following the rules of the trade and the guidelines of the supervisory authority. To this end:

1° they shall assess the internal control measures that credit institutions have taken as referred to in Article 21, § 1, 2°, and pursuant to Articles 21, § 1, 9°, 42 and 66, and shall share their findings on the subject with the supervisory authority;

2° they shall report to the supervisory authority on:

a) the results of the limited review of the periodic statements that the credit institution submits to the supervisory authority at the end of the first half-year in which it is confirmed that they have no knowledge of any facts that would indicate that these periodic statements at the end of the half-year were not drawn up in all material respects in accordance with the supervisory authority’s current guidelines. Furthermore, they shall confirm that these periodic statements at the end of the half-year, are, in all material respects, in line with the accounting and inventories with respect to the accounting records, in terms of completeness, which means that they include all records from the accounting and inventories on the basis of which these periodic statements were drawn up, and in terms of accuracy, which means that the records from the accounting and inventories on the basis of which these periodic statements were drawn up are reflected accurately; and confirm that they have no knowledge of any facts that would indicate that these periodic statements at the end of the half-year were not drawn up in all material respects in accordance with the accounting and valuation rules for drawing up the consolidated financial statements relating to the last accounting year; the supervisory authority can further specify the periodic statements referred to herein;

b) the results of the review of the periodic statements that the credit institution submits to the supervisory authority at the end of the financial year in which it is confirmed that the periodic statements were drawn up in all material respects in accordance with the supervisory authority’s current guidelines. Furthermore, they shall confirm that these periodic statements at the end of the financial year, are, in all material respects, in line with the accounting and inventories with respect to the accounting records, in terms of completeness, which means that they include all records from the accounting and inventories on the basis of which these periodic statements were drawn up, and in terms of accuracy, which means that the records from the accounting and inventories on the
basis of which these periodic statements were drawn up are reflected accurately; and confirm these periodic statements at the end of the financial year were drawn up in accordance with the accounting and valuation rules for drawing up the financial statements; the supervisory authority can further specify the periodic statements referred to herein;

3° they shall provide a special report to the supervisory authority at its request on the organization, activity and financial structure of the credit institution; the costs for drawing up this report shall be borne by the credit institution;

4° they shall report on their own initiative, within the scope of their task with the credit institution or an audit task with an enterprise affiliated with the credit institution, to the supervisory authority the moment any of the following matters come to their attention:

a) decisions, facts or developments that could have a material influence on the credit institution’s administrative or accounting procedures or its internal control;

b) decisions or facts that could indicate an infringement of the Companies Code, the articles of association, the present Law and the decisions and regulations made for the implementation thereof;

c) any other decision or fact that might lead to a refusal to certify the annual accounts or to reservations regarding their certification.

5° they shall report to the supervisory authority at least once a year on the soundness of the measures that the credit institution has taken for safeguarding the assets of clients [pursuant to Articles 65 and 65/1] and to the implementing measures taken by the King pursuant to these provisions.


The Bank shall provide the information referred to in the provisions under 5° of the first paragraph, in accordance with the methods provided for in Article 138, to the FSMA in order to allow it to exercise the tasks referred to in Article 45, § 1, 3° and § 2 of the Law of 2 August 2002.

No civil, criminal or disciplinary measures may be taken, nor may professional sanctions be imposed against accredited statutory auditors who have provided information in good faith as referred to in paragraph 1, 4°.

Accredited statutory auditors shall communicate the reports that they forward to the supervisory authority in accordance with paragraph 1, 3°, to the management of the credit institution. For this communication, the obligation to confidentiality applies as laid down, where applicable, in Article 35 of the Law of 22 February 1998. They shall provide the supervisory authority with a copy of their communications addressed to these managers and that relate to issues that could be of importance for the supervision it exercises.

The accredited statutory auditor and the accredited statutory auditor firms may exercise supervision in the foreign branches of the institution they supervise and carry out the investigations associated with their task.

They can be tasked by the supervisory authority, where applicable at the request of the European Central Bank in its capacity of monetary authority, with confirming that the records that these credit institutions must provide to these authorities are complete, accurate and drawn up in accordance with the applicable rules.

Article 225/1. [The accredited statutory auditor shall, on an annual basis, provide the additional report as referred to in Article 11 of Regulation No 537/2014 to the audit committee if such a committee has been set up, or to the statutory governing body. This report shall in particular relate to important matters which have been detected during the
exercise of the statutory audit of the annual accounts, and more specifically serious
deficiencies in the internal control as regards financial reporting. This additional report
shall be sent at the latest on the date of submission of the audit report as referred to in
Article 220, in Articles 144 and 148 of the Companies Code and in Article 10 of
Regulation No 537/2014.

At the supervisory authority’s request, the audit committee or, where applicable, the
statutory governing body, shall provide the additional report referred to in paragraph 1.]

Article inserted by Article 24, of the Law of 18 December 2015 - Belgian Official Gazette, 29
December 2015, and replaced by Article 136 of the Law of 7 December 2016 - Belgian Official
Gazette, 13 December 2016

TITLE IV. — Resolution plans

CHAPTER I. — Drawing up resolution plans

Article 226. § 1. [The resolution authority, having consulted the supervisory authority,
shall draw up a resolution plan for each credit institution that does not form part of a group
for which a group recovery plan is drawn up.]

§ 1 replaced by Article 4 of the Royal Decree of 26 December 2015 - Belgian Official Gazette, 31
December 2015

§ 2. The resolution authority may order the credit institution to assist in drafting and
updating the resolution plan and to provide all the information necessary for that purpose.
[The resolution authority may in particular oblige the credit institution to keep detailed
information regarding financial contracts to which it is a party. If the supervisory authority
already has all or part of this information, it shall provide this information to the resolution
authority.]

§ 3. The resolution authority shall provide the credit institution with a summary of the key
points of the resolution plan.

[§ 4. The resolution authority shall suspend the drawing up of a resolution plan until the
measures for mitigation or elimination of impediments to resolvability are established in
accordance with Article 231 and 232.]


[§ 5. The resolution authority shall provide the resolution plan and any changes thereto to
the supervisory authority.]

§ 5 inserted by Article 7, 2º of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

Article 227. § 1. The resolution plan shall define the measures that may be taken by the
resolution authority against a credit institution if the conditions of Article 244, § 1, are met
for this institution, in particular in order to ensure the continuation of critical functions,
to avoid jeopardizing the stability of the Belgian and international financial systems, and to
protect the covered deposits.

The resolution plan shall envisage various scenarios, including the possibility that the credit
institution’s default is idiosyncratic or occurs within a context of general financial
instability or systemic events. The resolution plan shall not envisage any exceptional
government intervention.

The resolution plan shall not envisage any exceptional government intervention [without
prejudice to the intervention of the Resolution Fund,] or any emergency liquidity assistance
by central banks or any recourse to other facilities for liquidity provision by central banks
under conditions as regards guarantees, duration or interest that vary from the norm. The
plan shall however contain an analysis indicating how and when the credit institution may
resort to the facilities of the central banks and shall list the assets that may be classified as guarantees for that purpose.

§ 1, paragraph 3 amended by Article 8 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

§ 2. By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may further define the following:

1° the minimum content of the resolution plan; and

2° the information to be submitted to the resolution authority by the credit institutions and the frequency of transmission of that information.

Article 228. The resolution authority shall update the resolution plan at least once a year and in any case after any changes occur to the legal or organizational structure of the credit institution, its activities or its financial situation, that could have a significant impact on the plan or require changes thereto.

Article 229. [§ 1. The resolution authority may exempt the credit institutions referred to in Article 239, § 1, from the obligations under this Chapter.

§ 2. Where the resolution authority grants an exemption pursuant to paragraph 1, it shall apply the requirements specified in the present Chapter on the basis of the general situation of the central institution and the credit institutions affiliated thereto as referred to in Article 239.

§ 3. The institutions which come under the direct supervision of the European Central Bank pursuant to Article 6, paragraphs 4 and 5, under b) of the SSM Regulation, or the institutions whose work forms an important part of the Belgian financial system, may not be exempted by virtue of paragraph 1. For the application of this paragraph, the work of an institution is deemed to form an important part of the Belgian financial system if the following conditions are met:

1° the total value of its assets is greater than EUR 30,000,000,000; or

2° the ratio of its total assets and the gross domestic product is greater than 20%.

§ 4. The resolution authority may derogate from the obligations under this Chapter concerning the contents of the resolution plan, the frequency of the plan’s updates, and the information to be provided by the credit institution, insofar as such an derogation is justified in light of the impact that the credit institution’s failure and liquidation under liquidation proceedings would have on the financial markets, on other credit institutions, on the financing conditions and on the economy in general. The supervisory authority shall in particular take into consideration the nature of the credit institution’s work, its shareholder structure, legal form, risk profile, scale and legal status, interconnectedness to other credit institutions or to the financial system in general, the scope and complexity of its work and whether or not it provides investment services or activity.]

Article replaced by Article 25 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

CHAPTER II. — Assessment of resolution plans

Section I. — Assessment of the resolvability of credit institutions

Article 230

When a resolution plan is drafted and updated, the resolution authority, after consulting the supervisory authority, shall consider the resolvability of the credit institution.
The credit institution shall be deemed resolvable if the resolution authority is able, in a credible manner, either to liquidate the credit institution or to resolve it by applying one or more resolution tools and powers, avoiding wherever possible major adverse effects on the Belgian financial system or the financial systems of other Member States, including in case of general financial instability or systemic events, with the objective of guaranteeing the continuity of the critical functions of that credit institution.

By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may stipulate the elements to be examined by the resolution authority in order to evaluate the resolvability of a credit institution in accordance with this Article.

In its assessment of the resolvability of a credit institution, the resolution authority shall disregard the possibility of exceptional government intervention [without prejudice to the intervention of the Resolution Fund,] or of any emergency liquidity assistance by central banks or any other use of facilities for the provision of liquidity by central banks under conditions as regards guarantees, duration or interest that vary from the norm.

Paragraph 4 amended by Article 9 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

Section II. — Mitigation or elimination of impediments for the resolvability of the credit institutions

Article 231. If, on conclusion of an assessment of the resolvability of a credit institution in accordance with Article 230, the resolution authority considers, after consulting the supervisory authority, that there are major impediments to the resolvability of the credit institution, it shall inform the credit institution concerned, the resolution authorities in the jurisdictions in which significant branches are established and the supervisory authority in writing, describing the impediments encountered.

Paragraph 1 amended by Article 10 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

During the four months after the date of receipt of the notification mentioned in paragraph 1, the credit institution shall propose to the resolution authority measures intended to mitigate or remove the impediments encountered.

Article 232. If the resolution authority considers, after consulting the supervisory authority, that the measures proposed by the credit institution in accordance with Article 231, second paragraph, will not remove or sufficiently mitigate the impediments to the resolvability of the credit institution, it shall demand that the institution take other measures. [When establishing those other measures, the resolution authority shall provide evidence as to why the measures proposed by the credit institution could not remove the impediments to resolvability and why the other measures for elimination of the impediments are proportionate. The resolution authority shall take into account the threats to financial stability arising from these impediments to resolvability, and the consequences of the measures to the credit institution’s business, its stability and its ability to make a contribution to the economy. After consultation with the supervisory authority and the Bank in its capacity of macro-prudential authority, the resolution authority shall in addition take into account the potential effect of those measures on the credit institution concerned, on the internal market for financial services and on financial stability in other Member States and in the European Union as a whole.]

Paragraph 1 amended by Article 11, 1° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

The resolution authority may, in particular, ask the credit institution to:
adapt the intra-group financial support agreements, evaluate the absence of such agreements, or enter into service agreements at group level or with third parties, to guarantee the exercise or the provision of one or more critical functions;

2° limit the maximum individual and aggregate amount of its risk exposures;

3° provide, ad-hoc or at regular intervals, additional information relevant for the purposes of the resolution;

4° sell certain assets;

5° limit, suspend or terminate certain existing or planned activities;

6° reduce or terminate the expansion of certain activities or the sale of certain products;

7° modify its legal or operational structures or those of one or more entities under its direct or indirect control in order to reduce its complexity and to ensure that critical functions can be legally and operationally separated from the other functions through the application of resolution tools;

8° arrange to set up a financial holding company that will take control of the credit institution concerned or, if that institution is the subsidiary of a mixed financial holding company, ensure that it sets up a separate financial holding company to control the credit institution if this is necessary to facilitate the resolution thereof and prevent the application of resolution tools and the exercise of resolution powers from having adverse effects on the non-financial side of the group;

9° renegotiate the conditions of the additional tier 1 capital instruments or additional tier 2 capital instruments which it has issued, in order to ensure that any decision by the resolution authority to depreciate or convert such instruments is made in accordance with the applicable laws governing them;

10° issue eligible debts within the meaning of Article 242, 10°, taking into account if necessary the minimum level stipulated in application of Article 255, § 2, second paragraph.

[The resolution authority’s decision shall be sufficiently reasoned, in particular as regards the application of the requirement of proportionality referred to in paragraph 1, and communicated in writing to the credit institution. It shall, within one month, submit a plan for the implementation of that decision.]

paragraph 3 replaced by Article 11, 2° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

TITLE V. — Withdrawal of authorization

Article 233. By way of a decision notified by registered letter or letter with recorded delivery, the [European Central Bank] shall withdraw the authorization of credit institutions that have not begun their activity within twelve months of the authorization being granted, that expressly derogate from their authorization, that have been declared bankrupt or that have stopped their activity more than six months previously.

paragraph 1 amended by Article 400 of the present Law

The decision to withdraw authorization shall be notified by the [European Central Bank] to the European Banking Authority, including the reasons thereof.

paragraph 2 amended by Article 400 of the present Law
TITLE VI. — Recovery measures

CHAPTER I. — Binding measures

Article 234. § 1. Where the supervisory authority finds that a credit institution is not operating in accordance with the provisions of the present Law, its implementing decrees and regulations or Regulation No 575/2013, [Directive 2013/36/EU, title II of Directive 2014/65/EU [or Regulation No 600/2014]] or receives information indicating that the institution runs the risk of no longer operating in accordance with those provisions over the next 12 months, the supervisory authority shall stipulate a deadline by which the situation should be remedied.


§ 2. Until such time as the credit institution has remedied the situation mentioned in § 1, the supervisory authority may, at any time:

1° impose more stringent or additional own funds requirements in addition to those provided in or by virtue of Article 92 of Regulation No 575/2013 or the rules issued in application of Article 98;

2° impose the application of specific rules governing the valuation or adjustment of value for the purposes of the own funds requirements provided for in or by virtue of Article 92 of Regulation No 575/2013 or the regulations issued in application of Article 98;

3° require that all or part of the distributable profits be placed in a reserve;

4° limit or prohibit any distribution of dividends or any payment, particularly of interest, to shareholders or to the holders of additional tier 1 capital instruments, insofar as the suspension of the resulting payments does not result in the commencement of winding-up proceedings pursuant to the provisions of the Bankruptcy Law of 8 August 1997;

5° limit the amount of variable remuneration to a percentage of the profits;

6° impose specific liquidity rules, stricter than those stipulated by or pursuant to Regulation No 575/2013 or the rules issued in application of Article 98, including limitations on mismatches between the institution’s assets and liabilities;

7° require the institution to reduce the risks of certain activities or products or of its organization, where applicable, by requiring the sale of all or part of its business or network;

8° impose rules on the concentration of risks or the limitation of exposure, stricter than those defined in or pursuant to Regulation No 575/2013 or the rules issued pursuant to Article 98;

9° impose additional reporting obligations or higher reporting frequencies than those stipulated in or pursuant to Article 106, in particular with regard to risks, own funds or liquidity positions;

10° impose the publication of more detailed, frequent information than provided for in or pursuant to Article 75 of Regulation No 575/2013.

[11° order the measures as referred to in Article 116, § 2, paragraph 2, 3° and 5°;]

§ 2, 11° inserted by Article 12, 2° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

[12° require the institution to draw up a plan for the conduct of negotiations with creditors on the restructuring of the debts, where applicable in accordance with the recovery plan.]
§ 2, 12° inserted by Article 12, 2° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

§ 3. Where the supervisory authority considers that the measures taken by the institution to remedy the situation within the period stipulated in application of § 1, are satisfactory, it shall, pursuant to the procedures to be determined, lift all or part of the measures decided in application of § 2.

§ 4. The supervisory authority shall inform the European Banking Authority of the method used to find that an institution runs the risk, over the next 12 months, of no longer operating in accordance with the provisions of § 1.

[§ 5. The supervisory authority shall inform the resolution authority forthwith as soon as it establishes that the conditions referred to in paragraph 1 are met for a credit institution.]

§ 5 inserted by Article 12, 3° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

CHAPTER II. — Implementation of the recovery plan

Article 235. Until such time as the institution has remedied the situation described in Article 234, § 1, and without prejudice to the measures described in § 2 of that Article, the supervisory authority may, at any time, pursuant to procedures it shall determine, ask the institution to implement all or part of the recovery plan mentioned in Article 108.

CHAPTER III. — Extraordinary recovery measures

Article 236. § 1. Without prejudice to the other provisions of the present Law, where the supervisory authority finds that a credit institution does not, or no longer complies with the measures adopted in application of Article 234, § 2, or that on expiry of the deadline set in application of Article 234 § 1, the situation has not been remedied, the supervisory authority may:

1° appoint a special commissioner.

In such a case, the written, generic or specific authorization of the special commissioner is required for all the actions and decisions of all the bodies of the institution including its general meeting, and for the actions of the persons responsible for its management; the supervisory authority may however limit the scope of the operations subject to the authorization.

The special commissioner may submit any proposal he/she considers appropriate to all bodies of the institution, including the general meeting.

The members of the management and governing bodies and the persons responsible for management who carry out actions or make decisions without having received the necessary authorization from the special commissioner shall be jointly and severally liable for any loss arising therefrom incurred by the institution or by a third party.

If the supervisory authority has published the name of the special commissioner in the Belgian Official Gazette and has specified the actions and decisions that are subject to his/her authorization, any actions or decisions made without the required authorization, shall be null and void unless ratified by the special commissioner. Under the same conditions, any decision of the general meeting which was made without the necessary authorization of the special commissioner shall be null and void unless ratified by the special commissioner.

The remuneration of the special commissioner shall be set by the supervisory authority and paid by the institution.

The supervisory authority may appoint a deputy commissioner;
2° Order the replacement of all or part of the members of the statutory governing body of the institution by a deadline it determines and, where no replacement occurs by this deadline, appoint one or more provisional managers or administrators in the place of the entire management and governing bodies of the institution who alone or collegially, depending on the case, shall have the powers of the persons replaced. The supervisory authority shall publish its decision in the Belgian Official Gazette.

Where the circumstances so warrant, the supervisory authority may appoint one or more provisional managers or administrators without first ordering the replacement of all or part of the managers referred to in paragraph 1.

With the authorization of the supervisory authority, the provisional manager(s) or administrator(s) may call a general meeting and draw up the agenda thereof.

The supervisory authority may request, in accordance with the methods it determines, that the provisional manager(s) or administrator(s) provide a report on the financial situation of the institution and on the measures taken in connection with their task, and on the financial situation at the start and end of that task.

The remuneration of the provisional manager(s) or administrator(s) shall be determined by the supervisory authority and borne by the institution.

The supervisory authority may, at any time, replace the provisional manager(s) or administrator(s), either ex officio, or at the request of the majority of the shareholders or members if they can prove that the management by the parties concerned no longer offers the necessary guarantees;

§ 1, 2° replaced by Article 45, 1° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

3° Order the institution to call a general meeting of shareholders by a date to be set by the supervisory authority which shall also draw up the agenda;

4° Suspend, for a period to be determined by the supervisory authority, the direct or indirect exercise of all or part of the institution’s business or prohibit such business; such suspension may, to the extent determined by the supervisory authority, imply the total or partial suspension of pending contracts.

The members of the management and governing bodies and the persons responsible for management who carry out actions or make decisions in violation of the suspension or prohibition order shall be jointly and severally liable for any loss arising therefrom incurred by the institution or by a third party.

If the supervisory authority has published the suspension or prohibition order in the Belgian Official Gazette, any actions or decisions contravening it shall be null and void;

5° Order a credit institution to sell any shares it holds in accordance with Articles 89 and 90 of Regulation No 575/2013; Article 54, second paragraph, shall apply;

[5°/1 Order the institution to transfer part or all of its business or network. In such a case, Articles 77, paragraph 1, 4°, and 78 apply if the transfer takes place between credit institutions or between such an institution and other financial institutions;]

§ 1, 5°/1 inserted by Article 45, 2° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

6° Withdraw the authorization. A decision to withdraw and its reasons shall be communicated by the [European Central Bank] to the European Banking Authority.

§ 1, 6° amended by Article 401 of the present Law
§ 2. Notwithstanding the conditions of application of § 1, in extremely urgent cases [or where the seriousness of the facts so justifies] the supervisory authority may take the measures described in § 1 without setting a deadline in advance.


§ 3. The decisions of the supervisory authority governed by § 1 shall be binding on the institution from the date of notification sent by registered letter or letter with recorded delivery, and shall be binding on third parties from the date of their publication in accordance with the provisions of § 1.

§ 4. The supervisory authority may also take the measures referred to in the present Article if a credit institution has obtained an authorization by means of false declarations or in any other irregular way.

§ 5. Articles 234, § 1 and § 2, and § 1, paragraph 1, 1°, 2°, 4° and 6° and § 2 and § 3 of the present Article shall apply if the supervisory authority becomes aware that a credit institution has put in place a special mechanism with the aim or effect of promoting tax fraud by third parties.

§ 6. In the case of a serious and systematic infringement of the rules of Article 45, § 1, first paragraph, 3°, or § 2 of the Law of 2 August 2002, the [European Central Bank] may withdraw the authorization, where applicable at the request of the Bank, following a request from the FSMA in accordance with the procedure and rules stipulated in Article 36bis of the same Law.

§ 6 amended by Article 401 of the present Law

§ 7. § 1, first paragraph and § 3, shall not apply with respect to the withdrawal of authorization of a credit institution declared bankrupt.

§ 8. The Commercial Court shall issue, at the request of any interested party, the annulment orders provided for in § 1, second paragraph, 1° and 4°.

An action for annulment shall be brought against the institution. If justifiable for compelling reasons, the applicant may commence summary proceedings for the provisional suspension of the disputed action or decision. The suspension order and annulment order shall be binding on all parties. If the suspended or annulled action or decision was published, the suspension order and annulment order shall be published in summary form in the same way.

If the annulment order is such that it threatens the rights acquired by a third party in good faith towards the institution, the court may rule that the annulment order does not affect those rights, without prejudice to any right of the applicant to compensation.

An action for annulment may not be brought after six months have elapsed from the date on which the decisions or actions concerned became enforceable on—or were known to—the party seeking the annulment.

Article 237. [§ 1.] The Bank shall inform the FSMA of the decisions made in accordance with Articles 233 to 236 and shall keep the FSMA informed of the process of appeals against such decisions.

It shall also inform the competent authorities that supervise the credit institutions of the other Member States where a credit institution governed by Belgian law has established a branch or pursues activity as referred to in Article 4 within the scope of the free provision of services.
The supervisory authority shall also inform the resolution authority of the measures taken pursuant to Articles 234 to 236 as well as of the identification that the circumstances as referred to in Articles 234, § 1, and 236, § 1, which could lead to the application of the measures provided for by these provisions have arisen.

§ 2 inserted by Article 26 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Article 238. The credit institutions that have had their authorization withdrawn or revoked by virtue of Article 233 and 236 shall continue to be governed by the present Law and its implementing decrees and regulations until the monies obtained from the public are refunded, unless the supervisory authority exempts them from this obligation.

The present Article shall not apply with respect to the withdrawal of authorization of a credit institution declared bankrupt.

TITLE VII. — Federations of credit institutions

Article 239. § 1. The credit institutions referred to in this Article are those that operate their business under the following arrangements:

1° permanent affiliation to a central institution to which the provisions of Titles I to VI of the present Book apply and with which they form a federation by virtue of the affiliation rules approved by the [European Central Bank];

§ 1, 1° amended by Article 402 of the present Law

2° the obligations of the affiliated institutions and of the central institution constitute joint and several obligations;

3° standard internal regulations apply for the transactions and the organization of the institutions affiliated to the federation;

4° the central institution exercises direct supervision of the affiliated institutions and has the power to give them instructions on their management, their transactions and their organization.

§ 2. Without prejudice to the observation of the other provisions of the present Book, Book III, Title III and of Books IV, V, VI, and VIII, the provisions specified hereinafter shall apply as follows to the credit institutions referred to in § 1:

1° the authorization shall be decided upon once the central institution has communicated its position to the Bank on the observation by the institution of the affiliation conditions and of the provisions referred to in § 1. The institutions affiliated disclose their affiliation in their articles of association, shares, securities, documents, correspondence and advertising. The authorization lapses upon ceasing the affiliation in accordance with the applicable rules for the federation; this shall be notified to the supervisory authority at least one month in advance and the supervisory authority shall take all the necessary measures to protect the rights of creditors. Decisions on authorization do not need to be published on the list of credit institutions;

2° the minimum amount of capital referred to in Article 17, is required on the basis of the joint position of the central institution and its affiliated institutions;

3° Article 19 shall not apply to the managers of the affiliated institutions;

4° Article 55 shall apply on the basis of the joint position of the central institution and its affiliated institutions;

5° Article 72, § 1 shall be extended to all affiliated institutions for loans, credits and guarantees to managers or administrators of the central institution; it shall not apply to loans, credits and guarantees through the central institution or another affiliated institution,

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to managers of affiliated institutions that are not involved in the day-to-day management, where such loans, credits or guarantees comply with the conditions that apply to the federation and that are approved by the [European Central Bank];

§ 2, 5° amended by Article 402 of the present Law

6° Articles 86 to 92 and Article 89 of Regulation No 575/2013 shall apply on the basis of the joint positions of the central institution and its affiliated institutions;

7° Articles 94 to 107, 149 to 152 and the regulations established pursuant to Article 98 as well as Article 92, 412 and 413 of Regulation No 575/2013 shall apply on the basis of the joint positions of the central institution and its affiliated institutions;

8° without prejudice to the observation of these provisions by the central institution, where various notifications and publications are contemplated, § 2 of Article 106 and Article 107, shall apply on the basis of the joint position of the central institution and its affiliated institutions;

9° the central institution shall be responsible for the observation of the provisions of the present Title and their implementation provisions by the affiliated institutions; it shall also be responsible for their management, their administrative and accounting procedures and their internal control;

10° Chapter IV of Title III of the present Book shall not apply to the affiliated institutions individually. The tasks and obligations of the accredited statutory auditors working at the central institution shall apply to the joint position and operation of the federation. These statutory auditors can exercise the supervision they deem necessary on-site at the affiliated institutions. They shall report to the bodies of the central institution. The affiliated institutions may not grant loans, credits or guarantees to the accredited statutory auditors nor may they grant them any kind of remuneration or advantage;

11° the accredited statutory auditors working at the central institution have the same obligations, in terms of the joint periodic statements and the joint financial statements of the federation as in terms of the periodic statement and financial statements of the central institution;

12° by way of derogation from Article 142 of the Companies Code, the affiliated institutions with the legal form of a cooperative shall not be obliged to appoint one or more statutory auditors, irrespective of their size. Where they have not appointed a statutory auditor, Articles 165, 166 and 385 of the same Code shall apply. The affiliated institutions shall not be required to submit their financial statements individually as required by Article 106, § 1. The partners of the affiliated institutions and every interested party shall in any case have the right to consult the latest financial statements on-site at these institutions;

13° by way of derogation from Article 66 of the Companies Code, the affiliated institutions with the legal form of a limited liability cooperative may be established by way of a special public or private deed. Any deeds for the amendment of the articles of association, irrespective of the form of the deed of incorporation may also be established by way of a special public or private deed.

Article 240. Credit unions affiliated by Crelan NV/SA shall form a federation of credit institutions with it within the meaning of Article 239. The board of directors of Crelan NV/SA shall affiliate credit unions that comply with the conditions included in the affiliation rules established by the board of directors in accordance with Article 239, § 1, 1°.

The management committee shall set out the standardized internal rules of federation of credit institutions, in accordance with Article 239, § 1, 3°, and shall exercise the powers vis-à-vis these unions referred to in Article 239, § 1, 4°.
Article 241. § 1. The affiliation rules for the bank federation referred to in Article 240 shall contain the provisions necessary for the execution and implementation of Article 239. Without prejudice to the powers conferred to the supervisory authority pursuant to Article 239, § 2°, 1°, refusals of authorization or the voluntary cessation of bank activities by an authorized association shall not be subject to any conditions other than honouring the notice period that ends on 31 December of the year following the year in which the central institution was notified of the refusal of authorization or the cessation of credit and deposit activity. The board of directors of Crelan NV/SA can however, by way of a reasoned decision, permit that the refusal of authorization or the voluntary cessation of credit and deposit activity enter into force at an earlier time.

§ 2. The authorized credit unions can acquire control of the central institution together or with third parties. An authorized credit union may not acquire the exclusive or joint control of this institution without first having offered participation in this control to the other authorized credit unions with respect to the subsequent accounting items as booked on 31 December of the year previous to the date of the acquisition, after appropriation of income and as described by the legislation on financial statements of credit institutions: reserves, revaluation gains, contingency funds for future risks and the negative result carried forward.

TITLE VIII. — Resolution of credit institutions

CHAPTER I - Definitions

Article 242. For the application of the present Title and of the provisions and regulations established for its implementation, the following definitions shall be used:

1° resolution measure: a decision by the resolution authority to apply a resolution tool to a credit institution or to exercise a power of resolution against such an institution;

2° power of resolution: a power governed by Article 276 or 277;

3° sale of business tool: a mechanism which allows the resolution authority, in accordance with Article 256, to have shares or other instruments of ownership issued by a credit institution subject to a resolution procedure, or the assets, rights or liabilities of such a credit institution sold to a purchaser;

4° bridge institution tool: a mechanism which allows the resolution authority, in accordance with Article 260, to have shares or other instruments of ownership issued by a credit institution subject to a resolution procedure, or the assets, rights or liabilities of such a credit institution sold to a bridge institution;

5° asset separation tool: a mechanism which allows the resolution authority, in accordance with Article 265, to have assets, rights or liabilities of a credit institution subject to a resolution procedure sold to an asset management vehicle;

[5°/1 bail-in tool: the mechanism for effecting the exercise by a resolution authority of the write-down and conversion powers in relation to liabilities of a credit institution under resolution, in accordance with Article 267/1;]

5°/1 inserted by Article 2, 1° of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[5°/2 derivative: a derivative within the meaning of Article 2, paragraph 5 of Regulation No 648/2012;]

1 Title VIII entered into force by Royal Decree of 22 February 2015 - Belgian Official Gazette, 3 March 2015
5°/2 inserted by Article 2, 1° of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015


5°/3 inserted by Article 2, 1° of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

6° receiving entity: a purchaser, bridge institution or asset management vehicle, as the case may be;

7° purchaser: a legal entity other than a bridge institution or asset management vehicle to which the shares, other instruments of ownership, assets, rights or liabilities of a credit institution under resolution, are sold;

8° bridge institution: a legal entity owned entirely or partially by one or more public authorities, that is controlled by the resolution authority, and has been created with the aim of acquiring the shares, other instruments of ownership, assets, rights or liabilities of one or more credit institutions subject to a resolution procedure, with a view to pursuing all or part of the activity and services of those institutions;

9° asset management vehicle: a legal entity entirely or partially owned by one or more public authorities, that is controlled by the resolution authority and has been created with the aim of receiving the assets, rights or commitments of one or more credit institutions subject to a resolution procedure, or of one or more bridge institutions;

10° eligible debts: commitments or liabilities of a credit institution which do not fall within any of the following categories:

10° amended by Article 2, 2° of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

a) covered deposits;
b) guaranteed liabilities including covered bonds;
c) liabilities resulting from the holding of clients’ assets or funds, provided that the rights of those clients are recognized under the bankruptcy law;
d) liabilities resulting from a fiduciary relationship between the credit institution as fiduciary and another person as beneficiary, provided that the rights of such a beneficiary are recognized under bankruptcy law or civil law;
e) liabilities towards non-affiliated credit institutions or investment firms with a maturity of less than seven days;
f) liabilities with a residual maturity of less than seven days towards the systems or system operators designated for the purposes of Directive 98/26/EC or their participants and resulting from participation in such a system;
g) liabilities towards workers in the form of salaries, pension provisions and any other fixed remuneration with the exception of variable salary components not governed by a collective employment agreement and the variable salary component of persons occupying a function involving risk-taking;
h) liabilities towards creditors linked to the provision to the credit institution of IT services, public utilities, the leasing, upkeep and maintenance of office space and other assets or services that are essential for the daily activities of the institution;
i) amounts payable to the tax and social security authorities, provided that the corresponding claims have priority under the applicable law; and
liabilities towards the deposit guarantee schemes for contributions payable in accordance with Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes;

11° secured liabilities: liabilities in respect of which the creditor's right of payment or any other form of execution is guaranteed by a right, a pledge, a preferential right or a form of constitution of security, including liabilities resulting from repo transactions and other guarantee contracts with transfer of ownership;

12° relevant capital instruments: additional tier 1 instruments and tier 2 instruments that fulfil the conditions laid down in Article 52(1) and Article 63 of Regulation No 575/2013;

13° group: a group formed of a credit institution governed by Belgian law and its Belgian and foreign subsidiaries, and as such subject to consolidated supervision.


15° court: the Brussels Commercial Court.

16° the Court of Appeal: the Brussels Court of Appeal;

17° [transfer decision: the decision of the resolution authority to order the transfer of shares, other instruments of ownership, assets, rights or liabilities, the write-down or the conversion of liabilities pursuant to a resolution tool or to exercise the powers referred to in Article 250 or Article 276, § 2, 2°, 3°, 4°, 4°/1, 4°/2, 4°/3, 4°/4 and 5°:]

17° replaced by Article 2, 3° of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

18° owners: natural or legal persons owning, on the date of the resolution measures, shares, other instruments of ownership or assets, or holding claims or other rights that are the subject of a disposal ordered by the resolution authority within the context of the resolution measures;

19° compensatory amount: the total amounts recovered by the owners of the same category, or the amount they could reasonably expect to recover on their shares, other instruments of ownership, assets, claims and other rights, during a resolution procedure as calculated or estimated in accordance with procedures defined by the King, including as the case may be the part of the price received by the shareholder by virtue of Articles 256, § 3, 1°, or 260, § 4, 1°, their share of the net profit of the liquidation of the credit institution, and if applicable the price supplement mentioned in Article 248 § 2, and the compensation mentioned in Article 284.

CHAPTER II. — Objectives, conditions and general principles of resolution

Section I. — Objectives of resolution

Article 243. § 1. Resolution is the restructuring of a credit institution through the application of one or more resolution tools, with the aim, as the case may be, of:

1° guaranteeing the continuity of the critical functions of the credit institution;

2° avoiding serious adverse effects on financial stability, particularly by preventing contagion, including of market infrastructures, and by maintaining market discipline;

3° protecting the resources of the State by reducing the recourse to exceptional government intervention as far as possible; and
4° protecting the covered deposits and the funds and assets of the clients of the credit institution.

[In the pursuit of these objectives, the resolution authority shall try as much as possible to limit resolution costs and avoid value destruction, unless this is necessary to achieve the objectives of the resolution.]

§ 1, paragraph 2 inserted by Article 13 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

§ 2. Subject to the exceptions provided for in the present Law, the objectives laid down in § 1 shall be on an equal footing and the resolution authority shall decide on the correct equilibrium between said objectives depending on the nature and circumstances of each case.

Section II. —Conditions for initiating a resolution procedure

Article 244. § 1. The resolution authority shall apply a resolution tool against a credit institution only if it considers that each of the following conditions has been met:

1° the supervisory authority, having consulted the resolution authority, or the resolution authority, having consulted the supervisory authority, has established that the credit institution is failing or that such a situation is imminent;

2° taking into account the timing and the other relevant circumstances, there is no reasonable prospect of any other private or prudential action taken with regard to the credit institution, in particular the measures governed by Article 232 or the depreciation or conversion of capital instruments in accordance with Chapter IV, being able to prevent the failure of the credit institution within a reasonable period; and

3° a resolution measure is necessary in the public interest.

For the application of 1°, the supervisory authority, at the request of the resolution authority, must examine whether the credit institution is failing or its failure is imminent.

§ 2. For the purposes of § 1, 1°, the failure of a credit institution shall be deemed to have occurred or be imminent if it is in one or more of the following situations:

1° the credit institution breaches the requirements for maintaining its authorization, or there are objective indications that this is to happen in the near future, in such a way as would justify a withdrawal of the authorization by the supervisory authority, in particular given the fact that the credit institution has or may suffer losses that affect a substantial part of its own funds;

2° the net assets of the credit institution are negative or there are objective indications that this is to happen in the near future;

3° the credit institution is unable to meet its obligations on their due dates or there are objective indications that this is to happen in the near future; or

4° the credit institution is in need of exceptional government intervention.

§ 3. For the purposes of § 1, 3°, a resolution measure shall be considered in the public interest if it is necessary to reach one or more of the objectives mentioned in Article 243, § 1, whereas the liquidation of the credit institution would not permit the fulfilment of the objectives to the same extent.
§ 4. For the purposes of § 2, 4°, no account shall be taken, under the conditions defined by the King, of the support measures for solvent credit institutions intended to remedy a serious disruption of the economy and preserve financial stability.

[§ 5. The taking of recovery measures as referred to in Article 234 or 236 is not a condition for the taking of a resolution measure.]

§ 5 inserted by Article 14 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

Section III. — General principles governing resolution

Article 245. § 1. If the resolution authority applies the resolution tools and exercises its resolution powers, it shall take all the appropriate measures to ensure that the resolution measure is passed in accordance with the following principles:

1° the shareholders of the credit institution shall bear the losses in the first instance;

2° the creditors of the credit institution shall bear the losses after the shareholders, in accordance with the order of priority of their claims in the case of arrangements with creditors, subject to the exceptions provided for in the present Law;

3° the statutory governing body and the management of the credit institution shall be replaced, except where the resolution authority considers that the retention of all or part of the body or management is necessary in order to fulfil the objectives of the resolution;

4° the statutory governing body and the management of the credit institution shall provide all the assistance necessary to attain the objectives of the resolution;

5° the causes of and the responsibility for the failure of the credit institution shall be the subject of an investigation;

6° in accordance with the judicial guarantees, individuals and entities are required to report on the failure of the credit institution, within the limit of their responsibility;

7° subject to the exceptions provided for in the present Law, creditors of the credit institution that are of the same rank shall be treated equally;

8° no creditor shall incur losses greater than those it would have incurred if the credit institution had been liquidated through winding-up proceedings;

9° the covered deposits shall be fully protected; and

10° the resolution measure shall be passed in accordance with the safeguards mentioned in Chapter VII.

§ 2. The investigation mentioned in § 1, 5° shall be conducted by a college of experts appointed by the court at the request of the resolution authority.

Articles 972 to 976, 978, 984 and 987 to 991bis of the Judicial Code shall apply to the investigation, on the understanding that:

1° the resolution authority and the credit institution concerned shall be considered parties to the investigation procedure; and

2° the costs and fees of the experts shall constitute the costs of the resolution as mentioned in Article 272.

§ 3. If the resolution authority applies the resolution tools and exercises its resolution powers, it shall inform and consult the employee representatives of the credit institution of the consequences for employment and employment conditions.
CHAPTER III. — Valuation

Article 246. § 1. Before taking a resolution measure, or exercising the power to write down or convert relevant capital instruments by application of Chapter IV, the resolution authority shall ensure that a fair, prudent and realistic valuation is made of the credit institution’s assets and liabilities by a person independent of any public authority, including the resolution authority, and of the credit institution.

§ 2. The aims of the valuation are as follows:

1° to gather information allowing it to be determined whether the conditions for implementation of the resolution procedures or the write-down or conversion of capital instruments have been met;

2° if the conditions for commencing a resolution procedure have been met, to gather information allowing a choice to be made of appropriate resolution measures;

3° where it is envisaged to exercise the power to write down or convert the relevant capital instruments, to provide the basis for calculation of the write-down to be applied in order to absorb the losses and of the level of conversion to be applied to recapitalize the credit institution;

[3°/1 where it is envisaged to apply a bail-in tool, to gather information allowing a decision to be made on the amount of write-down or conversion of the eligible debts.]

3°/1 inserted by Article 3 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

4° where it is envisaged to apply the sale of business tool, to gather information allowing a determination of the shares or other instruments of ownership or the assets, rights or commitments to be transferred and to determine what the commercial conditions are for the purposes of Article 256, § 2;

5° where it is envisaged to apply the bridge institution or asset separation tool, to gather information allowing a determination of the shares or other instruments of ownership or the assets, rights or commitments to be transferred and the value of any consideration payable to the credit institution or, as the case may be, to the owners of the shares or other instruments of ownership;

6° to ensure that full account is taken of any loss made on the assets of the credit institution at the time when the resolution tool is applied or at the time when the power to write down or convert the capital instruments is exercised.

Article 247. § 1. The valuation shall be based on prudent assumptions, including in respect of default rates and the severity of losses. It shall not include any future exceptional government intervention, or any emergency liquidity assistance from central banks or recourse to other central bank liquidity facilities on special terms with regard to security, term or interest that vary from the norm.

[The valuation must also take into account, where a resolution tool is applied, that:

1° the resolution authority and the Resolution Fund can recover any reasonable expenses it has lawfully incurred from the credit institution under resolution, in accordance with Article 272;

2° the financing arrangement for the resolution can provide for interest or compensation for all loans or collateral granted to the credit institution under resolution, in accordance with Article 6/1 of the Law of 28 December 2011 on the Resolution Fund.]

§ 1, paragraph 2 inserted by Article 15 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016
§ 2. The valuation shall be supplemented by the following information:
1° an up-to-date balance sheet and a report on the financial situation of the credit institution;
2° an analysis of the book value of its assets;
3° a list of its current liabilities, including off-balance-sheet liabilities, with details of the creditors and their order of priority in the event of an arrangement with creditors.

§ 3. If necessary, in order to gather the information allowing the decisions referred to in Article 246, § 2, 4° and 5° to be made, the information referred to in § 2, 2°, shall be supplemented by an estimate and an analysis of the market value of the assets and liabilities of the credit institution.

§ 4. The valuation report shall provide a breakdown of creditors into various categories according to their order of priority in the event of an arrangement with creditors and shall assess the payment that each category of shareholders and creditors would have been likely to receive had the credit institution been liquidated under winding-up proceedings.

Article 248. § 1. Subject to Article 296, where all the requirements set out in Articles 246 and 247 have been met, the valuation shall be deemed final.

§ 2. If the urgency of the situation makes it impossible to perform a valuation that meets all the requirements set out in Articles 246 and 247, the resolution authority shall proceed to a provisional valuation of the assets and liabilities of the credit institution.

Wherever reasonably possible in the circumstances, the valuation shall adhere to the requirements of Articles 246 and 247. It shall include a buffer for further losses, together with a justification of the amount.

The provisional valuation performed in accordance with this paragraph shall allow the resolution authority to take resolution measures or exercise the power to write down or convert the relevant capital instruments.

§ 3. The provisional valuation shall be followed as soon as possible by a final valuation fully in accordance with all the requirements set out in Articles 246 and 247. This valuation shall be performed separately to or jointly with the one referred to in Article 283.

Where the final valuation is higher than the provisional valuation, the resolution authority shall determine, as necessary, the price supplement that the bridge institution or the asset management vehicle must pay to the credit institution or to the owners, as the case may be, in consideration of the shares, other instruments of ownership, assets or rights transferred by application of the bridge institution tool or asset separation tool [or where applicable exercise its power to increase the value of relevant capital instruments or eligible debts which have been written down pursuant to the bail-in tool].

§ 3, paragraph 2 amended by Article 4 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[§ 4. The valuation forms an integral part of the decision to take a resolution measure or to exercise the power to write down or convert relevant capital instruments. The valuation itself is not open to separate appeal but can be open to an appeal in conjunction with that decision, pursuant to the provisions of Chapter IX of this Title.]

§ 4 inserted by Article 16 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

Article 249. By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may define:
1° the conditions under which a person shall be deemed independent for the purposes of Article 246, § 1;
2° the method(s) to be used to assess the market value of the assets and liabilities of the credit institution for application of Article 247, § 3; and

3° the method(s) to be used to calculate the buffer for further losses to be included in the provisional valuation in accordance with Article 248, § 2, second paragraph.

CHAPTER IV. — Write-down or conversion of capital instruments

Article 250. § 1. The resolution authority shall be empowered to write down the relevant capital instruments or to convert these into shares or other instruments of ownership of the credit institution in accordance with the provisions of this Chapter.

This power may be exercised either separately or, where the conditions for commencing a resolution procedure referred to in Article 244, § 1, have been met, in combination with a resolution measure.

§ 2. The resolution authority shall exercise the powers referred to in § 1, forthwith if one or more of the following conditions is or are met:

1° the resolution authority has established that the conditions for commencing a resolution procedure referred to in Article 244, § 1, have been met, before any resolution measure has been taken;

2° the resolution authority finds that the credit institution or its group will no longer be viable unless this power is exercised; or

3° the credit institution asks for exceptional government intervention.

§ 3. For the purposes of § 2, 3°, no account shall be taken, under the conditions defined by the King, of the support measures for solvent credit institutions intended to remedy a serious disruption of the economy and preserve financial stability.

Article 251. For the purposes of Article 250 § 2, 2°, a credit institution or its group shall only be deemed no longer viable if the following two conditions are met:

1° the credit institution or its group has failed or its failure is imminent; and

2° bearing in mind the timing and other relevant circumstances, there is no reasonable prospect that action other than the write-down or conversion of the relevant capital instruments, performed separately or in combination with a resolution measure or one or more of the measures referred to in Title VII, can within a reasonable period of time prevent the credit institution or its group from failing.

For the purposes of paragraph 1, 1°:

1° a credit institution shall be deemed to have failed or its failure to be imminent if it is in one of the situations referred to in Article 244 § 2;

2° a group shall be deemed to have failed or its failure to be imminent if it is in breach of the consolidated prudential requirements or there are objective indications that this is to happen in the near future to an extent justifying the intervention of the supervisory authority, in particular as a result of the group having sustained or being likely to sustain losses affecting a substantial portion of its own funds.

Article 252. The resolution authority shall proceed to write down or convert the relevant capital instruments in their order of priority in winding-up proceedings, such that:

1° common equity tier 1 capital is reduced first in proportion to the losses and to the limit of its capacity; and
2° the principal amount of the relevant capital instruments is then written-down or converted into common equity tier 1 capital instruments to the required extent and up to the capacity limit of the relevant capital instruments.

Article 253. Where the principal amount of the relevant capital instruments is written-down:

1° the effects of the reduction shall be permanent;

2° no obligation to the holder of the relevant capital instrument shall subsist in the context of said instrument or in connection with the written-down amount, with the exception of bonds that have matured and liabilities that may result from a judicial review of the exercise of the power to write-down;

3° no compensation shall be payable to the holders of the relevant capital instruments with the exception of that provided for by Article 254.

Article 254. § 1. In order to proceed with a conversion of the relevant capital instruments in accordance with Article 252, 2°, the resolution authority may require the credit institution to issue common equity tier 1 capital instruments in favour of the holders of the relevant capital instruments.

§ 2. The relevant capital instruments may only be converted into common equity tier 1 capital instruments if the following conditions have been met:

1° these common equity tier 1 capital instruments are issued by the credit institution or by its parent undertaking with the agreement of the resolution authority;

2° these instruments are issued before any issue of shares or instruments of ownership by the credit institution with a view to a capital contribution by the State or a public body;

3° they are awarded and transferred to the affected holders of the relevant capital instruments without delay following the exercise of the power of conversion;

4° the conversion rate is established in accordance with the following principles:

a) the rate represents appropriate compensation for affected holders of the relevant capital instruments; and

b) the rate applicable to the unsubordinated debts is higher than that applicable to the subordinated debts.

§ 3. For the purposes of § 1, the resolution authority may require credit institutions to permanently maintain the prior authorization necessary for issue of an adequate number of common equity tier 1 capital instruments.

CHAPTER V. — Resolution tools

Section I. — Principles

Article 255. § 1. The resolution tools are as follows:

1° sale of business tool;

2° bridge institution tool;

3° asset separation tool;

[4° bail-in tool.]

§ 1, 4° inserted by Article 5 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015
§ 2. By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may take all appropriate measures for the implementation of the mandatory provisions of international treaties or international acts passed by virtue of these aimed at supplementing the resolution tools with a bail-in tool allowing the resolution authority to proceed with writing down all or part of the eligible debts of a credit institution or converting these liabilities into shares or instruments of ownership.

To this end such Decree may require the credit institutions to maintain at all times a minimum level of own funds and eligible debts in order to allow an orderly resolution.

The powers conferred to the King under the first paragraph end on 31 December 2015.

A Decree made pursuant to the present paragraph may amend, supplement, replace, or abrogate legal provisions currently in force.

Such a Decree may not come into force prior to 1 January 2016. It shall be abrogated ipso jure if not ratified by the law within twelve months following its publication in the Belgian Official Gazette.

[The write-down or conversion of debts of a credit institution conducted with the application of the bail-in tool, shall not benefit the joint and several debtors and third parties that have provided a personal or collateral security.]

§ 2, paragraph 6 inserted by Article 45 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

§ 3. The resolution authority may apply the resolution tools both individually and together.

It may also apply the asset separation tool along with only one other resolution tool.

§ 4. If the resolution tools referred to in § 1, 1° or 2°, are used to sell only part of the assets, rights or liabilities of the credit institution, the credit institution shall be wound up by way of winding-up proceedings.

The winding-up shall occur within a reasonable period of time taking into account that it may be necessary that the credit institution provide services under Article 279 to allow the receiving entity to provide the transferred activities or services and with other reasons that require the credit institution’s survival in order to achieve the objectives of the resolution or comply with the principles provided for in Article 245.

[§ 5. The King may, by a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, or of His own accord, grant extraordinary public financial support through instruments for financial stabilization to participate in the resolution of a credit institution, including by directly intervening to prevent the liquidation of this institution, in order to achieve the resolution objectives referred to in Article 243, § 1.

The government financial stabilization tools are the following:

1° the public equity support tool with which a credit institution as referred to in paragraph 1 is recapitalized in exchange for common equity tier 1 capital instruments or additional tier 1 or tier 2 instruments;

2° the temporary public ownership tool, with which the shares of a credit institution as referred to in paragraph 1 are transferred to an undertaking fully owned by the State or a representative of the King.]

§ 5 replaced by Article 17, 1° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

[§ 6. The government financial stabilization tools are used as a last resort in order to safeguard financial stability and only after the resolution tools as referred to in paragraph 1 and paragraph 2 have as much as possible been assessed and used. This assessment is made
by the King after consultation with the resolution authority. The government financial stabilization tools may be used only if the following conditions are met:

1° the resolution authority has established that the conditions for commencing a resolution procedure referred to in Article 244, § 1, have been met vis-à-vis the credit institution concerned;

2° after consultation with the Bank in its capacity of Central Bank, and of the supervisory authority, the King and the resolution authority determine that the application of the resolution tools does not suffice to prevent substantial negative effects to financial stability; or

- that the application of the resolution tools does not suffice to protect the public interest; or

- only as regards the temporary public ownership tool, that the application of the resolution tools does not suffice to protect the public interest, if the institution has already received equity support through the equity support tool;

3° the value of the instruments converted or written down pursuant to the bail-in tool or the write-down or conversion of capital instruments amounts to more than 8% of the total liabilities, including the own funds of the institution under resolution, calculated using the valuation carried out pursuant to Articles 246 to 249; and

4° the rules of the European Union regarding state aid are complied with.]

§ 6 inserted by Article 17, 2° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

[§ 7. The Bank, in its capacity of resolution authority, shall, at the King’s request exercise all of the resolution powers granted to it if the exercise of these powers is necessary for the implementation of the government financial stabilization tools.

The King sees to it that the undertakings owned directly or indirectly by the State pursuant to a government financial stabilization tool, are managed on a commercial and professional basis.

As soon as commercial or financial circumstances allow, the participations held directly or indirectly by the State pursuant to a government financial stabilization tool, shall be transferred to the private sector.]

§ 7 inserted by Article 17, 2° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

Section II. — Sale of business tool

Article 256. § 1. Where the conditions referred to in Article 244, § 1, have been met, the resolution authority may order, in favour of any transferee, any act of disposal, in particular any act of sale, transfer or contribution relating to the shares or other instruments of ownership issued by the credit institution, or all or part of the assets, rights or liabilities thereof.

§ 2. The resolution authority shall take all reasonable measures to ensure that the transfer takes place under conditions corresponding to the valuation performed pursuant to Chapter III, having regard to the individual circumstances and in accordance with European Union rules on state aid.

§ 3. Subject to Article 272, any consideration paid by the transferee shall revert:

1° to the owners of the shares or instruments of ownership, where the sale of business has been made by the transfer of all or part of their shares or securities;
2° to the credit institution, where the sale of business has been made by the transfer of all or part of its assets.

**Article 257.** § 1. Where the resolution authority uses the sale of business tool it shall ensure that the process of the sale:

1° is as transparent as possible given the circumstances and in particular the need to maintain financial stability;

2° does not favour any of the proposed acquirers;

3° is free of conflicts of interest;

4° takes account of the need to take rapid resolution measures having regard to the resolution objectives;

5° aims to maximize as far as possible, the consideration received for the shares, other instruments of ownership, assets or rights transferred, having regard to the resolution objectives.

§ 2. The resolution authority may derogate from the requirements referred to in § 1 where it concludes that compliance with these would undermine achievement of one or more of the objectives of the resolution, and in particular if it considers that:

1° there is a material threat to financial stability arising from or aggravated by the failure or potential failure of the credit institution; and

2° compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing the threat specified in 1° or achieving the objectives of the resolution.

[§ 3. Every publication of the sale of a credit institution which would be required pursuant to Article 17, paragraph 1 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse may be postponed in accordance with Article 17, paragraphs 4 or 5 of that Regulation.]

§ 3 inserted by Article 18 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

**Article 258.** The transferee must hold the necessary authorization to conduct the business and provide the services transferred to it. The authorities concerned or the supervisory authority, where applicable, shall evaluate such a request for authorization in a timely manner.

**Article 259.** § 1. If a transfer of the shares or other instruments of ownership issued by the credit institution results in the acquisition of a qualifying holding in the credit institution or an increase in such a holding so that it reaches or exceeds one of the thresholds provided for in Article 46, the supervisory authority shall proceed with the assessment referred to in Article 48 as soon as possible in order not to delay the implementation of the resolution measure and in order not to prevent such a measure achieving the objectives of the resolution.

§ 2. By decree issued on the advice of the resolution authority, the King may lay down rules pertaining to the legal effects of the transfer of the shares or other instruments of ownership referred to in § 1 and the exercise of the rights associated thereto during the supervisory authority’s period of assessment of the transferee as well the consequences of possible opposition by the latter to the transfer. The decree issued by virtue of this paragraph may derogate from Article 51 to the extent allowed by the mandatory provisions of international treaties or international acts passed by virtue of these.
Section III. — Bridge institution tool

Article 260. § 1. Where the conditions referred to in Article 244, § 1, have been met, the resolution authority may order, in favour of any bridge institution, any act of disposal, in particular any act of sale, transfer or contribution relating to the shares or other instruments of ownership issued by the credit institution, or all or part of the assets, rights or liabilities thereof.

§ 2. The resolution authority shall ensure that the total value of the commitments transferred to the bridge institution does not exceed that of the rights and assets transferred from the credit institution or coming from other sources.

§ 3. Subject to Article 272, any consideration paid by the bridge institution shall revert:

1° to the owners of the shares or instruments of ownership, where the transfer has been made to the bridge institution by transfer of all or part of these shares or instruments of ownership;

2° to the credit institution, where the transfer has been made by the transfer of all or part of its assets.

[§ 4. The statutory governing body and the senior management of the bridge institution shall retain access to the critical functions with a view to the application of the provisions of Article 261, 263 or 264.]


Article 261. § 1. Once it has applied the bridge institution tool, the resolution authority may order that all or part of the shares or other instruments of ownership or of the assets, rights or liabilities of the bridge institution be transferred to a third party.

§ 2. The resolution authority shall endeavour to sell the shares, other instruments of ownership, assets, rights or liabilities of the bridge institution in an open and transparent process, without favouring any of the proposed acquirers.

This sale shall be made under commercial conditions, having regard to the circumstances, and in accordance with European Union rules on state aid.

Article 262. § 1. The resolution authority shall approve:

1° the articles of association of the bridge institution;

2° the composition of its statutory governing body and senior management;

3° the identity, responsibilities and remuneration of the persons in charge of its senior management; and

4° its risk strategy and profile.

§ 2. The bridge institution must hold the necessary authorization to conduct the business and provide the services transferred to it.

Notwithstanding paragraph 1, the resolution authority may, to the extent permitted by the mandatory provisions of international treaties or international acts passed by virtue of these, exempt the bridge institution, for a transitional period and under the conditions that it shall set, from the authorization referred to in paragraph 1.

§ 3. The bridge institution, the members of its statutory governing body and the members of its senior management shall not bear any civil liability for their acts or omissions in performing the task of the bridge institution, except in the event of fraud or gross negligence.
Article 263. § 1. The resolution authority shall decide that the bridge institution ceases to have this status as soon as possible in whichever of the following situations occurs first:

1° the bridge institution is merged with another entity;

2° the institution ceases to meet the criteria provided for by Article 242, 8°;

3° all or the bulk of the assets, rights and commitments of the bridge institution are sold or transferred to a third party;

4° the period provided for in Article 264, § 1, or, as the case may be, Article 264, § 2, has expired;

5° the assets of the bridge institution are fully liquidated and its liabilities fully settled.

§ 2. Where the status of the bridge institution is terminated by application of § 1, 3° or 4°, the bridge institution shall be wound up and liquidated.

Following payment, or remittance of the sums necessary for payment, of the debts of the bridge institution, and subject to Article 272, any net proceeds from the liquidation of the bridge institution shall revert to the shareholders thereof.

Article 264. § 1. If none of the situations referred to in Article 263 § 1, 1°, 2°, 3° or 5° arises, the resolution authority shall terminate the activity of the bridge institution as soon as possible and at the latest at the end of a period of twenty-four months following the date of the final transfer from a credit institution made within the framework of the bridge institution tool.

§ 2. The resolution authority may extend the period referred to in § 1 by one or more further periods of twelve months, where such extension:

1° favours the achievement of one of the outcomes referred to in Article 263 § 1, 1°, 2°, 3° or 4°; or

2° is necessary to ensure the continuity of critical functions.

Any decision of the resolution authority to extend the period referred to in § 1 shall be substantiated and contain a detailed assessment of the situation, including of the market conditions and outlook, in support of the extension.

Section IV. — Asset separation tool

Article 265. § 1. The resolution authority may order the transfer of all or part of the assets, rights or commitments of a credit institution or of a bridge institution to one or more asset management vehicles only in one of the following cases:

1° the situation in the specific market for the assets in question is such that liquidation of these assets under winding-up proceedings would risk having a negative impact on one or more financial markets;

2° this transfer is necessary to ensure the proper functioning of the credit institution or of the bridge institution; or

3° this transfer is necessary to maximize the proceeds of the liquidation.

§ 2. The resolution authority shall determine the consideration, which may be face value or negative, as the case may be, for the transfer of all or part of the assets, rights and liabilities to the asset management vehicle, in accordance with the principles set out in Articles 246 to 248 and the European Union rules on state aid.
§ 3. Without prejudice to Article 272, § 1, any consideration paid by the asset management vehicle for the assets, rights or liabilities acquired direct from the credit institution under resolution shall revert to the credit institution under resolution. Considerations may be paid in the form of debt securities issued by the asset management vehicle.

§ 3 inserted by Article 20 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

§ 4. If the bridge institution tool is used, an asset management vehicle may acquire assets, rights or liabilities of the bridge institution following the application of the bridge institution tool.

§ 4 inserted by Article 20 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

Article 266. § 1. The resolution authority shall approve:
1° the articles of association of the asset management vehicle;
2° the composition of its statutory governing body and senior management;
3° the identity, responsibilities and remuneration of the persons in charge of its senior management; and
4° its risk strategy and profile.

§ 2. The asset management vehicle, the members of its statutory governing body and its senior management shall not bear any civil liability for their acts or omissions in performing the task of the bridge institution, except in the event of fraud or gross negligence.

Article 267. The asset management vehicle shall manage the assets transferred to it in order to maximize their value through an ordered sale or liquidation.

Subject to Article 272, any net proceeds of the liquidation of the asset management vehicle shall revert to the shareholders of said vehicle.

[Section IV/1. — Bail-in tool]

Title inserted by Article 6 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Subsection 1 – Purpose and scope]

Title inserted by Article 7 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/1. § 1. If the conditions of Article 244, § 1 are met, the resolution authority may write down or convert all or part of the eligible debts of a credit institution into shares or other instruments of ownership, to achieve one of the following objectives:

1° recapitalization of a credit institution that complies with the conditions for initiating a resolution procedure, to ensure that it meets the authorization conditions again and can continue to conduct the work for which it has received authorization, as well as to maintain sufficient market confidence;

2° write down of debt instruments or conversion thereof into shares or other instruments of ownership, where they are transferred:

a) to a bridge institution, to provide capital to that bridge institution; or

b) by application of the sale of business tool or of the asset separation tool:
§ 2. The bail-in tool may only be applied to achieve the objectives referred to in paragraph 1, 1°, if it could reasonably be expected that the application of that tool, in combination with other relevant measures, including measures taken in accordance with the business reorganization plan provided for in Article 267/11, would not only achieve the relevant objectives of the resolution, but also restore the credit institution’s financial solidity and viability over the long-term.

If the conditions of the previous paragraph are not met, all resolution tools referred to in Article 255, § 1, 1°, 2° and 3° as well as, where applicable, the bail-in tool referred to in paragraph 1, 2° of the present Article may be applied.

§ 3. The eligible debts can be written down or converted into shares or other instruments of ownership irrespective of the credit institution’s legal form. If necessary, the resolution authority may decide first to change the legal form of the credit institution. This decision results ipso jure in the change of the legal form of the credit institution.

[Article inserted by Article 8 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015]

[Article 267/2. § 1. The resolution authority shall ensure that all assets used to cover guaranteed obligations remain intact or separate and sufficiently financed.

The exceptions stated in Article 242, 10°, do not prevent, where applicable, the part of an obligation covered by a guarantee or otherwise that exceeds the value of the assets that are subject to the cover, lien or collateral security, from being written down or converted. The same applies to the part of a deposit that exceeds the level of the cover provided for in Article 382 or any similar provision.

§ 2. Where the bail-in tool is applied, in exceptional circumstances certain eligible debts may be excluded in whole or in part from the application of the write-down or conversion measures, especially if:

1° the write-down or conversion is not able to be proceeded to in a reasonable period of time;

2° it is strictly necessary and proportionate to the objective to guarantee the continuity and critical functions and core business units of a credit institution under resolution;

3° it is strictly necessary and proportionate to the objective to prevent widespread contagion, especially in relation to eligible deposits of natural persons and small or medium enterprises, which would seriously disrupt the operation of the financial markets in a manner that could destabilize the national economy, that of another Member State, or that of the European Union as a whole;

4° the application of the bail-in tool to these eligible debts would result in a value destruction such that the loss incurred by the other creditors would be greater than if these obligations to apply the bail-in measure were excluded.

If an eligible debt or a category of eligible debts is excluded in whole or in part from the bail-in, the level of write-down or conversion applied to the other eligible debts may be increased to take into account these exclusions, with due regard to the principle contained in Article 245, § 1, 8°.

§ 3. The resolution authority shall inform the European Commission of the draft decisions it wishes to take pursuant to § 2.

Where a contribution from [the Resolution Fund] is considered, the resolution authority shall defer its decision pending the decision to be taken by the European Commission in accordance with Article 44, § 12 of Directive 2014/59/EU. In its decision it shall take into
account any conditions that must be met for the European Commission to grant its approval.]

§ 3, paragraph 2 amended by Article 21 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

Article inserted by Article 9 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Subsection 2. – Minimum requirements for own funds and eligible debts]

Title inserted by Article 10 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/3. § 1. Credit institutions shall at all times fulfil a minimum requirement for own funds and eligible debts. The minimum requirement is an amount of own funds and eligible debt, expressed as a percentage of the total liabilities and own funds of the credit institution.

For the purposes of the first paragraph, liabilities arising from derivatives form part of the total liabilities on the basis that full recognition is given to counterparty netting rights.

§ 2. Eligible debts may only be included in the amount of own funds and eligible debts as referred to in § 1 if they meet the following conditions:

1° the instrument is issued and fully paid-up;

2° it is not a debt to the credit institution itself or one that it guarantees;

3° the purchase of the instrument is neither directly nor indirectly financed by the credit institution;

4° the debt has a term remaining of at least one year;

5° the debt does not arise from a derivative;

6° the debt does not arise from a deposit that is preferential pursuant to Article 389.

For the application of point 4°, the maturity date of a debt that gives the creditor a right to early repayment shall be deemed to be the first date on which that right can be exercised.

§ 3. If an eligible debt is subject to the legislation of a third country, the resolution authority may require the credit institution to demonstrate that each decision of the resolution authority to write-down or convert that debt is valid and enforceable pursuant to the law of that third country, in particular taking into account the conditions of the contract relating to that obligation and international agreements regarding the recognition of resolution procedures. If according to the resolution authority it has not been sufficiently demonstrated that each decision is valid and enforceable in accordance with the law of that third country, the eligible debt shall not be eligible for the minimum requirements on own funds and eligible debts as provided for in § 1.

§ 4. The minimum requirement for own funds and eligible debts of each credit institution shall be determined on an individual basis by the resolution authority after consulting the competent authority, and at least on the basis of the following criteria:

1° the application of resolution tools, where applicable including the bail-in tool, allow the objectives of the resolution to be achieved;

2° the credit institution has sufficient eligible debts to guarantee that, if the bail-in tool is applied, the losses can be absorbed and the common equity tier 1 capital ratio of the credit
institution would be returned to a level necessary to put it in a position to continue to comply with the conditions for authorization and continue to do the work for which it has received authorization, as well as to maintain sufficient market confidence in the credit institution;

3° if the resolution plan takes into account that certain categories of eligible debts can be excluded from the bail-in pursuant to Article 267/2, § 2, or could be fully transferred to a buyer through a partial transfer, the credit institution has sufficient other eligible debts so that the losses can be absorbed and its common equity tier 1 capital ratio would be returned to a level necessary to put it in a position to continue to comply with the conditions for authorization and continue to do the work for which it has received authorization;

4° the scale, business model, financing model and risk profile of the credit institution;

5° the extent to which the deposit protection scheme in accordance with Article 348/1 could contribute to the financing of the resolution;

6° the extent to which the failure of the credit institution would have negative effects for financial stability, especially through contagion ensuing from its interconnectedness with other credit institutions or with the rest of the financial system.]

Article inserted by Article 11 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/4. § 1. The decisions made pursuant to the present subsection may provide for partial fulfilment at an individual level of the minimum requirements for own funds and eligible debts through contractual bail-in instruments.

§ 2. An instrument is deemed a contractual bail-in instrument within the meaning of § 1 if the resolution authority is of the opinion that the following conditions are met:

1° the instrument contains a contractual clause that entails, where a resolution authority decides to apply the bail-in to the institution, the instrument being written down or converted to the extent required before other eligible debts are written down or converted; and

2° the instrument is subject to a binding subordination agreement, allowance or provision pursuant to which the instrument is subordinate in the case of winding-up proceedings to other eligible debts and cannot be refunded until other eligible debts outstanding at that time are settled.]

Article inserted by Article 12 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/5. § 1. In consultation with the competent authority, the resolution authority requires and verifies compliance by credit institutions with the minimum requirements for own funds and eligible debts referred to in Article 276/3 and, where applicable, with the requirement referred to in Article 267/4, and makes all decisions in accordance with this Article in parallel with drawing up and updating the resolution plans.

§ 2. In consultation with the competent authority, the resolution authority informs the EBA of the minimum requirement for own funds and eligible debts and, where applicable, of the requirement referred to in Article 267/4, established for each of the credit institutions that fall under its competence.]

Article inserted by Article 13 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Subsection 3. – Implementation of the bail-in tool]
Title inserted by Article 14 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/6. § 1. Where it applies the bail-in tool, the resolution authority shall evaluate, on the basis of a valuation that complies with Articles 246 to 248, the total of:

1° where applicable, the amount to which the eligible debts must be written down to ensure that the net value of the credit institution’s assets under resolution is equal to zero; and

2° where applicable, the amount to which the eligible debts must be converted to shares or other capital instruments to restore the common equity tier 1 capital ratio of the credit institution under resolution or to enable a bridge institution to comply therewith.

§ 2. The evaluation referred to in § 1 must take into account the contribution of capital by [the Resolution Fund]. The total referred to in § 1 must enable sufficient market confidence in the credit institution under resolution or the bridge institution to be achieved and must enable it at least during one year to continue to comply with the conditions for authorization and to continue to do the work for which it has received authorization.

§ 2, paragraph 1 amended by Article 22 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

If the resolution authority intends to use the asset separation tool as referred to in Article 265, the amount by which the eligible debts must be reduced shall take as much account as possible of a prudent estimate of the asset management vehicle’s capital requirements.

§ 3. If the relevant capital instruments in accordance with Articles 250 to 254 are written down and the bail-in tool is applied in accordance with Article 267/1, § 1, and where it appears that the level of write-downs based on the basis of the provisional valuation pursuant to Article 248, § 2 is higher than the requirements when this level is compared with that of the definitive valuation pursuant to Article 248, § 3, measures shall be taken to refund creditors and subsequently shareholders insofar as necessary.

§ 4. Resolution authorities shall establish and maintain arrangements to ensure that the assessment and valuation are based on information about the assets and liabilities of the credit institution under resolution that is as updated and comprehensive as is reasonably possible.]

Article inserted by Article 15 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/7. § 1. Where the resolution applies the bail-in tool or writes down or converts capital instruments, it shall take one or both of the following measures vis-à-vis the shareholders and holders of other instruments of ownership:

1° cancel existing shares or other instruments of ownership, or transfer them to creditors to which the bail-in tool is applied;

2° if the net value of the credit institution under resolution following the valuation pursuant to Articles 246 to 248 is positive, dilute existing shareholdings and other instruments of ownership as a result of the conversion into shares or other instruments of ownership of:

a) relevant capital instruments issued by the credit institution pursuant to the powers referred to in Article 250, § 1; or

b) eligible debts issued by the credit institution under resolution pursuant to Article 276, § 2, 4°/2.

For the application of point 2°, the resolution authority shall use the conversion rate that severely dilutes existing shareholdings or other instruments of ownership.
§ 2. The measures referred to in § 1 shall also apply in respect of shareholders and holders of other instruments of ownership where the shares or other instruments of ownership in question were issued or conferred in the following circumstances:

1° pursuant to conversion of debt instruments to shares or other instruments of ownership in accordance with contractual terms to which the debt instruments are subject on the occurrence of an event that preceded or occurred at the same time as the assessment by the resolution authority that the credit institution met the conditions for initiation of a resolution procedure;

2° pursuant to the conversion of relevant capital instruments to common equity tier 1 capital instruments pursuant to Article 250.

§ 3. The resolution authority, when considering which measures must be taken pursuant to § 1, shall have regard to:

1° the valuation pursuant to Articles 246 to 248;

2° the amount by which the face value of common equity tier 1 capital instruments is reduced and by which relevant capital instruments must be written down or converted; and

3° the total established pursuant to Article 267/6.

§ 4. If the application of the bail-in tool or the conversion of capital leads to the acquisition of a qualifying holding in the credit institution or to an increase in such a holding as a result of which one of the thresholds specified in Article 46 is reached or exceeded, the supervisory authority shall make the assessment referred to in Article 48 in a timely manner that does not delay the application of the resolution measure and prevent this measure from achieving the relevant resolution objectives.

§ 5. By decree issued on the advice of the resolution authority, the King may lay down rules pertaining to the legal effects of the application of the bail-in tool and of the conversion of capital as referred to in paragraph 1, and the exercise of the rights associated with the allocated shares or other instruments of ownership during the supervisory authority’s period of assessment of the transferee as well as the consequences of possible opposition by the latter to the transfer. The decree issued by virtue of this paragraph may derogate from Article 51 to the extent allowed by the mandatory provisions of international treaties or international acts passed by virtue of these.]
reduces the principal amount of subordinated claims that are not additional tier 1 instruments or tier 2 instruments;

5° if the reduction in accordance with points 1° to 4° hereinabove is less than the sum of the amounts specified in Article 267/7, § 3, 2° and 3°, the resolution authority reduces the principal amount, or the outstanding amount payable for the rest of the eligible debts, taking into consideration the order of priority of claims applied in winding-up proceedings.

§ 2. Where the resolution authority exercises the write-down or conversion powers, it shall distribute the losses represented by the sum of the amounts specified in Article 267/7, § 3, 2° and 3° over each category of capital and eligible debts in accordance with their ranking in the order of priority of claims applied in winding-up proceedings, and within each category in proportion to the face value of those instruments and debts or of the outstanding amount payable for those instruments and debts, without prejudice to another distribution of the losses over eligible debts of the same rank, pursuant to Article 267/2, § 2.

§ 3. A write-down or conversion measure as specified in § 1 shall, where applicable, be applied under the same conditions on the residual value of an instrument specified in § 1, 2° to 4° to which a write-down was already applied by virtue of contractual provisions.

§ 4. Without prejudice to the exceptions referred to in Articles 242, 10° and 267/2, § 2, the resolution authority may not write down or convert a liability if its other subordinated liabilities have not for the most part been converted or written down.]

Article inserted by Article 17 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/9. § 1. The resolution authority exercises the write-down and conversion powers for a liability arising from derivatives where derivative positions are closed. At the opening of the resolution procedure, the resolution authority may cancel the derivative contracts or close the derivative positions.

If one of the liabilities arising from derivatives is excluded from application of the bail-in measure pursuant to Article 267/2, § 2, the resolution authority is not obliged to end the aforementioned derivative contracts or close the derivative positions.

For the valuation pursuant to Articles 246 to 248, the resolution authority or the independent person takes into account the existing set-off and netting agreements and determines the respective liabilities of the parties on a net basis in accordance with the provisions of these agreements.

§ 2. The resolution authority determines the value of the derivatives arising from liabilities based on the following:

1° suitable methods for determining the value of the categories of derivatives, including the transactions subject to netting agreements;

2° principles for establishing the time for which the value of the derivative position must be set; and

3° suitable methods for comparing the value destruction that would arise from the closure of the derivative positions and the bail-in for derivatives, with the amount of the losses that would have been borne by these derivatives in case of bail-in.]

Article inserted by Article 18 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/10. When exercising the conversion power as referred to in Article 250, § 2 and in Article 276, § 2, 4°/2, the resolution authority may apply different conversion rates to different categories of capital instruments and liabilities. When determining these
conversion rates, account is taken of the order of priority of the categories of liabilities applied in winding-up proceedings.

The conversion rate shall offer the affected creditor an appropriate compensation for the loss incurred as a result of the exercise of the write-down and conversion powers.]

*Article inserted by Article 19 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015*

**Article 267/11.** § 1. Within a month after the application of the bail-in tool to a credit institution to achieve the objectives specified in Article 267/1, § 1, 1°, the statutory governing body of the credit institution or the person or persons appointed pursuant to Article 281, § 2 for the credit institution concerned shall draw up a business reorganization plan and submit it to the resolution authority for approval.

§ 2. In exceptional circumstances and if necessary for the achievement of the objectives of the resolution, or where the business reorganization plan must be submitted as part of the application of the rules of the European Union on state aid, the resolution authority may extend the term of one month specified in § 1 by at the most one month.

§ 3. Measures shall be established in the business reorganization plan in accordance with the objectives and guidelines of the resolution authority which aim to restore the long-term viability of the credit institution or part of its work within a reasonable period of time. It shall include at least the following:

1° a detailed diagnosis of the factors and problems through which the credit institution remains in default or is likely to remain in default, and the circumstances that are the cause of the difficulties faced by the credit institution;

2° a description of the measures to be taken aimed at restoring the long-term viability of the credit institution;

3° a timetable for implementation of the measures.

In the business reorganization plan, account is taken inter alia of the current state of and future prospects of the financial markets, based on optimistic and pessimistic hypotheses, such as a combination of situations on the basis of which the major weaknesses of the credit institution can be established. The hypotheses shall be compared with the appropriate sector-wide benchmarks.

This plan must, where applicable, be compatible with the restructuring plan established as part of the application of the rules of the European Union on state aid.

§ 4. Measures aimed at restoring the long-term viability as referred to in paragraph 3 include, inter alia:

1° reorganizing the credit institution’s work;

2° making changes to the operational systems and the infrastructure in the credit institution;

3° withdrawal from loss-making activities;

4° restructuring existing activities that could be made profitable;

5° selling assets or business lines.]

*Article inserted by Article 20 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015*

**Article 267/12.** § 1. Within a month, to be calculated from the date of submission of the business reorganization plan specified in Article 267/11, the resolution authority shall assess the suitability of that plan to restore the long-term viability of the credit institution concerned. This assessment shall be made in consultation with the competent authority.
If the resolution authority and the competent authority are of the opinion that the objectives can be achieved with the implementation of the plan, the resolution authority shall approve the plan.

§ 2. If the resolution authority is of the opinion that the objective referred to in § 1 cannot be achieved with the implementation of the plan, it shall inform, in consultation with the competent authority, the statutory governing body of the credit institution or the person or persons appointed pursuant to Article 281, § 2 of the deficiencies it has identified and require the plan to be amended so as to remedy these deficiencies.

§ 3. Within two weeks to be calculated from the date of receipt of the notification referred to in § 2, the statutory governing body of the credit institution or the person or persons appointed pursuant to Article 281, § 2, shall submit an amended plan for approval to the resolution authority. The resolution authority shall assess the amended plan and inform the statutory governing body of the credit institution or the person or persons appointed pursuant to Article 281, § 2, within one week whether it is of the opinion that the deficiencies identified are remedied or whether further amendments are required.

§ 4. The statutory governing body of the credit institution or the person or persons appointed pursuant to Article 281, § 2, shall implement the reorganization plan as approved by the resolution authority and the competent authority and shall submit a report at least every six months to the resolution authority on the progress made with the implementation of the plan.

§ 5. The statutory governing body of the credit institution or the person or persons appointed pursuant to Article 281, § 2, shall review the plan if, in the opinion of the resolution authority, with the consent of the competent authority, this is necessary to achieve the objectives referred to in Article 267/11, § 3 and shall submit any change to this plan for approval to the resolution authority.

Article inserted by Article 21 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/13. § 1. Where a resolution authority reduces to zero the principal amount of, or outstanding amount payable in respect of a liability by means of the power referred to in Article 267, § 2, 4°/1, that liability and any obligations or claims arising in relation to it that are not accrued at the time when the measure is exercised, shall be treated as discharged for the principal amount and interest, and shall not be contributed in any subsequent proceedings in relation to the credit institution under resolution or any successor institution in any subsequent winding up.

§ 2. Where the resolution authority partly reduces the principal amount or outstanding amount payable in respect of a liability by means of the power referred to in Article 276, § 2, 4°/1:

1° the liability shall be discharged to the extent of the amount reduced;

2° the relevant instrument or the agreement on which the original liability is based, shall continue to apply to the remaining principal amount or the outstanding amount payable in respect of the liability, subject to any modification of the amount of interest payable to reflect the reduction of the principle amount, and any further modification of the terms that the resolution authority might make by virtue of Article 276, § 2, 4°/4.]

Article inserted by Article 22 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/14. The conversion of eligible debts or of additional tier 1 or tier 2 instruments of a credit institution into shares or other instruments of ownership has effect,
ipso jure, pursuant to Article 275, notwithstanding any legal or contractual provisions or any other clause in its articles of association or deed of incorporation, including any preferential right for shareholders or any clause that requires shareholders to approve a capital increase.]

Article inserted by Article 23 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 267/15. § 1. If an eligible debt that is subject to the legislation of a third country does not form a deposit as specified in Article 389, § 2, the credit institutions must ensure that a provision is included in the agreement that entails that the creditor recognizes that the liability may be converted or that the value thereof could be reduced, and consent to be bound by each reduction of the principal amount or the outstanding amount payable, any conversion or any cancellation created by the exercise of these powers by the resolution authority.

The resolution authority may require that the credit institutions concerned provide a legal opinion on the enforceability and effectiveness of such a clause.

§ 2. § 1 shall not apply if the resolution authority is of the opinion that the liabilities or instruments could be subject to its write-down or conversion powers pursuant to the legislation of a third country or a binding agreement entered into with that third country.

The absence of the provision referred to in § 1 in the agreement does not prevent the resolution authority from exercising its prerogatives.”.

Article inserted by Article 24 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Section V. — Provisions common to all resolution tools

Article 268. § 1. A transfer ordered by application of the sale of business tool, the bridge institution tool or the asset separation tool shall not be subject to:

1° approval of the statutory governing body or the general meeting of shareholders of the credit institution or of any third party other than the receiving party, notwithstanding any provision to the contrary in the law, articles of association or contracts;

2° meeting any procedural requirements under the corporate or securities legislation other than those resulting from mandatory provisions of international treaties or international acts passed by virtue thereof.

§ 2. The resolution authority shall notify the Minister responsible for Finance of any decision on a measure that it intends to take. The Minister may oppose this within 48 hours if he/she considers that the proposed act has a direct fiscal effect or systemic consequences.

Article 269. § 1. When it applies the sale of business tool, bridge institution tool or asset separation tool, the resolution authority may exercise the power of transfer more than once in order to effect additional transfers of shares, other instruments of ownership, assets, rights or liabilities to the receiving entity.

§ 2. Under the conditions laid down by the King on the recommendation of the resolution authority, the resolution authority may order the transfer of shares, other instruments of ownership, assets, rights or liabilities which have been transferred by application of one of the resolution tools referred to in § 1 to a receiving entity, back to the credit institution or their initial owners, as appropriate.

[§ 3. When applying the resolution tools referred to in paragraph 1, and without prejudice to the provisions of Chapter VII of the present Title, shareholders or creditors of the credit
institution under resolution and other third parties whose assets, rights or liabilities have not been transferred, have no rights to or as regards the transferred assets, rights or liabilities.]

§ 3 inserted by Article 23 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

**Article 270.** Without prejudice to Article 278 and the provisions of Chapter VIII and notwithstanding any provision to the contrary in any agreement, transfers ordered by the resolution authority and validated by the court in accordance with Article 302 cannot have the effect of changing the terms of agreements relating to the business transferred or terminating such agreements nor give any party the right to cancel them unilaterally, suspend their performance, offset the claims and liabilities arising therefrom or invoke any resolutory or acceleration clauses.

**Article 271.** The receiving entity shall be considered to be a continuation of the credit institution and may continue to exercise any such rights as were exercised by that institution in respect of the assets, rights or commitments transferred, including the rights deriving from membership and access to the payment, clearing and settlement systems, regulated markets and investor-compensation and deposit guarantee schemes.

A receiving entity may not be denied access to the systems and markets referred to in paragraph 1 on the grounds that it does not have a rating issued by a credit rating agency or that its rating does not correspond to the level required to obtain access to the systems and markets in question.

If the receiving entity does not meet the criteria for membership of a payment, clearing or settlement system, regulated market or deposit guarantee scheme or for participation therein, the resolution authority shall define the transitional period during which it may exercise the rights referred to in paragraph 1. This period may not exceed 24 months but may be extended by the resolution authority at the request of the receiving entity.

**Article 272.** § 1. [The resolution authority and the Resolution Fund may recover any reasonable expenses they have lawfully incurred in relation to the application of the resolution tools, the exercise of resolution powers, the interventions of the Resolution Fund or the use of government financial stabilization tools, by one or several of the following means:]

§ 1, introductory sentence replaced by Article 24, 1° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

1° from the credit institution subject to the resolution procedure;

2° by deduction from any consideration paid by a receiving entity to the credit institution or, where applicable, to the owners of the shares or other instruments of ownership; or

3° by deduction from any income deriving from the termination of activities of the bridge institution or the asset management vehicle.

§ 2. [The claims of the resolution authority and the Resolution Fund in respect of the credit institution for the costs they have incurred as part of the procedure for the resolution of the credit institution, are preferential on all movable property of this credit institution.]

§ 2, paragraph 1 replaced Article 24, 2° of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

The preferential right referred to in paragraph 1 takes the order of preference immediately after the preferential right specified in Article 19, 1° of the mortgage law of 16 December 1851.

**Article 273.** § 1. Any credit institution subject to the application of a resolution tool or in respect of which the resolution authority considers that the trigger conditions for a
resolution procedure pursuant to Article 244, § 1, are satisfied cannot be declared insolvent except at the request or with the agreement of the resolution authority.

§ 2. The clerk of the relevant Commercial Court must inform the resolution authority without delay of any application to open insolvency proceedings against a credit institution.

No decision can be taken on such an application unless the resolution authority has been informed in accordance with the first paragraph and unless, within a period of seven days following such notification, the resolution authority has not informed the relevant Commercial Court that it has implemented a resolution tool in respect of the credit institution concerned or it considers that the latter satisfies the trigger conditions for a resolution procedure.

Article 274. Disposals ordered by the resolution authority under a resolution measure cannot be considered as unenforceable against creditors by virtue of Articles 17, 18 or 20 of the bankruptcy law of 8 August 1997 or Article 1167 of the Civil Code.

Article 275. [The resolution measures, including the disposal decisions of the resolution authority ratified by the court in accordance with Article 302, have effect ipso jure and apply to the credit institution under resolution as well as to the creditors and shareholders affected on the date established by the resolution authority, and are enforceable on third parties under the conditions provided for in Article 76 of the Companies Code.

This legal effect also applies to the accessories of the liabilities transferred and the business or personal guarantees provided as collateral thereof.]

Article replaced by Article 25 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

CHAPTER VI. — Resolution powers

Section I. — General powers

Article 276. § 1. The resolution authority may require any credit institution, if necessary by means of on-site inspections, to supply the information needed for the resolution authority to decide to adopt a resolution measure or exercise its power to write-down or convert capital instruments.

§ 2. Once it has determined that a credit institution satisfies the trigger conditions for a resolution procedure pursuant to Article 244, § 1, the resolution authority has the following resolution powers that it may exercise severally or jointly, subject to Article 255, § 3, second paragraph:

1° the power to take control of the credit institution and exercise all the rights and powers of the general meeting of shareholders and of the statutory governing body of the credit institution, in accordance with Article 281;

2° the power to order transfer to a buyer or a bridge institution, with the latter's agreement, of the shares and other instruments of ownership issued by the credit institution, pursuant to Articles 256 or 260;

3° the power to order transfer to a recipient, with the latter's agreement, of all or part of the rights, assets or liabilities of the credit institution, pursuant to Articles 256, 260 or 265;

4° the power to order the transfer of all or part of the shares, other instruments of ownership, assets, rights or liabilities of the bridge institution to a third party pursuant to Article 261;

[4°/1 the power to reduce the principal amount or the outstanding amount payable with respect to the eligible debts of a credit institution (to zero);]
§ 2, 4°/1 inserted by Article 26, a) of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[4°/2 the power to convert the eligible debts of a credit institution into shares or other instruments of ownership of that credit institution, its parent undertaking or a bridge institution;]

§ 2, 4°/2 inserted by Article 26, a) of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[4°/3 the power to withdraw debt instruments issued by a credit institution, unless they are liabilities covered by a guarantee as referred to in Article 242, 10°, b);]

§ 2, 4°/3 inserted by Article 26, a) of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[4°/4 the power to change the maturity date of the debt instrument and other eligible debts of the credit institution or the amount of interest owed in respect of these debt instruments and eligible debts or the date on which the interest needs to be paid, including a temporary suspension of payment unless they are liabilities covered by a guarantee as referred to in Article 242, 10°, b);]

§ 2, 4°/4 inserted by Article 26, a) of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[4°/5 the power to settle or end derivative contracts in accordance with Article 267/9;]

§ 2, 4°/5 inserted by Article 26, a) of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

5° the power to reduce, including to zero, the face value of the shares or other instruments of ownership of a credit institution or to cancel these shares or other instruments of ownership;

6° the power to require a credit institution or its parent undertaking to issue new shares or other instruments of ownership, or other capital instruments, including preference shares and contingent convertible instruments, pursuant to Articles 232, second paragraph, 10°, and 254, § 1;

7° the power to remove or replace the members of the statutory governing body and senior management of the credit institution; and

8° [the power to commission the supervisory authority to assess the acquirer of a qualifying holding in the credit institution promptly and in accordance with Article 259, § 1 and Article 267/7, § 4, where applicable, by way of derogation from the terms established in Articles 47 and 48.]

§ 2, 8° replaced by Article 26, b) of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Section II. — Ancillary powers

Article 277. Subject to the restrictions laid down in Chapter VII, the resolution authority shall have the power, in exercising resolution powers, to:

1° take measures to free transferred shares, other instruments of ownership, assets, rights or liabilities from rights or collateral;

2° remove shareholders’ or third parties’ rights to acquire further shares or other instruments of ownership issued by the credit institution;

3° require the authority concerned to discontinue the admission to trading on a regulated market or the official listing of the financial instruments issued by the credit institution;
4° provide for the recipient to be treated as if it were the credit institution for the purposes of exercise of the latter's rights or obligations, including any rights or obligations relating to participation in a market facility;

5° require the credit institution or the recipient to provide the other party with information and assistance;

6° cancel or modify the terms of a contract to which the credit institution is a party;

7° take all necessary or useful steps to ensure the continuity of contracts entered into by the credit institution pursuant to Article 270 and enable the recipient to fully exercise the rights and obligations relating to any contracts and financial instruments pertaining to the business transferred to it; and

8° order the substitution of the recipient for the credit institution as party to the contracts and financial instruments relating to the business transferred to it and any legal proceedings concerning any of the assets or liabilities, contracts or rights or commitments transferred.

Article 278. The powers referred to in Article 277 shall not affect:

1° the right of an employee of the credit institution to terminate a contract of employment;

2° subject to Article 280, § 1, the right of a party to a contract to exercise the rights under the contract, including the right to terminate, by virtue of an act or omission by the credit institution prior to the transfer or by the recipient after the transfer.

Section III. — Power to require the provision of services and infrastructure

Article 279. § 1. Subject to the restrictions provided for in Chapter VII, the resolution authority may, in exercising resolution powers, require the credit institution or any entity which is part of the same group to provide any operational services or facilities, with the exclusion of any form of financial support, necessary to enable a recipient to effectively operate the business transferred to it.

§ 2. Where the services and facilities provided for in accordance with § 1, were provided to the credit institution under a contract immediately before the resolution measure was taken, the credit institution must supply these services and facilities on the same terms and for the duration of the contract. Failing this, it must provide them on reasonable terms.

§ 3. The resolution authority may specify the minimum list of operational services and facilities necessary to enable a recipient to operate the business transferred to it.

Section IV. — Power to suspend certain obligations, restrict the enforcement of security interests and suspend termination rights

Article 280. § 1. Subject to the restrictions provided for in Chapter VII, the resolution authority may, in exercising resolution powers:

1° suspend any payment or delivery obligations arising from any contract to which the credit institution is a party from the publication of the notice required by Article 295, 1°, until midnight on the business day following that publication, it being understood that the payment or delivery obligations of the counterparties of the credit institution by virtue of the same contract are suspended for the same period;
2° restrict the right of the credit institution’s creditors to enforce security interests for the period established in 1°;

3° suspend the termination rights of any party to a contract entered into with the credit institution or, on the terms laid down by the King, a subsidiary thereof, for the period established in 1° [insofar as the essential obligations pursuant to the agreement, especially the payment and delivery obligations and the provision of security are complied with].

§ 1, 3° amended by Article 27 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

§ 2. Any suspension ordered by virtue of § 1, 1°, shall not apply to:

1° covered deposits;

2° payment and delivery obligations towards the systems or system operators designated pursuant to Directive 98/26/EC, central counterparties and central banks;


§ 3. The power referred to in § 1, 2°, may not be exercised in respect of any security interest of the entities referred to in § 2, 2°, by way of margin calls or collateral by the credit institution.

§ 4. Any suspension ordered by virtue of § 1, 3°, shall not apply to the entities referred to in § 2, 2°.

[§ 5. In the event of suspension by virtue of paragraph 1, 3° a termination right can be exercised before the end of the term provided for in paragraph 1, 1° if the resolution authority has published a notice stating that the rights and obligations arising from the contract are not being transferred to another entity, or that they are not subject to write-down or conversion under the application of the bail-in tool pursuant to Article 267/1, § 1, 1°.]

§ 5 inserted by Article 25 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

[§ 6. If the resolution authority exercises the power referred to in paragraph 1, 3° and has not published a notice as referred to in paragraph 5, the termination rights may be exercised as follows after the term referred to in paragraph 1, 1°:

1° if the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may only exercise those termination rights if on the receiving entity’s side an enforcement event remains or occurs later;

2° if the rights and liabilities covered by the contract remain with the credit institution under resolution, and the resolution authority has not applied the bail-in tool with regard to that institution in accordance with Article 267/1, § 1, 1°, a counterparty may exercise termination rights once the suspension has ended in accordance with the terms of that contract.]


Section V. — Exercise of resolution powers

Article 281. § 1. In order to take one or more resolution measures, the resolution authority shall have the power to exercise control over the credit institution, enabling it to:

1° exercise all the powers of the shareholders’ meeting, statutory governing body and management of the credit institution; and
2° manage and dispose of the assets and property of the credit institution.

§ 2. The control provided for in § 1, may be exercised directly by the resolution authority or indirectly by one or several persons appointed by the authority.

The resolution authority may therefore appoint a special administrator for the credit institution who may hold all the powers of the shareholders' meeting, statutory governing body and management and exercise those powers under the control of the resolution authority and within the limits set by the latter.

The task of the special administrator is to carry out the necessary resolution measures to promote the objectives of the resolution pursuant to Article 243 and implement the decisions of the resolution authority.

The term of the special administrator's mandate may not exceed twelve months but may exceptionally be extended by the resolution authority. The latter may remove the special administrator at any time.

§ 3. The resolution authority may take resolution measures either through executive order or by exercising control over the credit institution in accordance with § 1. It may choose the method on a case-by-case basis, having regard to the objectives of the resolution and the general principles governing resolution, the specific circumstances of the credit institution in question and the need to facilitate the effective resolution of cross-border groups.

Section VI. - Powers with regard to assets, rights, liabilities, shares and other instruments of ownership in third countries

[Article 281/1. § 1. Where action is taken under a resolution measure with regard to assets located in a third country or to shares, other instruments of ownership, rights or liabilities governed by the law of a third country, the resolution authority may require that:

1° the trustee or other person who exercises control over the credit institution under resolution and the receiving entity is obliged to take all necessary steps to ensure that the transfer, write-down, conversion or measure comes into effect;

2° the trustee or other person who exercises control over the credit institution under resolution is obliged to hold the shares, other instruments of ownership, assets or rights, or to meet the commitments on behalf of the receiving entity until the transfer, the write-down, the conversion or the measure comes into effect;

3° the reasonable expenses that the receiving entity has legitimately incurred in the exercise of a measure required in accordance with 1° and 2°, shall be compensated in one of the ways as referred to in Article 272.

§ 2. Where the resolution authority establishes that, despite all the necessary measures taken by the trustee or other person as referred to in paragraph 1, 1°, it is highly questionable that the transfer, conversion or measure with respect to certain assets in a third country, or certain shares, other instruments of ownership, rights or liabilities that come under the law of a third country, comes into effect, the resolution authority shall not proceed with the transfer, write-down, conversion or measure in question. If the resolution authority has already ordered the transfer, write-down, conversion or measure, this order as regards the assets, shares, instruments of ownership or liabilities is rendered null and void.]
CHAPTER VI/1. - Power to enforce measures taken by other Member States

[Article 281/2. § 1. Where a transfer of shares, other instruments of ownership, or assets, rights or liabilities made pursuant to Directive 2014/59/EU by the resolution authority of another Member State includes assets located in Belgium, or rights or liabilities governed by Belgian law, this transfer has effect in Belgium or pursuant to Belgian law.

§ 2. The resolution authority shall provide the resolution authority of the other Member State referred to in paragraph 1 which has exercised the transfer or plans to do so, with all reasonable assistance to ensure that the shares or other instruments of ownership or assets, rights or liabilities are transferred to the receiving entity in accordance with all applicable requirements.

§ 3. The shareholders, creditors and third parties affected by the transfer of rights, other instruments of ownership, assets, rights or liabilities referred to in paragraph 1, are not entitled to prevent, challenge or set aside the transfer even if such a right is provided for by the law that applies to the shares, other instruments of ownership, rights or liabilities, without prejudice to the provisions of Chapter IX.

§ 4. Where a resolution authority of another Member State exercises the write-down or conversion powers, inter alia in relation to capital instruments in accordance with Article 59 of Directive 2014/59/EU, and the eligible debts or relevant capital instruments of the institution under resolution includes instruments or liabilities that fall under Belgian law or liabilities that are owed to creditors established in Belgium, the principal amount of these liabilities or instruments is reduced, or these liabilities or instruments are converted by virtue of the exercise of the write-down or conversion powers by the resolution authority of the other Member State.

§ 5. The creditors affected by the exercise of write-down or conversion powers referred to in paragraph 4 are not entitled to challenge the reduction of the principal amount of the instrument or the liability or, depending on the case, the conversion thereof, without prejudice to the provisions of Chapter IX.

§ 6. In the event of transfer of shares, other instruments of ownership or assets, rights or liabilities that include assets located in another Member State, or of rights or liabilities that fall under the law of another Member State, or in the case of exercise of the write-down or conversion powers, especially as regards additional capital instruments pursuant to Article 250, and where the eligible debts or relevant capital instruments of the institution are subject to a resolution procedure that includes instruments or liabilities that fall under the law of another Member State or includes liabilities in respect of creditors established in another Member State, the following is laid down by Belgian law:

1° the right for shareholders, creditors and third parties to lodge an appeal pursuant to Article 305 to dispute the aforementioned transfer of shares, other instruments of ownership, assets, rights or liabilities;

2° the right for shareholders, creditors and third parties to challenge the reduction of the principal amount or the conversion of an instrument or liability as referred to in paragraph 4 by lodging an appeal pursuant to Article 305;

3° the safeguards referred to in Chapter VII for partial transfer of assets, rights or liabilities.]

CHAPTER VII. - Safeguards

Section I. - [Protection of shareholders and creditors in the case of partial transfer and in the case of application of the bail-in tool]

Title replaced by Article 27 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Article 282. [§ 1.] If the resolution measure only involves a partial transfer of the assets, rights and liabilities of the credit institution, shareholders and creditors whose claims have not been transferred shall receive in payment of their instruments or claims at least as much as what they would have received if the institution had been wound up under insolvency proceedings immediately before the transfer.

[§ 2. Where the resolution authority applies the bail-in tool, the shareholders and creditors whose securities or claims are written down or converted into shares or other instruments of ownership may not incur greater losses than they would have done if the credit institution had been wound up under insolvency proceedings immediately before the decision by the resolution authority to apply the bail-in tool.]

§ 2 inserted by Article 28 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Article 283. § 1. In order to determine whether the shareholders and creditors would have received better treatment had the credit institution been wound up under insolvency proceedings, the resolution authority shall have a valuation carried out by an independent expert after the resolution measure in question has been taken. This valuation shall be distinct from the valuation referred to in Chapter III.

§ 2. By Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may specify the method or methods to be used to carry out the valuation referred to in § 1.

Article 284. If the valuation made in accordance with Article 283 determines that the shareholders and creditors referred to in Article 282 or the Deposit and Financial Instrument Protection Fund have suffered more substantial losses than they would have in the event of winding up, they are entitled to payment of the difference from the resolution authority, at the expense of the [Resolution Fund]. The methods of this payment shall be laid down by the King by a Decree deliberated on in the Council of Ministers.

Article amended by Article 26 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

Section II. — Protection for security arrangements

Article 285. § 1. The resolution authority may not order transfer of:

1° assets against which a liability is secured, unless that liability and the benefit of the security are also transferred;

2° a secured liability, unless the benefit of the security is also transferred;

3° the benefit of the security, unless the secured liability is also transferred.

§ 2. The resolution authority may not order the amendment or termination of a security arrangement if the effect of that modification or termination is that the liability ceases to be secured.
As regards the application of paragraph 1, "security arrangement" means any arrangement under which a person has, by way of security, an actual or contingent interest in the property or rights that are subject to transfer, irrespective of whether that interest is secured by specific property or rights or by a pledge of business assets or by way of another floating charge or similar arrangement.

§ 3. The safeguards referred to in the preceding paragraphs do not apply to the transfer, amendment or termination of assets, rights and liabilities relating to covered deposits.

Section III. — Protection for financial collateral agreements, structured finance arrangements and set-off and netting agreements

Article 286. § 1. The resolution authority may not order the partial transfer, amendment or termination of:

1° assets, rights and liabilities that form all or part of a structured financing arrangement, including covered bonds and securitizations, to which the credit institution is party;

2° rights and liabilities resulting from a title transfer agreement by way of security, including a repurchase transaction (repo);

3° rights and liabilities deriving from a bilateral or multilateral novation or set-off agreement, including a netting agreement or a close-out netting agreement.

§ 2. The protection referred to in § 1 does not apply to the transfer, amendment or termination of assets, rights and liabilities relating to covered deposits.

§ 3. [The provisions of Title VIII prevail over the provisions of the Law of 15 December 2004 on financial collateral arrangements and containing miscellaneous provisions on in rem collateral arrangements and loans with respect to financial instruments.]

§ 3 replaced by Article 28 of the Law of 18 December 2015 - Belgian Official Gazette 29 December 2015

Section IV. — EXCLUSION OF CERTAIN CONTRACTUAL RIGHTS

Article 287. [§ 1. Insofar as the essential obligations arising from the contract, especially the payment and delivery obligations and the provision of a security are further complied with, and without prejudice to paragraph 2, the application of the resolution tools, the exercise of the resolution powers, or the taking of the measures as referred to in Articles 116, § 2, 232, paragraph 2, 234, 235, 236 and 250 as regards a credit institution, even pursuant to a contract entered into by that credit institution,

1° may not be deemed a breach of contract within the meaning of the aforementioned Law of 15 December 2004 or as an insolvency procedure within the meaning of the Law of 28 April 1999 transposing Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems;

2° may not allow non-payment of an instalment to be invoked, or the exercise of any right to termination, suspension or settlement, or realization of any collateral security on the assets of the credit institution.

The restrictions referred to in paragraph 1 also apply to agreements entered into by subsidiaries of the credit institution, the obligations of which are guaranteed or otherwise supported by the credit institution, or by an entity of the group to which the institution
belongs, and to contracts entered into by an entity of the group that include cross-default clauses.

§ 2. A suspension or restriction as referred to Article 280, § 1 does not constitute breach of contract for the application of paragraph 1 of this article, in particular within the meaning of the aforementioned Law of 15 December 2004.

§ 3. The provisions of this Article are deemed overriding mandatory provisions within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council.

Article replaced by Article 29 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Section V. - Protection for payment and settlement systems, central counterparties and central banks

Article 288. § 1. The resolution authority shall ensure that the exercise of resolution powers does not affect the operation and regulation of payment and settlement systems.

In particular, transfers, cancellations and amendments imposed by the resolution authority may not have the effect of:

1° revoking a transfer order in contravention of Article 4 of the Law of 28 April 1999 transposing Directive 98/26/EC of 19 May 1998 on settlement finality in payment and securities settlement systems;

2° amending or negating the enforceability of transfer orders and netting as required by Articles 3 and 4 of the same Law;

3° preventing the use of funds, securities or credit facilities as required by Article 3 of the same Law;

4° jeopardizing collateral security as required by Article 8 of the same Law.

§ 2. The resolution authority may not require payment and settlement systems or their operators, central counterparties or central banks to:

1° suspend any payment or delivery obligation of a credit institution;

2° suspend or restrict rights to enforce collateral security in relation to the assets of a credit institution; or

3° suspend any rights to terminate a contract entered into with the credit institution or a subsidiary of the latter.

Section VI. — Protection for employees

Article 289. The exercise of a power of resolution shall not affect the right of an employee of the credit institution to terminate an employment contract between him/her and that institution.

Article 290. As regards application of collective agreement No 32bis concluded on 7 June 1985 within the National Labour Council concerning maintenance of employees' rights in the event of a change of employer as a result of the legal transfer of an undertaking and regulating the rights of employees re-engaged in the event of a takeover of assets following insolvency, resolution measures shall be considered as acts by the credit institution itself.
**CHAPTER VIII - Procedural requirements**

**Article 291.** The statutory governing body of a credit institution shall be obliged to inform the supervisory authority and the resolution authority if it considers that the credit institution is failing or its failure is imminent pursuant to Article 244, § 2.

**Article 292.** If the resolution authority considers that the terms and conditions set out in Article 244, § 1, 1° and 2°, are met in relation to a credit institution, it shall communicate notify the following authorities forthwith:

1° the supervisory authority;
2° the competent authority of every branch of a credit institution;
3° the Deposit and Financial Instrument Protection Fund
4° where applicable, the group-level resolution authority;
5° the Minister responsible for Finance;
6° if the credit institution is subject to supervision on a consolidated basis, the consolidating supervisor; and
7° the ESRB

8° inserted by Article 27 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

9° inserted by Article 27 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

**Article 293.** The decision of the resolution authority determining that the conditions set out in Article 244, § 1 are met in relation to a credit institution must state the reasons for that decision [as well as the measure that the resolution authority intends to take including, where applicable, the appointment of a special administrator].

**Article amended by Article 28 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016**

**Article 294.** § 1. The resolution authority must notify the credit institution and the bodies referred to in Article 292 without delay of any resolution measure taken against it. [This notification shall include a copy of every measure or of every instrument through which the powers concerned were exercised and provide the date from which each resolution measure enters into force.]

**Article amended by Article 29 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016**

**Article 295.** Any resolution measure must be published forthwith, where applicable after obtaining the judgment referred to in Article 301, § 5:

1° on the website of the resolution authority;
2° on the website of the credit institution;
3° [where the shares or other ownership or debt instruments of the credit institution are admitted to trading on a regulated market, on the FSMA website; and]
4° in summary form, identifying the business transferred and the effective date of transfer, in the Annexes to the Belgian Official Gazette, in the manner laid down by the King.

paragraph 1, 3° replaced by Article 30 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015
[If the shares or other ownership or debt instruments of the credit institution are not admitted to trading on a regulated market, the resolution authority shall ensure that the documents that serve as proof of the resolution measure are sent to the shareholders and creditors of the credit institution under resolution included in the registers or databases of the credit institution under resolution, which are available to the resolution authority.]

paragraph 2 inserted by Article 30 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

CHAPTER IX. — Judicial review

Section I. — Validation

Article 296. Every decision is subject to prior review by the Courts in accordance with the present Section.

Article 297. § 1. The resolution authority shall submit an application to the clerk of the Court to confirm that the decision is in accordance with the law and that, where applicable, the compensatory amounts appear fair, in particular taking into account criteria referred to in Chapter III and in Article 301, § 4.

§ 2. Such an application, on penalty of being declared null and void, must include:

1° the identity of the credit institution concerned;

2° the identity of the receiving entity;

3° the justification for the decision in light of the objectives and conditions provided for in Articles 243 and 244;

4° the price agreed with the receiving entity for the shares, other instruments of ownership, assets, rights or liabilities that are the subject of the decision and, where applicable, the mechanisms for the revision or adjustment of prices;

5° the compensatory amounts, upon what basis these were established or estimated, especially in light of the definitive or provisional valuation in accordance with Chapter II, and the allocation keys;

6° where applicable the required authorizations by public authorities and all other conditions precedent to which the resolution decision is subject;

7° the date, month and year;

8° the signature of the person representing the resolution authority or of its advisor.

A copy of the decision shall be appended to the application.

§ 3. The provisions of Title Vbis of Book II of part IV of the Judicial Code, including Articles 1034bis to 1034sexies, shall not apply to the application referred to in § 1.

Article 298. The procedure initiated with the application referred to in Article 297 shall preclude all other simultaneous or future appeals or claims against the decision with the exception of the claim referred to in Article 305. After the submission of the application every other procedure against the decision initiated previously and still pending with another legal or administrative jurisdiction shall lapse.

Article 299. § 1. The President of the Court shall issue a decision, within 24 hours of the submission of the application referred to in Article 297, on the date and time of the hearing referred to in Article 301 that must take place within three working days of the submission
of the application. This decision shall include all the information referred to in Article 297, § 2.

§ 2. The decision referred to in § 1 shall be notified by the clerk of the Court by way of a registered letter to the resolution authority, to the credit institution concerned and to the receiving entity.

It shall simultaneously be published in summary form in the Belgian Official Gazette. This publication shall serve as a notification, where applicable, to the owners other than the credit institution.

The decision shall be published by the credit institution concerned on its website within 24 hours of the notification referred to in paragraph 1.

Article 300. The persons referred to in Article 299, § 2, may inspect the application referred to in Article 297 through the clerk of the Court free-of-charge until the judgment referred to in Article 301, § 5, is issued.

Article 301. § 1. During the hearing established by the President of the Court and during any later hearings that the Court deems useful, the Court shall hear the resolution authority, the credit institution and the receiving entity.

The Court can, at the request of one of the parties referred to in Article 299, § 2, or ex officio, decide that the hearings or certain hearings be held in pre-trial chambers, by way of derogation from Article 757, § 1, of the Judicial Code.

§ 2. By way of derogation from the provisions of Chapter II of Title III of Book II of Part IV of the Judicial Code, no persons other than those referred to in § 1, first paragraph may be involved in the procedure.

§ 3. After hearing the parties, the Court shall review whether the decision is in accordance with the law and whether, where applicable, the compensatory amounts appear fair.

§ 4. The Court shall take into account the actual situation of the credit institution at the time of issuing the decision especially the financial situation as it was or would have been if the exceptional government intervention or the emergency liquidity advances by the central banks from which they have, either directly or indirectly, benefited, had not been granted.

§ 5. The Court shall issue a decision in one and the same judgment, which shall be pronounced within three working days after the closure of debates.

Article 302. The judgment by way of which the Court establishes that the decision is in accordance with the law and, where applicable, the compensatory amounts appear fair, shall serve as a deed of transfer of title of shares, other instruments of ownership, assets, rights or liabilities that are the subject of the decision, subject to the conditions precedent referred to in Article 297, § 2, 6°.

Article 303. No appeal or application to set aside a judgment by default or by initiating third-party proceedings is possible against the judgment referred to in Article 301, § 5.

The judgment shall be notified by way of a registered letter from the courts to the resolution authority, the credit institution and the receiving entity, and shall be simultaneously published in summary form in the Belgian Official Gazette.

The decision shall be published by the credit institution concerned on its website within 24 hours of the notification referred to in the first paragraph.

Article 304. The resolution authority shall ensure that a message is published in the Belgian Official Gazette in which it is confirmed that the conditions precedent referred to in Article 297, § 2, 6°, have been met.
Section II.— Appeal

Article 305. An appeal can be submitted against any decision or resolution measure at the Court of Appeal in accordance with the provisions of the present Section.

Article 306. § 1. Such an application shall be submitted, on penalty of cancellation, within two months of:

1° either the publication in summary form in the Belgian Official Gazette of the judgment referred to in Article 301, § 5, for the measures subject to a prior review by the Courts; or

2° the publication of the summary referred to in Article 295, 4°, in the annexes of the Belgian Official Gazette for the other measures.

§ 2. The submission of the application shall not affect the executive nature of the measures referred to in Article 305. The Court of Appeal may only decide to suspend the consequences of that measure if the applicant demonstrates that this suspension is in the public interest.

Article 307. The application relates to the compliance of the measures referred to in Article 305 with the law and, where applicable, to the sufficiency of the compensatory amount, of the category of the owners concerned and of the keys for allocation between them.

If the application relates to the sufficiency of a compensatory amount, the Court of Appeal shall base itself on the valuations in accordance with Chapter III and Article 283 and shall apply Article 301, § 4.

Article 308. The judgment of the Court of Appeal has no influence on the validity of the measure referred to in Article 305, including of the transfer of ownership of shares, other instruments of ownership, assets, rights or liabilities that are the subject of the decision.

Article 309. The application shall be regulated for the rest by the Judicial Code.

Article 310. Any disputes arising from the measures referred to in Article 305 or the responsibility referred to in Article 12ter, § 3, of the Law of 22 February 1998, shall fall under the sole jurisdiction of the Courts of Belgium.

CHAPTER X. — Resolution of cross-border groups

Article 311. By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may take all measures useful for regulating:

1° the application of the provisions of the present Title to credit institutions that form part of cross-border groups;

2° the implementation in Belgium of prevention, recovery and resolution measures taken by the competent authorities of other Member States or third countries;

3° the application of resolution measures on goods that are outside Belgium and on agreements and financial instruments governed by foreign law;

4° the exchanges on the subject with the competent authorities of other Member States and third countries.

The powers conferred to the King under the first paragraph end on 31 December 2015.

The decrees passed pursuant to the present Article may amend, supplement, replace or abrogate the existing provisions of the legal provisions in force.
Such decrees shall be abrogated ipso jure if they are not ratified during the twelve months following their publication in the Belgian Official Gazette.

BOOK III. - CREDIT INSTITUTIONS GOVERNED BY FOREIGN LAW

TITLE I. — Branches and activity under the free provision of services in Belgium by credit institutions governed by another Member State

CHAPTER I. — Access to activity in Belgium

Article 312. § 1. Credit institutions governed by another Member State and that may carry on activities listed in Article 4 in their home Member State by virtue of their national law, may pursue this business through the establishment of a branch as soon as the supervisory authority has notified them by way of a registered letter or letter with recorded delivery of their registration as the branch of a credit institution in a Member State.

Such notification shall be made at the latest two months after the competent authority of the home Member State of the institution has communicated the information dossier required by virtue of the European regulations on the subject. If the institution has not been notified by the deadline stated, it may nevertheless open the branch and commence the envisaged activity with the proviso that it informs the supervisory authority thereof.

§ 2. The supervisory authority shall draw up the list of the branches registered in accordance with § 1. The list and all changes made thereto shall be published on its website.

§ 3. The Bank shall inform the FSMA of the aspects relevant to the supervision of compliance with the conduct of business rules in the information dossier.

§ 4. The credit institution must communicate any change it intends to make to the information included in the information dossier referred to in § 1, second paragraph, to the supervisory authority at least one month before the change is effected.

[§ 5. Where a credit institution governed by the law of another Member State plans to call on tied agents established in Belgium in order to provide investment services and/or activities as well as ancillary services on the territory of that Member State, paragraphs 1, 2 and 4 shall apply mutatis mutandis. For the application of this Title, these tied agents shall be deemed equivalent to a branch of a credit institution.

The Bank shall inform the FSMA of the aspects relevant to the supervision of compliance with the conduct of business rules in the information dossier and of the rules relating to tied agents.]

§ 5 inserted by Article 48 of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016 enters into force on the date stated in Article 93, § 1, paragraph 2 of Directive 2014/65/EU for entry into force of the national provisions that transpose the Directive in question

Article 313. § 1. Credit institutions governed by another Member State and that may carry on activities listed in Article 4 in their home Member State by virtue of their national law, may pursue this business in Belgium under the free provision of services as soon as the supervisory authority has notified the institutions concerned that it has received the communication from the competent authority of the home Member State, detailing the activity listed in Article 4 that this institution wishes to pursue in Belgium.

The supervisory authority shall inform the institution concerned thereof within three working days of receipt of the communication. If no notification has been received by the
time stated, the institution may commence the envisaged activity after having informed the supervisory authority thereof.

§ 2. The supervisory authority shall publish the list of the institutions that receive deposits of other repayable funds from the public in Belgium on their website including any changes made thereto.

[§ 3 Where a credit institution governed by the law of another Member State wishes to provide investment services and/or activities as well as ancillary services in Belgium by way of recourse to tied agent established in that other Member State, paragraph 1 shall apply mutatis mutandis.

The Bank shall publish on its website the identities of the tied agents on which the credit institution wishes to call.]

§ 3 inserted by Article 49 of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016 enters into force on the date stated in Article 93, § 1, paragraph 2 of Directive 2014/65/EU for entry into force of the national provisions that transpose the Directive in question

Article 314. The credit institutions referred to in Articles 312 and 313 must disclose their name and home Member State and in the cases referred to in Article 313, their registered office when pursuing their business in Belgium.

CHAPTER II. — Pursuit of business

Article 315. § 1. In the pursuit of business detailed in the list in Article 4, the provisions of the present Title are without prejudice to the compliance with the legal and regulatory provisions that apply in Belgium to credit institutions and their transactions, for reasons of public interest.

The Bank shall inform the credit institutions referred to in Article 312 of which provisions are to its knowledge in the public interest. It shall obtain the opinion of the FSMA to that end.

The provisions of the present Title are also without prejudice to compliance with the legal and regulatory provisions that apply in Belgium to business other than that indicated in the list in Article 4.

§ 2. […]

§ 2 abrogated by Article 404, 1° of the present Law

Article 316. The managers of the branches referred to in Article 312 shall report to the Bank and the accredited auditor or audit firm on compliance with Article 315 and on the appropriate measures taken.

CHAPTER III. — Periodic provision of information and accounting rules

Article 317. The credit institutions referred to in Article 312 shall provide the supervisory authority with periodic reports, in the form and frequency determined by the supervisory authority, on the transactions executed in Belgium by the branches it has established there. The provisions of Article 106, § 2, shall apply mutatis mutandis.

These reports can only be used for statistical ends or to allow the supervisory authority to carry out its supervisory tasks as referred to in the present Title.

The supervisory authority can in particular request information of the credit institutions referred to in paragraph 1 to be able to determine whether their branch established in Belgium is significant within the meaning of Article 322.

Article 318. Upon the recommendation of the Bank, the King determines the rules by way of which the branches referred to in Article 312:
1° keep their accounts and inventories;
2° prepare their financial statements;
3° publish the annual accounting records for their transactions.

CHAPTER IV. — Branch supervision

Section I. — The supervisory authority in its capacity of competent authority of the host Member State.

Article 319. The branches referred to in Article 312 fall under the supervision of the supervisory authority for matters concerning compliance with Articles 315, 317 and 318 insofar as the aspects arising from these provisions fall under the supervision of the supervisory authority. Articles 134 to 136 and 139 shall apply mutatis mutandis.

Article 320. For the purpose of maintaining supervision of the activity of institutions that are governed by another Member State and that operate in Belgium or in other Member States, including via a branch, the supervisory authority shall work in close cooperation with the competent authorities of the other Member States concerned.

To this end, the supervisory authority shall share all information in its possession relating to the management and ownership of the institutions concerned that could facilitate the supervision of these institutions and the examination of the conditions for granting an authorization to those institutions, as well as all the information that could facilitate monitoring these institutions, in particular in the area of liquidity, solvency, deposit guarantees, mitigation of major risks, other factors that could have an effect on the system risks formed by the institution, their administrative and accounting procedures and internal control mechanisms.

Article 321. In its capacity of competent authority of the host Member State, the supervisory authority can ask the competent authority of the home Member State to communicate and explain how account was taken of the information and findings that was shared pursuant to Article 320.

If after the communication of the information and findings, the supervisory authority is still of the opinion that the competent authority of the home Member State has not taken suitable measures, it can, after informing the European Banking Authority and the competent authority of the home Member State and without prejudice to the option of the latter of submitting the matter to the European Banking Authority pursuant to Article 19 of Regulation No 1093/2010, take suitable measures to prevent further infringements in order to protect the interests of depositors, investors and other persons to whom services are provided or to safeguard the stability of the financial system.

Section II. — Significant branches

Article 322. § 1. The supervisory authority can ask either the consolidating supervisor or the competent authority of the home Member State to designate a branch located in Belgium as significant within the meaning of Article 51 of Directive 2013/36/EU.

Such a request shall state the reasons for which the branch should be designated as significant and in particular:
a) whether the deposits of the branch in Belgium make up more than 2% of the market share;
b) the envisaged consequences of suspension or termination of the institution’s activity for the liquidity of the system and for payment, clearing and settlement systems in Belgium;
c) the scale and significance of the branch within the Belgium banking or financial system in terms of the number of clients it has.

§ 2. If within two months of receipt of a request as referred to in § 1, no joint decision has been made, the supervisory authority shall, within a further period of two months, decide itself whether the branch located in Belgium is significant. When making its decision, the supervisory authority shall take into consideration the views and reservations of the consolidating supervisor or of the competent authority of the home Member State.

The decision, as referred to in paragraph 1, shall be put in writing with a full statement of reasons and sent to the competent authorities concerned.

Article 323. If the competent authority of the home Member State has not consulted the supervisory authority in its capacity of competent authority of the host Member State on the operational measures relating to liquidity recovery plans, or if the supervisory authority after such a consultation continues to be of the opinion that the operational measures required are not adequate, the supervisory authority can submit the matter to the European Banking Authority and ask for its assistance in accordance with Article 19 of Regulation No 1093/2010.

Section III. — On-site inspections

Article 324. After informing the supervisory authority thereof, the competent authority of the home Member State may conduct on-site inspections, where applicable with the assistance of its appointed representatives, in the branches referred to in Article 312, with a view to collecting or inspecting information on the management of the branch as well as all information that could facilitate the supervision of the credit institution, in particular in the area of liquidity, solvency, deposit guarantees, mitigation of major risks, administrative and accounting procedures and internal control mechanisms.

The supervisory authority may, at the request of the competent authority of the home Member State of the credit institution, conduct on-site inspections, as a form of assistance to that authority, concerning the aspects referred to both in paragraph 1 and in Article 319. The costs for these inspections shall be borne by the authority that requests them.

Article 325. [After consulting the competent authority of the home Member State, the supervisory authority can, on a case-by-case basis, carry out on-site inspections of the activity of the branches referred to in Article 312 and, for supervisory purposes, order branches to provide information on their activity if it considers this relevant for reasons of stability of the Belgian financial system. After these inspections, the supervisory authority shall inform the competent authority of the home Member State of the information obtained and of the findings that are relevant for assessing the risks of the institution or for the stability of the Belgian financial system.]

Article replaced by Article 403 of the present Law

Article 326. § 1. The management of the branches referred to in Article 312 shall appoint one or more auditors or audit firms accredited by the Bank for a renewable term of three years.

Articles 223 and 224, paragraphs 1 to 4, shall apply to those auditors and firms. Before dismissing an accredited auditor or accredited audit firm from his/her/its functions, the opinion of the supervisory authority must be sought.
§ 2. The accredited auditors or audit firms appointed in accordance with § 1, shall offer their assistance for the supervision by the supervisory authority at their sole and exclusive responsibility and in accordance with the present paragraph, following the rules of the trade and the guidelines of the supervisory authority. To this end:

1° they shall assess the internal control measures that the branches have taken for compliance with the laws, decrees and regulations that apply by virtue of Article 315 to branches, and share their findings with the supervisory authority;

2° they shall report to the supervisory authority on:

a) the results of the limited review of the periodic statements that the branches referred to in Article 312 provide to the supervisory authority at the end of the first half-year, in which it is confirmed that they have no knowledge of any facts that would indicate that these periodic statements at the end of the half-year were not drawn up in all material respects in accordance with the applicable guidelines of the supervisory authority. Furthermore, they shall confirm that these periodic statements at the end of the half-year are, in all material respects, in line with the accounting and inventories with respect to the accounting records, in terms of completeness, which means that they include all records from the accounting and inventories on the basis of which these periodic statements were drawn up, and in terms of accuracy, which means that the records from the accounting and inventories on the basis of which these periodic statements were drawn up are reflected accurately; and confirm that they have no knowledge of any facts that would indicate that these periodic statements at the end of the half-year were not drawn up in all material respects in accordance with the applicable guidelines of the supervisory authority. The supervisory authority can further specify the periodic statements referred to herein;

b) the results of the review of the periodic statements that the branches referred to in Article 312 submit to the supervisory authority at the end of the financial year in which it is confirmed that the periodic statements were drawn up in all material respects in accordance with the applicable guidelines of the supervisory authority. Furthermore, they shall confirm that these periodic statements at the end of the financial year are, in all material respects, in line with the accounting and inventories with respect to the accounting records, in terms of completeness, which means that they include all records from the accounting and inventories on the basis of which these periodic statements were drawn up, and in terms of accuracy, which means that the records from the accounting and inventories on the basis of which these periodic statements were drawn up are reflected accurately; and confirm that these periodic statements at the end of the financial year were drawn up in accordance with the accounting and valuation rules for drawing up the financial statements relating to the last accounting year; the supervisory authority can further specify the periodic statements referred to herein;

They can be tasked by the supervisory authority, where applicable at the request of the European Central Bank, in its capacity of monetary authority, with confirming the records that these branches must provide to these authorities, in particular pursuant to Article 317;

3° they shall provide a special report to the supervisory authority at its request on the organization, activity and financial structure of the branches relating to the circumstances for which the supervisory authority is competent;

4° they shall report on their own initiative to the supervisory authority on the subject of aspects for which it is competent and within the scope of the cooperation with the competent authority of the home Member State, as soon as they are made aware of:
a) decisions, facts or developments that could materially influence the position of the branch financially or in the area of its administrative and accounting procedures or its internal control;
b) decisions or facts that could indicate an infringement of the provisions of the present Law and the decrees and regulations made for the implementation thereof, or other laws and regulations that apply to their business in Belgium, insofar as the circumstances referred to in these provisions pertain to the competence of the supervisory authority;

5° they shall report to the Bank, at its request, where another Belgian public authority informs them that legislation in the public interest that applies to the branch has been infringed.

No civil, criminal or disciplinary measures may be taken, nor may professional sanctions be imposed against accredited statutory auditors who have provided information in good faith as referred to in paragraph 1, 4°.

Accredited statutory auditors shall communicate the reports that they forward to the supervisory authority in accordance with paragraph 1, 3°, to the management of the branch. For this communication, the obligation to confidentiality applies as laid down in Article 35 of the Law of 22 February 1998. They shall provide the supervisory authority with a copy of their communications they address to these managers and that relate to issues that could be of importance for the supervision it exercises.

In branches where a works council is established pursuant to the Law of 20 September 1948 on the organization of the economy, accredited auditors and audit firms shall carry out the tasks referred to in Article 15bis of the present Law.

Article 15quater, second paragraph, first and third sentences and third paragraph of the same Law apply.

At the request and at the costs of the competent authority of the home Member State, they may exercise supervision of that branch with respect to the aspects referred to in Articles 319 and 320, second paragraph, as a form of assistance and after prior notification to the supervisory authority.

§ 3. The accredited auditors or audit firms shall certify the annual accounting records published pursuant to Article 318, 3°.

CHAPTER V. — Exceptional measures

Article 327. § 1. Within the scope of the cooperation referred to in Article 320, first paragraph, the supervisory authority shall also communicate to the competent authority of the home Member State, that the credit institution that has a branch in Belgium or operates in Belgium by virtue of the free provision of services does not comply with the provisions of the national laws of the home Member State that transpose Directive 2013/36/EU or Regulation No 575/2013, or appears no longer to comply with them, if it is aware of that fact.

§ 2. If the supervisory authority is of the opinion that the competent authority of the home Member State has not taken any measures to avert the irregular situation or the risk of an irregular situation referred to in § 1, it can submit the matter to the European Banking Authority in accordance with Article 19 of Regulation No 1093/2010, to request its assistance.

Article 328. § 1. Before applying the procedure referred to in Article 327, the supervisory authority can, in emergency situations, pending measures from the competent authorities of
the home Member State or reorganization measures from the administrative or judicial authorities of that Member State, and without prejudice to the option of the latter of submitting the matter to the European Banking Authority in accordance with Article 19 of Regulation 1093/2010, take all protective measures necessary to offer protection against financial instability that would constitute a serious threat to the collective interests of depositors, investors and clients in Belgium.

Such measures could consist of the measures referred to in Article 236, § 1, 1°, 2°, 4° and §§ 2 and 3.

§ 2. The supervisory authority shall put an end to the measures referred to in § 1 as soon as they no longer appear justified. Furthermore, such measures shall no longer have effect if the reorganization measures laid down by the administrative or legal authorities of the home Member State have effect in the home Member State.

§ 3. The European Commission, the European Banking Authority and the other competent authorities concerned shall be informed of the measures taken pursuant to § 1.

Article 329. § 1. Without prejudice to Article 327, where the supervisory authority has demonstrable grounds to believe, where applicable by virtue of information of the FSMA, that a credit institution operating in Belgium by way of the free provision of services, or a credit institution with a branch in Belgium infringes the obligations arising from the provisions [pursuant to Directive 2014/65/EU and Regulation No 600/2014], where no powers are conferred on the supervisory authority or the FSMA, it shall inform the competent authority of the home Member State of these findings.

§ 1, paragraph 1 amended by Article 50, 1° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

If the credit institution, in spite of the measures taken by the home Member State, or because these measures were inadequate, continues to act in a way that is prejudicial to the interests of investors in Belgium or the orderly functioning of the markets, the supervisory authority can take measures or have measures taken, where applicable at the request of the FSMA, and after informing the competent authority of the home Member State thereof, to protect investors and the proper functioning of the markets. This relates in particular, with regard to branches, to the measures referred to in Article 236, § 1, 1°, 2°, 4° and §§ 2 and 3 of the Law; with regard to credit institutions that operate via the free provision of services, this relates in particular to the measures referred to in Article 236, § 1, 4° and §§ 2 and 3. [The European Commission and European Securities and Markets Authority shall immediately be informed of these measures.]


[In the case referred to in paragraph 2, the supervisory authority may submit the matter to the European Securities and Markets Authority and ask for its assistance in accordance with Article 19 of Regulation No 1095/2010.]

§ 1, paragraph 3 inserted by Article 50, 3° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

§ 2. Without prejudice to Article 327, where the supervisory authority establishes that a credit institution governed by another Member State that operates in Belgium through a branch or through the free provision of services does not comply with the legal and regulatory provisions applicable in Belgium that come under the area of competence of the supervisory authority, it shall call upon the credit institution to remedy that situation within a period it determines.

Where the FSMA establishes that a credit institution governed by another Member State that operates in Belgium through a branch or through the provision of services does not comply with the Belgian legal and regulatory requirements that fall under the competence
of the FSMA, it shall call upon the credit institution to remedy that situation within a period it determines.

[…]


§ 3. In the event that a branch persists with the infringements referred to in § 2, the supervisory authority can, where applicable at the request of the FSMA, after informing the competent authority of the home Member State thereof, take the suitable measures provided for in Article 236, § 1, 1°, 2° and 4°, or order that they be taken. In such a case, Article 236, §§ 2 to 6 shall apply.

In the event that a credit institution operating through the provision of services persists with the infringements referred to in § 2, the supervisory authority can, where applicable at the request of the FSMA, after informing the competent authority referred to in § 2, prohibit that institution from executing any new transactions in Belgium. The supervisory authority may limit the period of validity of this prohibition and lift it, where applicable, based on Article 236, § 1, 4° and §§ 2 and 3. This paragraph also applies in the cases referred to in Article 236, § 5.

[If the breaches referred to in paragraph 2, 1º and 2º by a credit institution persist despite these measures, the supervisory authority shall take the necessary measures, where applicable at the request of the FSMA, and after informing the competent authorities of the home Member State, to protect depositors, investors and other clients, and the proper functioning of the markets.]


§ 4. The supervisory authority shall communicate to the European Commission [and to the European Securities and Markets Authority], in the frequency that the latter determines, the type and number of measures that have been taken in accordance with § 3.


§ 5. The supervisory authority can, at the request of the competent authority on that matter, apply §§ 2 and 3 to a credit institution referred to in Article 312 or 313 where the credit institution has committed acts in Belgium that contravene the legal or regulatory provisions which, for reasons of public interest, apply to areas other than those [referred to in Article 317].

§ 5 amended by Article 404, 3° of the present Law

§ 6. […]

§ 6 abrogated by Article 404, 2° of the present Law

[§ 6]. The Bank shall inform the FSMA of any measures taken [pursuant to §§ 2 to 5].

§ 7 amended by Article 404, 4° of the present Law

The FSMA shall inform the supervisory authority of any measures taken pursuant to Article 36 of the Law of 2 August 2002 with respect to branches.

Article 330. In the event of a repeal or withdrawal of authorization of a credit institution by the competent authority of its home Member State, the supervisory authority shall recommend the closure of the branch that this institution has established in Belgium, after having informed that authority thereof. It can appoint a temporary administrator to oversee the assets of the branch pending a decision on their destination, who shall have the power to take any protective measures in the interest of creditors.
CHAPTER VI. — Situations in which operations in Belgium are carried out by an institution governed by a participating Member State

Article 331. § 1. With respect to the tasks conferred to the European Central Bank pursuant to Article 4 of the SSM Regulation, in cases in which a credit institution governed by a participating Member State wishes to establish a branch in Belgium or wishes to commence operations under the free provision of services, the provisions relating to the procedures between competent authorities and the competences attached thereto shall not apply.

§ 2. With respect to the supervision of a branch or the operations carried out in Belgium under the free provision of services in cases referred to in § 1, the provisions on cooperation and sharing of information between competent authorities, as well as Article 330, shall not apply where the European Central Bank is the only competent authority concerned.

§ 3. Nevertheless, if the European Central Bank is the competent authority for a credit institution governed by a participating Member State that has a branch in Belgium, it shall make no evaluation of that branch with a view to its designation as a significant branch within the meaning of Article 322 of the present Law.

CHAPTER VII. — Specialized subsidiaries of credit institutions governed by another Member State

Article 332. Financial institutions governed by another Member State and that meet the conditions for credit institutions governed by that Member State, and in the opinion of the competent authorities of that State, meet the conditions in accordance with those referred to in Article 92, first paragraph, as determined in the national law of the Member State concerned, can request the application of Chapters I to V of the present Title.

TITLE II. — Branches in Belgium of third-country credit institutions

CHAPTER I. — Access to activity in Belgium

Article 333. § 1. Prior to opening a branch in order to carry out activity in Belgium, credit institutions governed by a third country and to which an authorization was granted in that third country in that capacity, must obtain authorization from the Bank.

In this respect, the following Articles shall apply:

1° Articles 8, 9, 12, 13 and 15, with the proviso that
- the Bank has exclusive competence for decisions on the application for authorization,
- the reference to Article 9 applies to the credit institution the branch is governed by,
- the credit institutions must have received the consent in their home country for carrying out the activity included in their programme of activity;

2° Article 14, first paragraph, with the proviso that the branches referred to in this Title are specified in a separate section of the list;
3° Article 16, with the proviso that Article 16 applies to the credit institution the branch is governed by. An authorization can also be granted to branches of institutions that have a legal form without being commercial undertakings;

4° Article 17, first and second paragraph, by way of which the initial capital is replaced by a provision, the amount of which can be determined by the Bank, by means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, as well as the components of and conditions for the corresponding assets, namely from the viewpoint of their location in Belgium;

5° Articles 18 to 22, with the proviso that the reference to Article 18 applies for the credit institution the branch is governed by and the reference to Articles 19 to 22 for the branch in Belgium;

6° Article 44, insofar as the credit institution cannot demonstrate that the associations of its Belgian branch are covered at least to the same extent by a deposit protection scheme from its home country as by a Belgian deposit protection scheme with respect to the covered assets and the coverage level established.

[7° Article 59, with the proviso that the management of the branch is deemed the management committee.]

§ 1, 7° inserted by Article 31 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

§ 2. Without prejudice to § 1, a branch of a credit institution governed by a third country can only be granted an authorization if the following conditions are met:

1° the credit institution is subject to prudential supervision in its home country that is equivalent to the prudential supervision regulated by Directive 2013/36/EU and Regulation No 575/2013;

2° the Bank has entered into a Memorandum of Understanding with the authority concerned of a third country for the sharing of information in order to be able to exercise effective supervision on the operations of the Belgian branch. The Bank may derogate from these conditions if it is of the opinion, in a particular case, that its knowledge of the credit institution and of the group to which it belongs, does not improve materially with regard to its organization and the risks arising from its activity, in particular the risks relating to creditors of the Belgian branch, in particular its depositors.

§ 3. The Bank may refuse an authorization, without prejudice to the international agreements which are binding for Belgium, to a branch of a credit institution governed by a third country that does not offer the same access to its market to credit institutions governed by Belgian law.

§ 4. The Bank can refuse an authorization to a branch referred to in the present Title if it is of the opinion that setting up a company governed by Belgian law is required for the protection of savers [or investors] or for a sound and prudent management of the institution or even for the stability of the financial system. For such a decision, account can in particular be taken of the following criteria:


- that the credit institution does not actually exercise the activity envisaged by the branch in the third country or within the group to which it belongs;

- the interest of the branch in relation with the scale of the credit institution.

§ 5. Prior to issuing its decision on the application for authorization of a branch, the Bank shall consult the authority concerned of the third country.
Article 334. The Bank shall inform the European Commission, the European Banking Authority and the European Banking Committee of authorizations to a branch granted pursuant to the present Title.

CHAPTER II. — Pursuit of business

Article 335. § 1. Alongside Article 45, with respect to Article 333 and the provisions declared applicable pursuant to Article 333, the following Articles shall apply:

1° Article 53, with the proviso that the Bank has the exclusive competence;

2° [Article 55, paragraph 1];

§ 1, 2° amended by Article 32, 1° of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

3° Articles 60 and 62 with respect to the managers of branches;

[3°/1 Articles 67 to 71;]

§ 1, 3°/1 inserted by Article 32, 2º of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

4° Articles 72, 76, 77, 3° and 4° and 78, with the proviso that the managers of the branch are considered members of the statutory governing body for the application of Article 72;

5° Articles 74, 98, 106 and 107;

[5°/1 Annex II;]

§ 1, 5°/1 inserted by Article 32, 3º of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

6° Article 5 of Annex IV.

§ 2. The King determines the rules and obligations for publishing the annual accounting statements of the branches.

Article 336. [§ 1.] The credit institution must have assets in Belgium eligible for reporting for an amount in line with the amount of deposits—as referred to in Article 382—that the branch has received, unless it demonstrates that it meets the following conditions:

1° the legislation relating to insolvency procedures of the third country guarantee that the creditors that have deposited their assets with the Belgian branch receive the same treatment as the creditors that have deposited their assets with the credit institution in the third country;

2° in the case of insolvency proceedings opened against the credit institution in the third country, the law governing those proceedings grants depositors who have deposited their funds with the Belgian branch a rank that offers similar protection to that provided in Article 389 of the present Law.


[§ 2. The Belgian branch of the credit institution may only accept financial instruments from clients if, at the time of opening the insolvency procedure against the credit institution in the third country, the legislation regarding such procedures recognizes the property right in rem as referred to in Article 13, paragraph 2 of Royal Decree No 62 of 10 November 1967 governing the custody of fungible financial instruments and the settlement of transactions on these instruments, consolidated on 27 January 2004, for the investors which
have deposited their financial instruments at the Belgian branch or, where this legislation grants a right to the investors as a result of the custody of the financial instruments, which forms a right in rem on the basis of which the investor may exercise a claim for return of these financial instruments, with the exclusion of a simple creditor’s right.]


CHAPTER III. — Supervision

Article 337. Articles 134, 135, 136[, 136/1] and 139 apply.


Article 338. The management of the branches referred to in the present Title must appoint one or more accredited auditors or one or more accredited audit firms in accordance with Article 220. The management can also designate a deputy under the same terms.

When appointing an audit firm, Article 221 shall apply mutatis mutandis.

Articles 223, 224, paragraph 1 to 4, 225, paragraphs one, two, three and six [326, § 1, paragraph 2, § 2, paragraphs 4 and 5 and § 3] apply.

paragraph 3 amended by Article 33 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Article 339. § 1. The Bank can, on the basis of the principle of reciprocity, agree with the credit institution’s third-country authorities and with the competent authorities of third countries of the other branches of this institution established outside Belgium, which obligations and prohibitions apply to the branch in the Belgium, how the supervision is tackled and exercised and in which way the cooperation and the information sharing with these authorities, as referred to in Articles 36/16 and 36/17 of the Law of 22 February 1998, is organized.

§ 2. To be able to establish the rules and methods that are best in line with the nature and spread of the activity of the credit institution and its supervision, the agreements may derogate from the provisions of the present Law, with the approval of the Minister responsible for Finances.

Insofar as general supervision exists that meets the criteria established by or pursuant to the present Law, these agreements can grant exemption to the application of certain provisions of the present Law and its implementing decrees and regulations.

The agreements referred to in the present Article may not include more advantageous rules for the branches to which they relate than for the branches of credit institutions established in Belgium that are governed by another Member State.

CHAPTER IV. — Withdrawal, exceptional measures, sanctions

Article 340. § 1. Articles 233, 234, 236 and 238 and Articles 345 to 352 apply, with the proviso that the Bank has exclusive competence.

§ 2. Where the Bank establishes that the branch is not working in accordance with the provisions of the present Law and its implementing decrees and regulations, or receives information indicating that the institution runs the risk of no longer operating in accordance with those provisions in the near future, the Bank can establish limits for the exposure of
the branch vis-à-vis its parent undertaking or the entities of the group to which the credit institution belongs.

§ 3. The Bank can revoke the authorization of a branch referred to in the present Title if it is of the opinion that setting up a company governed by Belgian law is required for the protection of savers or for a sound and prudent management of the institution or even for the stability of the financial system. The Bank can apply the criteria referred to in Article 333, § 4 thereto.

**TITLE III. — Representative offices**

**Article 341.** All credit institutions governed by a foreign state and that have not established a branch in Belgium but wish to establish a representative office to promote their business or gather and disseminate information, pursuant to compliance with the restrictions of Article 342, must first register with the Bank.

Prior to processing the registration, the Bank shall consult the authorities tasked with the supervision of credit institutions in the home Member State.

**Article 342.** A representative office may not pursue banking business and especially not intervene, under any circumstances, in the closing or ordinary settlement of financial transactions or financial services except when these form part of the administrative management of that office.

**Article 343.** The Bank can order any information to be forwarded to it, conduct on-site investigations or have them conducted and take cognizance of correspondence and any documents in connection with the operations of representative offices registered in accordance with Article 341.

Where the Bank establishes that a representative office does not comply with the current obligations, it can revoke its registration.

**Article 344.** All credit institutions governed by Belgian law that wish to establish a representative office on the territory of a foreign state must inform the supervisory authority thereof. Where the operations of this office may, in compliance with the rules that apply in that state, exceed the thresholds in Articles 342 and 343, Articles 86 to 89 shall apply. The supervisory authority can order any information to be forwarded to it on the organization, operations and position of the office and can inspect these records or have them inspected. Article 140 shall apply.

**BOOK IV - FINES AND OTHER PENALTIES**

**Article 345.** Without prejudice to the other measures prescribed by the present Law, the supervisory authority or the resolution authority, depending on the circumstances, can publish the fact that a credit institution, a financial holding company, a mixed financial holding company, or a mixed-activity holding company governed by Belgian or foreign law and established in Belgium, has failed to act on its orders to comply with the present Law or its implementing decrees or regulations or with Regulation No 575/2013 [or Regulation No 600/2014] within the term that it has determined.

*paragraph 1 amended by Article 54, 1° of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016*

In such a case, the supervisory authority or the resolution authority, depending on the circumstances, shall inform the European Securities and Markets Authority at the same time of such a publication where it relates to a credit institution that provides one or more
of the investment services and/or performs investment activity within the meaning of [Directive 2014/65/EU].


Article 346. § 1. Without prejudice to the other measures prescribed by the present Law, the supervisory authority can determine a deadline for a credit institution, a financial holding company, a mixed financial holding company or a mixed-activity holding company governed by Belgian or foreign law and established in Belgium:

a) by which it must comply with specific provisions of the present Law, of its implementing decrees or regulations or [of Regulation No 575/2013 or Regulation No 600/2014] or;

§ 1, a) amended by Article 55, 1º of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016

b) by which it must make the necessary adjustments to its policy for the organization of the business or its policy on own funds requirements and its liquidity management. Such an order applies to branches of credit institutions governed by another Member State only for matters relating to the failure to comply with one of the obligations referred to in Article 315;

c) by which it must comply with the provisions of Title II of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

§ 2. If the undertaking continues to be in breach on the deadline, the Bank can, where applicable at the request of the European Central Bank, apply a penalty, after having heard the undertaking or at least convened it, of a maximum of EUR 2 500 000 per infringement and a maximum of EUR 50 000 per day of delay.

§ 3. The following points shall be taken into consideration when establishing the amount of the fine:

a) the severity of the non-compliance identified and, where applicable, the potential impact of this non-compliance on the stability of the financial system;
b) the financial influence of the undertaking concerned, as taken from its turnover.

§ 4. The fines imposed pursuant to § 2 shall be collected by the Treasury [through the General Administration of Tax Collection and Recovery of FPS Finance].


§ 5. Where the Bank publishes measures it imposes in accordance with § 2, it shall inform the European Securities and Markets Authority at the same time of such a publication where it relates to a credit institution that provides one or more of the investment services and/or performs investment activity within the meaning of [Directive 2014/65/EU].

Article 347. § 1. Without prejudice to the other measures prescribed by the present Law and without prejudice to the other measures prescribed by other laws or regulations, the Bank may, where applicable at the request of the European Central Bank, where it identifies an infringement of the provisions of the present Law, the measures taken for its implementation or of Regulation No 575/2013 [or Regulation No 600/2014] or where it identifies an infringement of the provisions of Title II of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, impose an administrative fine to a credit institution, a financial holding company, a mixed financial holding company or a mixed-activity holding company governed by Belgian or foreign law established in Belgium, to one or more members of the statutory governing body of these entities or to persons involved in their senior management in the absence of a management committee, who are responsible for the non-compliance identified.


§ 2. Administrative fines imposed on an institution or an undertaking referred to in § 1, shall amount, for the same deed or deeds, to at least 1% and at most 10% of the annual net turnover of the institution in the previous financial year.

Administrative fines imposed on a natural person shall amount, for the same deed or deeds, to at least EUR 5 000 and at most EUR 5 000 000.

§ 3. The fines imposed by the Bank pursuant to § 1 shall be collected by the Treasury [through the General Administration of Tax Collection and Recovery of FPS Finance].


§ 4. The amount of the fine shall be established by virtue of

a) the severity and the duration of the non-compliance;
b) the extent of the responsibility of the party involved;
c) the financial influence of the party involved, as taken from the total turnover of the legal person involved or the annual income of the natural person involved;
d) any advantage or profit that these non-compliances result in;
e) the disadvantage for third parties that this non-compliance has led to, insofar as this is quantifiable;
f) the extent of the cooperation of the natural or legal persons involved with the competent authorities;
g) previous non-compliance by the party involved;
h) the potential negative impact of the non-compliance on the stability of the financial system.

§ 5. Where the Bank publishes measures imposed in accordance with the present Article, it shall inform the European Securities and Markets Authority at the same time where it relates to a credit institution that provides one or more of the investment services and/or performs investment activity within the meaning of [Directive 2014/65/EU].

TITLE II. — Criminal sanctions

Article 348. § 1. A punishment of a prison term of one month to one year along with a fine of EUR 50 to EUR 10 000 or one of these punishments alone shall be imposed on:

1° those who do not comply with Articles 5 or 6;

2° those which pursue the business of a credit institution as referred to in Article 7 of Book III, Title II, without being authorized to do so or despite their authorization being withdrawn or revoked;

3° those which intentionally do not make the notifications as referred to in Articles 46 and 50, ignore the opposition as referred to in Article 48, second paragraph, or ignore the suspension as referred to in Article 54, first paragraph, 1°;

4° members of the statutory governing body and other persons referred to in Article 62 who infringe the provisions of the present Article;

5° members of the statutory governing body or persons tasked with the senior management who infringe Articles 72, 77, 2° to 4°, 74, 213, 214 or Articles 341 to 344 or Article 99 of Regulation No 575/2013;

6° members of the statutory governing body or persons tasked with the senior management of a credit institution who open a branch or provide services abroad, without having made the notifications as referred to in Articles 86 or 90 or who do not comply with Article 89;

7° members of the statutory governing body or persons tasked with the senior management of a credit institution who infringe the decrees or regulations referred to in Articles 106, 203, § 1, or 318;

8° members of the statutory governing body or persons tasked with the senior management of a credit institution who do not comply with Article 106, § 2, first paragraph, first and third sentences, second and third paragraph;

9° those who carry out trades or execute transactions without having received the consent of the special commissioner as referred to in Article 236, § 1, 1°, or who act against a suspension decision in accordance with Article 236, § 1, 4° or who do not comply with the prohibition in Article 329, § 1, second paragraph, or § 3, or with the protective measures as referred to in Article 329, § 6, or with the order referred to in Article 330;

10° those who knowingly accept funds or assets possessed in breach of Article 74;

11° those who as statutory auditor, accredited statutory auditor or independent expert certify, approve or ratify financial statements, balance sheets and profit and loss accounts or consolidated financial statements of undertakings or certify, approve or ratify periodic statements or information in cases where, with their knowledge, the provisions of the present Law and its implementing decrees and regulations or Regulation No 575/2013 are not complied with, or who have not acted as they normally should to ascertain whether those provisions are complied with;

12° those who hamper the investigations and inspections they have to comply with in the country itself or abroad or refuse to provide the records they are obliged to by virtue of the present Law, or who knowingly provide inaccurate or incomplete information;

14° all directors and administrators who do not follow the requirements of Articles 220, second paragraph, and 326, § 1, first paragraph;

15° the persons who infringe Article 79;
16° the members of the statutory governing body or the persons tasked with the senior management of a credit institution who do not follow the orders of the resolution authority in accordance with Articles 226, § 2, 232, second paragraph, 3°, 276, § 1, and 277, 5°, or knowingly provide inaccurate or incomplete information.

§ 2. Infringements of the prohibition of Article 20 shall be punished by a prison sentence of three months to two years and with a fine of EUR 1 000 to EUR 10 000.

§ 3. A prison sentence of eight days to three months and a fine of EUR 50 to EUR 10 000 or only one of these punishments shall be imposed on all managers, administrators or directors who do not adhere to the provisions of Articles 95 and 99 and the regulations laid down pursuant to Article 98.

[§ 4. The financial intermediaries referred to in Article 2, 9° of the Law of 2 August 2002 or those acting on behalf of such intermediaries, who use the financial instruments of a client in any way whatsoever without the consent required pursuant to Article 65, § 1, for their own benefit or that of third parties, shall be deemed guilty of breach of trust and punished with the penalties specified in Article 491 of the Criminal Code.]


Article 349. The requirements of Book I of the Criminal Code, including Chapter VII and Article 85 apply to the misdeeds punished by the present Title.

Article 350. Credit institutions, financial institutions and undertakings have civil liability for the fines imposed on the members of their statutory governing body, the persons tasked with their senior management or their representatives pursuant to the provisions of the present Title.

Article 351. All investigations resulting from infringement of the present Law or one of the laws referred to in Article 20, of members of the statutory governing body, persons tasked with senior management, representatives, or accredited statutory auditors of credit institutions or financial institutions, and all investigations resulting from infringement of the present Law of all other natural or legal persons must be notified to the Bank and the FSMA, each in accordance with its competence, by the judicial and/or administrative authority they have been brought before.

All criminal proceedings by virtue of the misdeeds referred to in the first paragraph, must be notified to the Bank and to the FSMA, each in accordance with its competence, by the Public Prosecution Service.

Article 352. The Bank and the FSMA may intervene, at any stage of the proceedings, before the criminal court this misdeed has been brought before pursuant to the present Law, without the need to demonstrate the existence of any damage. Such an intervention shall occur in accordance with the rules that apply for the civil party.
TITLE I. — Reorganization measures

CHAPTER I. — Competence regime and recognition of foreign measures

Article 353. Subject to Articles 340 and 358, the Belgian reorganization authorities are exclusively competent for taking reorganization measures with respect to the credit institutions referred to in Book II. These reorganization measures shall be implemented and have effect in accordance with Belgian legislation, subject to the specifications and exceptions established in the present Law. The Belgian reorganization authorities can in particular not take any reorganization measures vis-à-vis a credit institution governed by another country, or vis-à-vis a branch established in Belgium of such a credit institution.

Article 354. Reorganization measures taken by the reorganization authorities of another Member State with respect to a credit institution governed by that Member State shall have effect in Belgium based on the legislation of that Member State insofar as it has effect there, without prejudice to the publication thereof in Belgium. Such reorganization measures shall apply in Belgium with no further formalities.

[Article 354/1. The write-down or conversion of debts of an institution or an entity governed by foreign law, conducted with the application of the bail-in tool, shall not benefit the joint and several debtors and third parties that have provided a personal or collateral security governed by Belgian law.]

Article inserted by Article 46 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

CHAPTER II. — Consultation and information

Article 355. The Belgian reorganization authorities shall take the necessary measures to inform the competent authorities of the other Member States forthwith, where the credit institution has a branch or provides services pursuant to Article 90, of any decision made to take reorganization measures; this shall as far as possible be done prior to establishing this measure or otherwise immediately thereafter. Such a notification, in which all the specific consequences of the reorganization measure shall be explained, shall be made by the supervisory authority by all appropriate means.

The resolution authority shall keep the supervisory authority informed of the progress of implementation of reorganization measures that come under its competence.

Article 356. Where the Belgian reorganization authorities deem it necessary to take reorganization measures in Belgium vis-à-vis a credit institution governed by another Member State, they shall ensure that this is communicated forthwith to the competent authority of the Member State concerned. Such a communication shall be made by the supervisory authority.

Article 357. If the rights of third parties in the Member State in which the credit institution concerned has a branch or provides services in accordance with Article 90, could be jeopardized by the implementation of a reorganization measure decided upon in accordance
with Article 353, the supervisory authority or, with respect to the reorganization measures referred to in Book II, Title VIII, the resolution authority, shall ensure that an extract of this decision is published in the Official Journal of the European Union as well as in two national daily newspapers of the Member States in which the rights of third parties could be affected by the implementation of this reorganization measure. This publication shall not in any way influence the consequences of the reorganization measure, especially for the creditors of the credit institution concerned.

The following data shall be provided in the first paragraph of the extract referred to at least in the official language or languages of the Member States concerned:

1° the subject and the legal basis for the decision made;

2° the timeframe for appeal with details of the deadline by which an appeal may be lodged as well as the particulars of the authority competent for such an appeal.

For third parties living or residing in another Member State, the term for lodging an appeal against the establishment of a reorganization measure shall begin when the first of the communications provided for in the first paragraph is made in that Member State.

CHAPTER III. — Branches of credit institutions governed by third countries

Article 358. The Bank shall inform the competent authorities of the other Member States in which a credit institution governed by a third country also has a branch forthwith and by any appropriate means of its decision to take a reorganization measure pursuant to Article 340 as well as of the specific consequences of such a measure; this shall as far as possible be done prior to establishing this measure or otherwise immediately thereafter. The Bank shall endeavour to coordinate its intervention with that of the reorganization authorities of the credit institutions of the other Member States.

TITLE II. — Winding-up proceedings

CHAPTER I. — Competence regime and recognition of foreign measures

Article 359. The Commercial Court has exclusive competence to declare a credit institution referred to in Book II bankrupt. This implies that it may not declare a credit institution governed by the law of another country or its branches established in Belgium bankrupt.

Article 360. Winding-up proceedings opened by the winding-up authorities of another Member State with respect to a credit institution governed by that Member State, shall be recognized in Belgium with no further formalities and shall have effect in Belgium as soon as they have effect in the Member State in which they were opened.

CHAPTER II. — Procedures for credit institutions governed by Belgian law

Section I. — Consultation and sharing of information

Article 361. Without prejudice to Articles 273 and 378, the Commercial Court shall inform the supervisory authority forthwith of any decision to declare an institution bankrupt as well as of the specific consequences of the bankruptcy; this shall as far as possible be done
prior to the declaration of bankruptcy or otherwise immediately thereafter. The supervisory authority shall share this information forthwith and by any appropriate means to the competent authorities in the other Member States in which the credit institution concerned has a branch or provides services pursuant to Article 90.

Article 362. The trustee(s) in bankruptcy appointed in accordance with Article 11 of the Bankruptcy Law of 8 August 1997 shall ensure the publication referred to in Article 38 of that same Law, both via publication of the extract in the Official Journal of the European Union and in two national daily newspapers of the Member States in which the credit institution has a branch or provides services pursuant to Article 90.

Article 363. If the creditors to whom individual notifications are sent as referred to in Article 62 of the Bankruptcy Law of 8 August 1997 reside or live in another Member State, the circular shall also show, alongside the information in the extract referred to in Article 362, that the creditors with preferential rights or collateral security are obliged to declare their claims and the consequences of non-compliance with the terms established in Article 72 of the Law of 8 August 1997.

The circular, which shall be drawn up in the language of the procedure, shall bear the heading ‘Invitation to lodge a claim - Deadlines’ in all the official languages of the European Economic Area.

Article 364. The trustee(s) in bankruptcy appointed in accordance with Article 11 of the Bankruptcy Law of 8 August 1997, shall regularly keep the creditors informed of the progress of the process in the manner they deem most appropriate.

Section II. — Procedural arrangements — Applicable law

Article 365. Bankruptcy of credit institutions referred to in Book II shall be governed by Belgian law, subject to specifications and exceptions of the present Law.

Article 366. § 1. Creditors who live or reside in another Member State can notify of their claims or remarks in the official language of that Member State, as long as the following heading is included in the language of the procedure in Belgium: “lodgement of claim” or “submission of observations relating to a claim”. The trustees in bankruptcy can also require that these creditors provide a translation of the claims or observations submitted. Article 63 of the Bankruptcy Law of 8 August 1997 shall apply.

§ 2. Claims from creditors who live or reside in another Member State shall receive the same treatment and especially the same rank as similar claims that creditors who live or reside in Belgium could submit. To this end, claims from similar creditors shall be deemed equivalent.

The first paragraph shall also apply to creditors living or residing in a third country insofar as the law that applies in that country does not provide the option of opening insolvency proceedings against the credit institution concerned and that the procedure opened in Belgium can have effect in that country. Where that is not the case, these creditors shall be deemed equivalent, for the proceedings opened in Belgium, to unsecured creditors.

Section III. — Withdrawal of authorization

Article 367. Where a bankruptcy ruling has been made against a credit institution, the [European Central Bank] shall withdraw its authorization. Article 237 shall apply.

Article amended by Article 405 of the present Law
TITLE III. — Rules that apply both to reorganization measures and winding-up proceedings

CHAPTER I. — Voluntary liquidation or liquidation as a result of a court order

Article 368. Prior to formulating a proposal for dissolution within the meaning of Article 181 of the Companies Code for a credit institution referred to in Book II, the statutory governing body of the credit institution concerned shall consult the supervisory authority.

Only one ruling can be made on the grounds for judicial winding-up of a credit institution established in the Companies Code after the unanimous opinion of the supervisory authority. This opinion shall be requested pursuant to the procedure prescribed in Article 378.

The winding-up of a credit institution and the subsequent liquidation thereof shall be without prejudice to the possibility of imposing one of the measures referred to in Article 236, § 1, without previously setting a deadline.

CHAPTER II. — Exceptions or nuances to the application of Belgian law as procedural law

Article 369. By way of derogation from Articles 353 and 365, the consequences of reorganization measures or winding-up proceedings for:

1° employment contracts and employment relationships shall be exclusively governed by the law of the Member State which applies to the employment contract;

2° agreements granting the right of use or acquisition of immovable property shall be exclusively governed by the law of the Member State in which the immovable property is located. This legislation shall determine whether the property is movable or immovable;

3° the right to immovable property, a boat or an aircraft that is subject to registration in a public register shall be exclusively governed by the law of the Member State under the authority of which such register is held;

4° the exercise of property rights on financial instruments or of other rights on such instruments, the existence or transfer of which requires registration in a register, or held or located on an account or in a central securities depository in a Member State, shall be exclusively governed by the law of the Member State in which the register or account is held or the central securities depository is located;

5° agreements for novation or bilateral or multilateral set-off as well as the express termination clauses included therein to make set-off possible, shall be exclusively governed by the law that applies to those agreements;

6° repurchase agreements, or ‘repo transactions’ shall be exclusively governed by the law that applies to those agreements, without prejudice to the provisions under 4° of the present Article;

7° transactions on a foreign regulated market within the meaning of Article 2, 6°, of the Law of 2 August 2002, shall be exclusively governed by the law that applies to those transactions, without prejudice to the provisions under 4° of the present Article.

Article 370. § 1. Taking reorganization measures or opening bankruptcy proceedings shall not affect the right in rem of a creditor or of a third person on tangible or intangible movable or immovable property—both specific assets and collections of indefinite assets as
a whole which change from time to time—that belong to a credit institution and that, at the
time of these measures being taken or this procedure being opened, were located on the
territory of another Member State.

§ 2. Rights, within the meaning of § 1, shall be understood to include:

1° the right to realize an asset or have it realized and to be paid out of the income or
revenue from that asset, especially by virtue of security or mortgage;

2° the exclusive right to recover a debt, in particular through a security on the debt or by
assignment of that debt for collateral;

3° the right to claim the asset back and/or to require its return from anyone who has it in
their possession or uses it against the will of the person entitled to it;

4° the right in rem to the beneficial use of the asset.

§ 3. The right to acquire a right in rem, within the meaning of § 1, registered in a public
register, that can be enforced against third parties, shall be deemed equivalent to a right in
rem.

Article 371. § 1. The taking of reorganization measures or the opening of bankruptcy
proceedings against a credit institution that purchases an asset, shall not affect the seller’s
retention of title rights where that asset, at the time at which the measures were taken or the
proceedings were opened, was located on the territory of another Member State than the
Member State in which the measures were taken or the proceedings were opened.

§ 2. The taking of reorganization measures or the opening of bankruptcy proceedings
against a credit institution that acts in the capacity of seller, after the delivery of the sold
asset has taken place, is no grounds for termination or cancellation of the purchase and
shall not prevent the purchaser from acquiring the title to the purchased asset where that
asset, at the time at which the measures were taken or the proceedings were opened, was
located on the territory of another Member State than the Member State in which the
measures were taken or the proceedings were opened.

Article 372. The taking of reorganization measures or the opening of bankruptcy
proceedings shall not affect the right of a creditor to offset claims against the claims of the
credit institution where that offset is permitted in the law that applies to the credit
institution’s claims.

Article 373. § 1. Without prejudice to Article 369 and subject to Article 374, Articles 370,
§ 1, 371 and 372 shall be without prejudice to the application of Articles 17 to 20 of the

§ 2. Article 1167 of the Civil Code and Articles 17 to 20 of the Law of 8 August 1997
shall not apply where the party that has the advantage in the legal act referred to in the
provisions named, delivers proof that the legal act is subject to the law of a Member State
that is not Belgian law, and that this law does not in this case provide for the possibility to
challenge that legal act.

Article 374. By way of derogation from Article 236, § 1, 1° and 4°, of the present Law and
of Article 16 of the Law of 8 August 1997, and notwithstanding Articles 17 to 20 of the
latter Law, where the credit institution, after the taking of a reorganization measure or after
the opening of bankruptcy proceedings has in its possession an immovable property, a boat
or an aircraft against payment that is subject to registration in a public register or financial
instruments or rights to such instruments, the existence or transfer of which requires
registration in a register or is held in an account or in a central securities depository in
another Member State, that transaction shall be declared null and void or unenforceable by
virtue of the law of the Member State where that immovable property is located or under
the authority of which such register, account or securities depository is held;

CHAPTER III. — Commissioners in reorganization and liquidators

Section I. — Recognition of foreign measures and procedures

Article 375. The appointment of a commissioner in reorganization or of a liquidator by an
authority of another Member State shall be demonstrated by way of a certified true copy of
the decision for appointment or any other certificate drawn up by that authority.

Although no legalization or similar formalities is required; a translation must nevertheless
be made of the document referred to in paragraph 1, in the language or one of the
languages of the linguistic area in which the commissioner in reorganization or the
liquidator wishes to act.

Article 376. § 1. The commissioners in reorganization and liquidators appointed by an
authority of another Member State can exercise all powers in Belgium that they are
authorized to exercise in the territory of that other Member State.

The same applies for persons they designate in accordance with the law of that Member
State in order to assist them or to represent them in the settlement of a reorganization
measure or winding-up proceedings.

§ 2. For the exercise of their powers in Belgium, the commissioners in reorganization and
liquidators referred to in § 1, shall comply with Belgian legislation, and more in particular
with respect to the manner in which assets are realized and employees are informed. Those
powers may not include coercive measures or the right to rule on legal proceedings or
disputes.

§ 3. The commissioners in reorganization and liquidators referred to in § 1 shall inform the
Kruispunbank van Ondernemingen (KBO)/Banque Carrefour des entreprises (BCE)
referred to in Article 3 of the Law of 16 January 2003 on the creation of a Crossroads Bank
for Enterprises, on the modernization of the trade register, on the creation of recognized
companies’ dockets and on diverse rules, of any reorganization measures and winding-up
proceedings decided upon by the authority of another Member State in view of their
registration.

Section II. — Belgian commissioners in reorganization and liquidators

Article 377. The trustee(s) in bankruptcy that were or are appointed in accordance with
Article 11 of the Law of 8 August 1997 shall take all the necessary measures to comply
with the registration of winding-up proceedings in a public register of another Member
State imposed pursuant to the legislation of that Member State.

The costs arising from a registration in a public register of another Member State shall be
deemed costs relating to the procedure, irrespective of whether the registration is imposed
or occurs at the initiative of the persons referred to in the first paragraph.
Article 378. § 1. Without prejudice to Article 273 and excluding the cases in which a credit institution is the subject of the resolution measures provided for in Book II, Title II, the opening of bankruptcy proceedings or a provisional divestment of the debtor within the meaning of Article 8 of the Bankruptcy Law of 8 August 1997 against a credit institution may only be ruled after unanimous opinion of the supervisory authority.

§ 2. The request for an opinion shall be addressed in writing to the supervisory authority. This request shall include the reference documents necessary.

The supervisory authority shall deliver its opinion at the latest fifteen days after receipt of the request for an opinion. In the case of a procedure relating to a credit institution that the supervisory authority believes may engender major systemic risk implications, or for which prior coordination with foreign authorities is necessary, the supervisory authority may have a longer term within which to deliver its opinion, with the proviso that the total term may not amount to longer than thirty days. If the supervisory authority is of the opinion that it must make use of this exceptional longer term, it shall advise the judicial authority that must deliver a ruling. The term within which the supervisory authority has to deliver its opinion shall suspend the term for the ruling by the judicial authority. If the supervisory authority does not deliver an opinion by the stated deadline, the court may issue a ruling.

The supervisory authority shall provide its opinion in writing. It shall be delivered to the registrar of the court, by any means, and the said registrar shall provide it to the President of the Commercial Court and to the Crown Prosecutor. The opinion is to be entered into the dossier.

Article 379. The trustee(s) in bankruptcy referred to in Article 27 of the Bankruptcy Law of 8 August 1997 as well as the persons who are included as trustee in bankruptcy pursuant to the aforementioned Article 27, fourth paragraph, shall be appointed on the recommendation of the supervisory authority.

[Article 379/1. § 1. Without prejudice to Articles 17 to 21 of the Bankruptcy Law of 8 August 1997, the payments, transactions and trades executed by a credit institution and the payments made to such an institution on the day of the declaration of its bankruptcy, shall be valid if they precede the time of the bankruptcy ruling or were executed with no knowledge of the credit institution’s bankruptcy.

For the purposes of paragraph 1, the institutions tasked with the clearing or settlement between credit institutions of payments or financial transactions, shall be deemed equivalent to credit institutions.

§ 2. For the application of this Article, the King may extend the transactions and payments He decides to other categories of institutions from the financial sector.]

Article inserted by Article 34 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

BOOK VIII - [INVESTOR AND DEPOSIT PROTECTION SCHEMES]


Article 380. Credit institutions established in Belgium must [as regards deposits held in Belgium or in a Member State] participate in a collective deposit protection scheme that they finance, which has the purpose of granting compensation to certain categories of depositors where bankruptcy is ruled or where the supervisory authority has made the decision referred to in Article 381, paragraph 2. [The deposit guarantee scheme also has the purpose of financing the resolution of credit institutions pursuant to Article 384/1. The resolution authority shall specify the amount, after consultation with the Deposit and Financial Instrument Protection Fund, for which the deposit guarantee scheme is liable. The financial resources of this deposit guarantee scheme may also be used to finance measures to safeguard access by depositors to covered deposits in the case of bankruptcy of the credit institution concerned. The King specifies the methods and conditions for the taking of such measures.]

Paragraph 1 amended by Article 4, 1° to 3° of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

The first paragraph shall not apply to branches of credit institutions governed by another Member State. It shall also not apply to branches of credit institutions governed by a third country, the obligations of which are covered by a deposit protection scheme of that State to an extent at least equal to that of the corresponding Belgian deposit protection scheme[, as regards the covered assets and the coverage level established].


The Deposit and Financial Instrument Protection Fund shall take over the management and transactions of the deposit protection scheme.

[The depositors at branches established in Belgium by credit institutions governed by the law of another Member State shall be informed and refunded by the Deposit and Financial Instrument Protection Fund following and in accordance with the instructions of the deposit guarantee system of that other Member State.]

paragraph 4 replaced by Article 4, 4° of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

[The Deposit and Financial Instrument Protection Fund shall conduct tests on its deposit protection scheme at least every three years and where necessary more regularly. The first test shall take place at the latest on 3 July 2017.]

paragraph 5 replaced by Article 4, 5° of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

Article 381. The supervisory authority shall inform the Deposit and Financial Instrument Protection Fund [as quickly as possible] if it detects problems that could lead to the intervention of this deposit protection scheme.

paragraph 1 amended by Article 5, 1° of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

Except in cases where bankruptcy has been ruled, the supervisory authority makes the decision [by which it is determined that [a credit institution referred to in Article 380], appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposits and to have no current prospect of being able to do so]. Such a determination shall occur [as soon as possible and in any event] no later than five working days after first becoming satisfied that a credit institution has failed to pay deposits which are due and payable.

[The Deposit and Financial Instrument Protection Fund shall ensure that the repayable amount is available within a period of seven working days to be calculated from the date of the decision referred to in paragraph 2, or the date on which the credit institution’s bankruptcy was ruled. The King may allow a longer term for repayment of no more than three months if the depositor is not absolutely entitled to the sums held in the account. The King may also postpone the repayment where it is uncertain whether a person is entitled to receive a repayment, where the deposit is subject to a legal dispute or restrictive measures of national governments or international bodies, where no transaction has taken place as regards the deposit within the last 24 months, where the amount to be repaid is deemed to form part of a temporarily high balance or where the amount to be repaid must be paid out by the deposit guarantee scheme of the home Member State.]

paragraph 3 replaced by Article 5, 4° of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

[The credit institution or, in the case of its bankruptcy, the trustee in bankruptcy, shall share all information at any time and at the request of the Deposit and Financial Instrument Protection Fund that the Deposit and Financial Instrument Protection Fund needs in order to repay the deposits, including the markings pursuant to Article 381/1 and the total amount of eligible deposits of each depositor.] The King may determine further rules for the exchange of information between the credit institution or the trustee in bankruptcy and the Deposit and Financial Instrument Protection Fund.

paragraph 4 amended by Article 5, 5° of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

If doubts are raised as to the accuracy of the information that the Deposit and Financial Instrument Protection Fund has received pursuant to paragraph 4, the credit institution or the trustee in bankruptcy shall check this at the request of the Deposit and Financial Instrument Protection Fund and, where applicable, share the more accurate information with the Deposit and Financial Instrument Protection Fund.

Article 381/1. Credit institutions shall mark eligible deposits in such a way as to be able immediately to identify those deposits. The more detailed rules on these markings are laid down by the King.

Article inserted by Article 6 of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

Article 382. [The deposit protection scheme set up by the Deposit and Financial Instrument Protection Fund shall provide for a maximum amount of EUR 100 000 per depositor and per institution that takes part in this scheme, for the repayment of deposits, irrespective of the currency in which they are expressed. The King adjusts this amount in order to bring it into line with the amount established by the European Commission to take into account inflation in the European Union.

In addition to paragraph 1, the following deposits benefit from a protection of more than EUR 100 000 for a period determined by way of a Royal Decree deliberated on in the Council of Ministers, of at least three months and at most twelve months after the amount was credited or from the time at which those deposits could legally have been transferred:

a) deposits resulting from property transactions with respect to private homes;
b) deposits relating to certain life events of a depositor and which serve social purposes as indicated by way of a Royal Decree deliberated on in the Council of Ministers.
c) deposits based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction and which serve the purposes as indicated by way of a Royal Decree deliberated on in the Council of Ministers.

The King determines, by way of a Decree deliberated on in the Council of Ministers, the amount, methods and conditions for the granting of this additional protection per category of deposits that come under the previous paragraph.

Article replaced by Article 7 of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

Article 383. The King determines the information that the credit institutions must provide to the depositors on the coverage of their deposits resulting from the aforementioned scheme.

[The use in advertisements of the information referred to in paragraph 1 is limited to simply stating the deposit guarantee scheme that offers a guarantee for the product to which the advertisement pertains. The King may allow the communication of additional information.]

paragraph 2 inserted by Article 8 of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

[The FSMA shall supervise compliance with this Article and the decisions made in implementation thereof. For the exercise of this supervision, it shall have the powers referred to in Articles 34, § 1, 1°, 35, §§ 1 and 2, 36, 36bis and 37 of the Law of 2 August 2002.]

paragraph 3 inserted by Article 8 of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

Article 384. […]

Article abrogated by Article 9 of the Law of 22 April 2016 - Belgian Official Gazette, 12 May 2016

[Article 384/1. § 1. Where the resolution authority takes a resolution measure and insofar as this measure guarantees that the depositors continue to have access to their deposits, the Deposit and Financial Instrument Protection Fund shall contribute in cash to financing the resolution in the following cases:

1° when the bail-in tool is applied, the amount by which the guaranteed deposits would have been written down in order to absorb the losses in the credit institution in accordance with Article 267/1, § 1, 1° had the guaranteed deposits been included within the scope of the bail-in; or

2° when one or more resolution tools other than the bail-in tool is/are applied, the amount of losses that covered depositors would have suffered, had they suffered losses in proportion to the losses suffered by creditors with the same level of priority in the case of an arrangement with creditors.

The contribution by the Deposit and Financial Instrument Protection Fund as referred to in paragraph 1 is established by virtue of the valuation referred to in Articles 246 to 248 and may not be greater than the losses it would have had to suffer had the credit institution been liquidated through winding-up proceedings.

Where it is determined by a valuation pursuant to Article 283 that the Deposit and Financial Instrument Protection Fund’s contribution to the financing of the resolution was greater than the net losses it would have incurred had the institution been wound up under normal insolvency proceedings, the Deposit and Financial Instrument Protection Fund shall be entitled to the payment of the difference in accordance with Article 284.
§ 2. Where eligible deposits at a credit institution under resolution are transferred via the
sale of business tool or the bridge institution tool, the depositors shall have no claim from
the Deposit and Financial Instrument Protection Fund in relation to any part of their
deposits at the credit institution under resolution that are not transferred, provided that the
amount of funds transferred is equal to or greater than the aggregate coverage level
established under Article 382.

§ 3. Where the Deposit and Financial Instrument Protection Fund’s available financial
means are used in accordance with paragraphs 1 and 2, and are subsequently reduced to
less than two thirds of the target level determined by the King, the regular contribution to
the deposit guarantee schemes shall be set at a level allowing for reaching the target level
within six years.

§ 4. The Deposit and Financial Instrument Protection Fund may in no case contribute to the
financing of the resolution for an amount per intervention greater than 50% of the target
level referred to in paragraph 3.]

Article inserted by Article 29 of Royal Decree of 18 December 2015 - Belgian Official Gazette, 29
December 2015

TITLE II. — Investor protection scheme

Title inserted by Article 62 of the Law of 25 October 2016 - Belgian Official Gazette, 21
November 2016

[Article 384/2. Credit institutions established in Belgium must participate in a collective
investor protection scheme to which they contribute and which has the purpose of granting
compensation to certain categories of investors where bankruptcy is ruled of such an
institution or where the supervisory authority has made the decision as referred to in Article
384/3, paragraph 2 as regards such an institution.

The first paragraph does not apply to branches of credit institutions governed by the law of
another Member State. It shall also not apply to branches of credit institutions governed by
a third country, the commitments of which are covered by an investor protection scheme of
that State to an extent at least equal to that of the scheme referred to under paragraph 1, as
regards the covered assets and the coverage level established.

The Deposit and Financial Instrument Protection Fund shall take over the management and
transactions of the investor protection scheme.]

Article inserted by Article 62 of the Law of 25 October 2016 - Belgian Official Gazette, 21
November 2016

[Article 384/3. The supervisory authority shall inform the Deposit and Financial
Instrument Protection Fund as quickly as possible if it detects problems that could lead to
the intervention of this investor protection scheme.

Except in cases where bankruptcy has been ruled, the supervisory authority makes the
decision by which it is determined that a credit institution referred to in Article 384/2
appears to be unable for the time being, for reasons which are directly related to its
financial situation, to meet its commitments vis-à-vis the investors as regards repayment of
the financial instruments held on their account or owed by the credit institution and to have
no prospect of being able to do so. Such a determination shall occur as soon as possible and
in any event no later than five working days after first becoming satisfied that a credit
institutions has failed to repay a financial instrument.
The Fund shall provide for the compensation referred to in Article 384/4 within three months after recognition of the investor’s claim and establishment of the amount of that claim. The supervisory authority may extend this term by three months at most. Such an extension may only be permitted in very exceptional circumstances and in specific cases.

The credit institution or, in the case of its bankruptcy, the trustee in bankruptcy, shall share all information at any time and at the request of the Deposit and Financial Instrument Protection Fund that the Deposit and Financial Instrument Protection Fund needs to grant the compensation referred to in Article 384/4 to the investors. The King may determine further rules for the exchange of information between the credit institution or the trustee in bankruptcy and the Deposit and Financial Instrument Protection Fund.

If doubts are raised as to the accuracy of the information that the Deposit and Financial Instrument Protection Fund has received pursuant to the previous paragraph, the credit institution or the trustee in bankruptcy shall check this at its request and where applicable share the more accurate information with the Deposit and Financial Instrument Protection Fund.


Article 384/4. Without prejudice to any excesses in accordance with European law, the investor protection scheme set up by the Deposit and Financial Instrument Protection Fund shall provide for a maximum amount of EUR 20 000 per investor and per credit institution that takes part in this scheme as compensation for non-repayment of financial instruments held on behalf of the investors or owed by the credit institution, irrespective of the currency in which the financial instruments are expressed.


Article 384/5. The King determines the information that the credit institutions must provide to the investors on the coverage of their deposits resulting from the aforementioned scheme.

The use in advertisements of the information referred to in paragraph 1 is limited to simply stating the investor guarantee scheme that offers a guarantee for the financial instruments to which the advertisement pertains. The King may allow additional information to be stated.

The FSMA shall supervise compliance with this Article and with the decisions made in implementation thereof. For the exercise of this supervision, it shall have the powers referred to in Articles 34, § 1, 1°, 35, §§ 1 and 2, 36, 36bis and 37 of the Law of 2 August 2002.


Article 384/6. The Deposit and Financial Instrument Protection Fund shall take the necessary measures and arrangements to ensure that branches of credit institutions governed by another Member State are able to take part in the investor protection scheme that it manages with the aim of supplementing, within the limits of this scheme, the guarantees provided by the scheme that the institution adheres to in its State.

If the branch that has made use of the right provided for in paragraph 1 does not meet its obligations vis-à-vis the investor protection scheme, the Deposit and Financial Instrument Protection Fund shall refer the matter, in cooperation with the supervisory authority, to the competent authority that has granted the authorization to the credit institution to which the branch belongs. If the situation has not been remedied within twelve months, the Protection Fund for Deposits and Financial Instruments can, based on the unanimous opinion of this authority, exclude
the branch after a notice period of twelve months has elapsed. The forward commitments from before that exclusion shall remain covered by the protection scheme until maturity. Other assets held before the exclusion shall remain covered for twelve months. Investors shall be informed by the branch, or failing that by the supervisory authority, of the termination of coverage.]


BOOK IX - FINAL, AMENDING, TRANSITIONAL AND ABROGATING PROVISIONS

TITLE I. — Final and miscellaneous provisions

Article 385. For the application of Articles 1 and 5 of the present Law, the King may define the criteria for determining the public nature of the operations these provisions relate to.

Article 386. By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may take all useful measures to set up any financing arrangements necessary for the effective implementation of the instruments and resolution powers by the resolution authority.

Article 387. By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King can extend the application of all or part of the provisions of Book II, Title II, Chapter VII and of Titles IV and VIII to financial holding companies and mixed financial holding companies and establish further rules pertaining thereto.

Article 388. The powers conferred to the King under Articles 386 and 387 end on 31 December 2015.

The decrees passed pursuant to Articles 386 or 387 may amend, supplement, replace or abrogate the existing legal provisions in force.

Such decrees shall be abrogated ipso jure if they are not ratified during the twelve months following their publication in the Belgian Official Gazette.

[Article 389. § 1. Covered deposits and claims against a credit institution from the Protection Fund for Deposits and Financial Instruments for principal, interest and accessory costs, shall have a preferential right on all movable property of that credit institution.

The preferential right referred to in the first paragraph shall rank immediately after the preferential rights referred to in Article 19, 4° nonies, of the Mortgage Law of 16 December 1851.

§ 2. For the part which exceeds the level of cover provided for in Article 382, the eligible deposits of natural persons and small and medium-sized enterprises shall have a preferential right on all the movable property of that credit institution.

The preferential right referred to in the first paragraph shall rank immediately after the preferential right referred to in § 1.

For the application of the first paragraph, small- and medium-sized enterprises shall mean enterprises with an annual income of no more than EUR 50 million.]
TITLE II. — Amending provisions

Article 390. From 4 November 2014, Article 11, § 2 shall be replaced as follows:

"§ 2. Where the Bank does not take into account the opinion of the FSMA on the matters referred to in paragraph 1, § 1, this fact shall be communicated, including the reasons thereof, in the decision to refuse the authorization or in the draft decision it forwards to the European Central Bank pursuant to the SSM Regulation. The aforementioned opinion of the FSMA on point 1° of § 1, first paragraph, shall be included in the notification of the Bank’s decision to refuse the authorization or in its draft decision on the application for authorization as well as in the final decision of the European Central Bank”.

Article 391. From 4 November 2014, Article 12 shall be replaced as follows:

“Article 12. The supervisory authority shall provide its opinion on an application for authorization within six months of submission after the full dossier and at the latest within twelve months after receipt of the application.

If the Bank decides that the conditions of Section II are met, it shall communicate a draft decision to the applicant and to the European Central Bank so that the European Central Bank can rule within the terms referred to in paragraph 1 pursuant to the SSM Regulation. The Bank may, given the need for sound and prudent management, in its draft decision attach conditions to the authorization for the exercise of some of the envisaged activities.

If the Bank determines that the conditions of Section II are not met, it shall refuse the authorization.

The Bank shall notify of its decision to refuse the authorization or the final decision of the European Central Bank within fifteen days by registered letter or letter with recorded delivery, with due regard to the terms referred to in the first paragraph.”

Article 392. From 4 November 2014, Article 47 of the present Law shall be replaced as follows:

“Article 47. The Bank shall send the candidate acquirer a written confirmation of receipt promptly and in all cases within two working days of receipt of the notification and of all the information referred to in Article 46, as well as upon receipt at a later date, where applicable, of the information referred to in paragraph 3. This shall include the date on which the assessment period shall close. The Bank shall at the same time inform the European Central Bank.

The assessment period of the European Central Bank for making the decision referred to in § 3 shall be no more than 60 working days to be calculated from the date of confirmation of receipt of the notification and of all documents required in accordance with the list in Article 46, second paragraph.

During the assessment period, although no later than the fiftieth day thereof, the Bank can, either of its own accord or pursuant to a request from the European Central Bank, request further information necessary to complete the assessment. This request shall be made in writing and shall specify the additional information needed. The Bank shall provide the European Central Bank with any supplementary information it receives forthwith.

The assessment period shall be suspended from the date on which the Bank has requested further information until receipt of the response thereto from the candidate acquirer. This suspension shall last for a maximum of twenty working days. Although the Bank is free to formulate additional requests to complete or clarify information after the deadline stipulated in the previous paragraph, where applicable at the request of the European Central Bank, such requests shall not lead to a suspension of the assessment period.
The Bank can extend the suspension referred to in paragraph 4 to a maximum of thirty working days where:

a) the candidate acquirer is established outside the European Economic Area or is not subject to EU legislation; or


Article 393. From 4 November 2014, Article 48 of the present Law shall be replaced as follows:

“Article 48. In the assessment of the notification and information referred to in Article 46 and the additional information referred to in Article 47, the Bank shall review the suitability of the candidate acquirer and the financial soundness of the envisaged acquisition based on the criteria referred to in Article 18, second paragraph, in order to ensure the sound and prudent management of the credit institution targeted by the envisaged acquisition and taking into consideration the expected influence of the candidate acquirer on the credit institution.

Over the course of the assessment period referred to in Article 47 and at the latest 15 working days before the end of that period, the Bank shall address a draft decision to the European Central Bank including reasons as to whether or not it opposes the envisaged acquisition. The opposition may only be based on substantiated grounds for believing, by virtue of the criteria of Article 18, second paragraph, that the candidate acquirer is not suitable to guarantee sound and prudent management of the credit institution, or on the fact that the information that the candidate acquirer has provided is incomplete.

Where the European Central Bank decides based on the proposal of the Bank, to oppose the envisaged acquisition, it shall inform the candidate acquirer thereof in writing within two working days and without exceeding the assessment period deadline. An appropriate explanatory note on the decision may be made accessible to the public at the request of the candidate acquirer.

Where the European Central Bank does not oppose the envisaged acquisition within the assessment period, that acquisition shall be deemed approved.

The European Central Bank may establish a deadline for the completion of the envisaged acquisition and extend that deadline where applicable.”

Article 394. From 4 November 2014, Article 49 of the present Law shall be replaced as follows:

“Article 49. To carry out the assessment referred to in Article 48, the Bank shall work in close collaboration with any other competent authority concerned or, depending on the circumstances, in collaboration with the FSMA, if the candidate acquirer is one of the following persons or institutions:

a) a credit institution, an insurance company, a reinsurance company, an investment firm, an alternative investment fund manager or a management company of undertakings for
collective investment to which an authorization has been granted pursuant to the law of another Member State or, depending on the circumstances, granted by the FSMA;
b) the parent undertaking of an undertaking as referred to in the description under a);
c) a natural or legal person with the control of an undertaking as referred to in the description under a).

For this purpose, the Bank shall as rapidly as possible share information relevant or essential to the assessment with these authorities. It shall share all relevant information upon request and all essential information of its own accord. In the cases referred to in paragraph 1, the Bank shall always communicate in its draft decision any of the positions or considerations of the competent authority responsible for the candidate acquirer or, depending on the circumstances, of the FSMA. Such positions or considerations shall also be included in the decision of the European Central Bank.”.

Article 395. From 4 November 2014, Article 53 of the present Law shall be replaced as follows:

“Article 53. Credit institutions shall notify the Bank as soon as they are made aware of acquisitions or disposals of their shares resulting in a downward or upward crossing of one of the thresholds referred to in Article 46.

They shall also inform the Bank immediately of all information of which they are aware and that can have an influence on the situation of their shareholders or members with respect to the assessment criteria referred to in Article 18, second paragraph. These information obligations also apply to the persons referred to in Article 9. The Bank shall provide the European Central Bank with this information.

Under the same conditions and at least once a year, they shall communicate to the Bank the identity of shareholders or members who, acting alone or in concert, directly or indirectly hold a qualifying holding in their capital, as well as the proportion of capital and how many voting rights they hold. They shall also communicate to the Bank how many shares and for how many voting rights attached thereto they have received a notification of acquisition or disposal for in accordance with Article 515 of the Companies Code, if such a notification to the Bank is not prescribed by the articles of association.”.

Article 396. From 4 November 2014, Article 54 of the present Law shall be replaced as follows:

“Article 54. Where the supervisory authority has grounds to believe that the influence of a natural or legal person who directly or indirectly holds a qualifying holding in a credit institution, could hinder the sound and prudent management of that credit institution, without prejudice to the other measures provided for in the present Law, it can:

1° suspend the exercise of the voting rights attached to the shares that are held by the shareholder or member in question; the supervisory authority can, at the request of all interested parties, permit the abrogation of the measures ordered by it; its decision shall be communicated to the shareholder or member concerned in the most appropriate manner; its decision shall be enforceable as soon as it is notified; the supervisory authority can make its decision public;

2° order the shareholder or member concerned to dispose of the shareholder rights held by him/her/it within a term determined by the supervisory authority.

Should these not be disposed of within the established term, the supervisory authority can request the sequestration of the shareholder rights from the institution or from the person it determines. The sequestrator shall notify the credit institution, which shall amend the register of registered shares accordingly and only accept the exercise of the rights attached thereto through the sequestrator. The sequestrator shall act in the interest of the sound and
prudent management of the credit institution and in the interest of the holder of the sequestered shareholder rights. It shall exercise all rights attached to the shares. The amounts collected by the sequestrator as a dividend or otherwise shall only be transferred to the aforementioned holder where that holder has complied with the order referred to in paragraph 1, 2°.

The consent of the aforementioned holder is required to subscribe to capital increases or other (voting) securities, to opt for a dividend payout in company shares, to agree to takeover or exchange bids and to pay up as yet non-paid-up shares. The shareholder rights acquired as part of such transactions shall be added, ipso jure, to the aforementioned sequestration. The remuneration for the sequestrator shall be established by the supervisory authority and paid by the aforementioned holder.

The sequestrator can deduct this remuneration from the amounts paid to it in its capacity of sequestrator or paid to it by the aforementioned holder in anticipation of, or after completion of the transactions referred to hereinabove.

Where voting rights are exercised by the original holder or by another person outside the sequestration who acts on behalf of this holder, after the term established in accordance with the first paragraph, 2°, first sentence, notwithstanding the suspension of their exercise in accordance with the first paragraph, 1°, the Commercial Court of the jurisdiction in which the company has its headquarters may, at the request of the supervisory authority, declare null and void all or part of the decisions of the general meeting where the attendance or majority quorum required for the said decisions would not have been reached without the voting rights that have been exercised unlawfully."

**Article 397.** On the date of entry into force of Articles 40, 41, 43, 49, 50 and 51 of Directive 2013/36/EU, in accordance with Article 151 of that Directive, Article 157, paragraph 1 shall be replaced as follows:

"§ 1. Where the competent authorities of another Member State in which a Belgian credit institution has established a branch or performs activity as referred to in Article 4 within the scope of the free provision of services, notify the supervisory authority that the Belgian legal provisions established pursuant to Directive 2013/36/EU or Regulation No 575/2013, are not being complied with or there is a significant risk of non-compliance, the supervisory authority shall as quickly as possible take all appropriate measures, in particular those referred to in Articles 234 to 236, or have these measures taken to remedy this irregular situation.

The supervisory authority shall communicate the nature of such measures to the competent authority of the host Member State forthwith.”

**Article 398.** On the date of entry into force of Articles 40, 41, 43, 49, 50 and 51 of Directive 2013/36/EU, in accordance with Article 151 of that Directive, Article 158 shall be replaced as follows:

“Article 158. § 1. For the purpose of maintaining supervision of the activity of credit institutions conducted in other Member States via a branch, the supervisory authority shall work in close cooperation with the competent authority of the host Member State. The supervisory authority shall provide the competent authority of the host Member State with all information relating to the management and ownership of the credit institutions concerned that could facilitate the supervision of these credit institutions and the examination of the conditions for granting an authorization to those credit institutions, as well as all the information that could facilitate monitoring these credit institutions, in particular in the area of liquidity, solvency, deposit guarantees, mitigation of major risks, other factors that could have an effect on the system risk caused by them, administrative and accounting procedures and internal control mechanisms.
§ 2. The supervisory authority shall provide the competent authority of the host Member State with all details and findings forthwith relating to the liquidity supervision that is exercised in accordance with Articles 412 to 414 of Regulation No 575/2013, Articles 149, 151, 234, § 2, and Article 8 of Annex I of the present Law on the activity that a Belgian credit institution exercises via its branches, insofar as these details and findings are relevant for the protection of depositors or investors in the host Member State concerned.

§ 3. The supervisory authority shall inform the competent authority of the host Member State forthwith if liquidity stress arises or if it may reasonably be expected that liquidity stress shall arise. In this notification, other further details shall be provided on the schedule and implementation of a recovery plan and on all prudential supervisory measures taken in connection therewith.

§ 4. At the request of the competent authority of the host Member State, the supervisory authority shall report on and explain how account was taken of the details and findings communicated by the competent authority of the host Member State.

If the supervisory authority does not agree with the measures that must be taken by a competent authority of the host Member State to prevent further infringements in order to protect the interests of depositors, investors and other persons to whom services are provided or to safeguard the stability of the financial system, it may submit the matter to the European Banking Authority in accordance with Article 19 of Regulation No 1093/2010.

§ 5. The supervisory authority can also submit cases in which a request for cooperation, in particular for sharing relevant information, is rejected, or not honoured within a reasonable period of time, to the European Banking Authority in accordance with Article 19 of Regulation No 1093/2010.”.

Article 399. On the date of entry into force of Articles 40, 41, 43, 49, 50 and 51 of Directive 2013/36/EU, in accordance with Article 151 of that Directive, the following changes shall be made to Article 161:

1° in § 1, first sentence, the words “to reach a joint decision on designating the branch as significant pursuant to Article 159 and to facilitate the sharing of information” shall be replaced with the words “to facilitate the cooperation by virtue of Articles 158 and 160”;

2° in § 2, the words “as referred to in Article 156, § 2, as well as with the obligations referred to in Article 160”, shall be replaced with the words “as referred to in Articles 134, § 2, and 156, § 2 as well as with the obligations referred to in Article 160.”

Article 400. In Article 233, first and second paragraphs, the words “supervisory authority” shall be replaced with the words “European Central Bank” from 4 November 2014.

Article 401. In Article 236, § 1, 6° and § 6, the words “supervisory authority” shall be replaced with the words “European Central Bank” from 4 November 2014.

Article 402. In Article 239, § 1, 1° and § 2, 5°, the words “supervisory authority” shall be replaced with the words “European Central Bank” from 4 November 2014.

Article 403. On the date of entry into force of Articles 40, 41, 43, 49, 50 and 51 of Directive 2013/36/EU, in accordance with Article 151 of that Directive, Article 325 shall be replaced as follows:

“Article 325. After consulting the competent authority of the home Member State, the supervisory authority can, on a case-by-case basis, carry out on-site inspections of the activity of the branches referred to in Article 312 and, for supervisory purposes, order branches to provide information on their activity if it considers this relevant for reasons of stability of the Belgian financial system. After these inspections, the supervisory authority
shall inform the competent authority of the home Member State of the information obtained and of the findings that are relevant for assessing the risks of the institution or for the stability of the Belgian financial system.”

**Article 404.** On the date of entry into force of Articles 40, 41, 43, 49, 50 and 51 of Directive 2013/36/EU, in accordance with Article 151 of that Directive, the following changes shall be made:

1° in Article 315, § 2 shall be abrogated;
2° in Article 329, § 6 shall be abrogated;
3° in Article 329, § 5, the words “referred to in Articles 315, § 2, and 317” shall be replaced with the words “referred to in Article 317”;
4° in Article 329, § 7, which becomes § 6, the words “pursuant to §§ 2 to 6” shall be replaced by the words “pursuant to §§ 2 to 5”.

**Article 405.** In Article 367, the words “supervisory authority” shall be replaced with the words “European Central Bank” from 4 November 2014.

**TITLE III. — Transitional provisions**

**Article 406.** Credit institutions included, on the date of entry into force of the present Law, in the list of credit institutions as referred to in Article 13 of the Law of 22 March 1993 on the legal status and supervision of credit institutions shall automatically obtain an authorization in application of the present Law.

Credit institutions governed by the law of a Member State and included in the lists referred to in Articles 65 and 66 of the Law of 22 March 1993 on the legal status and supervision of credit institutions, shall automatically be included in the list referred to in Articles 312, § 2, and 314.

Representative offices of foreign credit institutions registered pursuant to Article 85, first paragraph, of the Law of 22 March 1993 on the legal status and supervision of credit institutions, shall automatically be registered pursuant to the present Law.

**Article 407.** § 1. Royal decrees and regulations of the Bank and all other measures of a regulatory nature established in application of the Law of 22 March 1993 on the legal status and supervision of credit institutions, shall remain in force insofar as the provisions of the present Law provide for the general or specific legal authorizations necessary for these regulatory measures and insofar as their content is not in contravention of the present Law.

§ 2. The authorizations and exceptions granted by the Bank and all measures with individual scope that have been established previously by virtue of the aforementioned Law of 22 March 1993 on the legal status and supervision of credit institutions or of regulatory measures established in implementation thereof, shall remain in force unless they are revoked or amended in accordance with the present Law.

**Article 408.** Article 20, § 1, 3°, shall only apply to definitive administrative fines laid down after entry into force of the present Law.

**Article 409.** Without prejudice to Article 26, credit institutions that possess an authorization on the date of entry into force of the present Law, must set up a management committee that shall comply with Articles 24 or 25 at the latest on 1 January 2016.
Article 410. Loans, credits or guarantees granted before entry into force of the present Law and that do not comply with the provisions of Article 72, § 2, must end at the latest on 1 January 2016.

Article 411. Article 1 of Annex II shall only apply to the services provided from 1 January 2014.

Article 412. For the period starting from the date of entry into force of the present Law to 31 December 2018, Article 1 of Annex IV shall apply in accordance with the methods provided for in this Article.

The percentage of common equity tier-1 capital conservation buffer expressed as a percentage of the total amount of the risk exposure of a credit institution, calculated in accordance with [Article 92, paragraph 3 of Regulation No 575/2013], shall be equal to:

\[ \text{paragraph 2 amended by Article 35 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015} \]

1) 0% for the period from the date of entry into force of the present Law to 31 December 2015;
2) 0.625% for the period from 1 January 2016 to 31 December 2016
3) 1.25% for the period from 1 January 2017 to 31 December 2017
4) 1.875% for the period from 1 January 2018 to 31 December 2018

Article 413. Articles 13 and 14 of Annex IV shall enter into force on 1 January 2016, subject to the following methods:

1) on 1 January 2016, [institutions] must meet 25% of the requirement established in accordance with Article 13, § 2, of Annex IV;

\[ \text{paragraph 1, 1) amended by Article 36 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015} \]

2) on 1 January 2017, [institutions] must meet 50% of the requirement established in accordance with Article 13, § 2, of Annex IV;

\[ \text{paragraph 1, 2) amended by Article 36 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015} \]

3) on 1 January 2018, [institutions] must meet 75% of the requirement established in accordance with Article 13, § 2, of Annex IV;

\[ \text{paragraph 1, 3) amended by Article 36 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015} \]

4) on 1 January 2019, [institutions] must meet 100% of the requirement established in accordance with Article 13, § 2, of Annex IV;

\[ \text{paragraph 1, 4) amended by Article 36 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015} \]

Article 414. Articles 18 to 20 of Annex IV shall enter into force on 1 January 2015.

Until 31 December 2014, if the percentage referred to in Article 17, § 1 of Annex IV is set or brought up to a percentage between 3% and 5% without this percentage being more than 5%, the Bank can only finalize the adoption of the Regulation referred to in Article 16, § 1, of Annex IV if the European Commission adopts an implementing act that grants the Bank permission to take this measure.

Article 415. Legal persons who on the date of entry into force of the present Law exercise the role of member of the statutory governing body of a credit institution, may continue their current term of office until it expires. Until the terms referred to in this Article expire,
Article 19, § 1, second paragraph, shall apply to the permanent representative of that legal person.

Article 416. The obligation to draw up a recovery plan as referred to in Article 108, must be complied with within a term of fifteen months from the entry into force of the present Law. By way of exception, credit institutions that had already drawn up a recovery plan and communicated it to the Bank prior to the entry into force of the present Law, shall have a term of six months from entry into force of the present Law to comply with the obligation to draw up a recovery plan in accordance with Article 108.

Article 417. The resolution authority shall submit a report to the Minister responsible for Finances before 31 December 2015 on the progress made in drawing up resolution plans and the elimination of impediments for the resolvability as referred to in Articles 226 to 232.

Article 418. [...]
[Article 419/3. For the application of Articles 384/2 to 384/6, the words ‘the Deposit and Financial Instrument Protection Fund’ should be understood to mean the fund for the protection of deposits and financial instruments created pursuant to the Law of 17 December 1998 on the set-up of a protection fund for deposits and financial instruments and for the reorganization of the protection schemes for deposits and financial instruments, up to the date on which its tasks were transferred to the Deposit and Financial Instrument Protection Fund.]


Article 420. In anticipation of the adjustment of the explanation accompanying the financial statements of credit institutions, credit institutions shall publish the following information, on a consolidated basis, at the latest by 1 July 2014, divided by Member State or by third country in which they are established:

a) their name, the nature of their activity and their geographical location;
b) their turnover;
c) their employees in FTEs.

[Article 420/1. Pending the entry into force of Articles 11 to 15 of Annex IV, “domestic systemically important financial institutions” shall be understood to mean the credit institutions, financial holding companies, and mixed financial holding companies which were previously deemed systemically important institutions by the Bank in application of Article 36/3, § 2 of the Law of 22 February 1998, as this provision existed immediately before the amendment thereto by Article 64 of the Law of 25 April 2014 laying down miscellaneous provisions.

Furthermore, the Bank may, also pending entry into force of Articles 11 to 15 of Annex IV, deem other credit institutions, financial holding companies, and mixed financial holding companies as global systemically important financial institutions (G-SIFIs) or domestic systemically important institutions (D-SIFIs) pursuant to the criteria referred to in Articles 13, § 1, and 14, § 1, of Annex IV respectively.]

Article inserted by Article 37 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

[Article 420/2. Until 1 January 2016, the establishment of the percentage of the credit institution-specific countercyclical common equity tier 1 capital buffer for the relevant risk exposure to counterparties established on the Belgian territory, provided for in Article 5 of Annex IV, constitutes an option for the Bank.]

Article inserted by Article 38 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

TITLE IV. — Abrogating provisions

Article 421. The Law of 22 March 1993 on the legal status and supervision of credit institutions, shall be abrogated.

BOOK X - ENTRY INTO FORCE

Article 422. The present Law enters into force on the date on which it is published in the Belgian Official Gazette.

However,

1° in Article 20, § 1,
a) in the provision under 2°, i) the words “or Articles XV.87, 3°, XV.90, 18° and 19°, XV.91, XV.126 and XV.126/1 of Book XV of the Code of Economic Law” shall enter into force on the respective date of entry into force of the provisions mentioned of the Code of Economic Law;

b) in the provision under 2°, l) the words “or Articles XV.87, 2°, XV.90, 1° to 16°, XV.91, XV.126 and XV.126/1 of Book XV of the Code of Economic Law” shall enter into force on the respective date of entry into force of the provisions mentioned of the Code of Economic Law;

c) the provision under 3°, b) shall enter into force on the date provided for in the Royal Decree;

2° Article 62, § 5, second sentence and § 6, second sentence, shall enter into force on 1 July 2014;

3° Articles 93, 163, 312, § 1, third sentence, and 313, § 2, shall enter into force on 4 November 2014;

4° Articles 157, § 3, 160, §§ 3 and 4, and 162, §§ 3 and 4, 321, 323, 327 and 328 shall enter into force on the date of entry into force of Articles 40, 41, 43, 49, 50 and 51 of Directive 2013/36/EU in accordance with Article 151 of that Directive;

5° Article 336 shall enter into force a year after the date of publication of the present Law in the Belgian Official Gazette;

6° Articles 27, 2° and 4°, 29 and 31 shall enter into force on 31 December 2014;

7° the King shall, by way of a Decree deliberated on in the Council of Ministers, set the date for entry into force of Article 389 and of all the provisions of Book II, Title VIII;

8° Without prejudice to Article 413, Articles 11 to 15 of Annex IV shall enter into force on 1 January 2016.

BOOK XI - RECOVERY AND RESOLUTION OF GROUPS

Book XI inserted by Article 5 of Royal Decree of 26 December 2015 - Belgian Official Gazette, 31 December 2015

TITLE I - Definitions

Article 423. Without prejudice to the definitions referred to in Article 3, for the application of the present Book and the decrees and regulations made in implementation thereof the following definitions shall apply:

1° EEA parent credit institution: an EEA parent credit institution [within the meaning of Article 164, § 2, 3°, and of Articles 574 and 575];


2° Belgian EEA parent credit institution: a Belgian EEA parent credit institution [within the meaning of Article 164, § 2, 4°, and of Articles 574 and 575];


[2°/1 EEA parent stockbroking firm, a parent stockbroking firm that is not a subsidiary of another stockbroking firm or credit institution to which authorization has been granted in
another Member State, or of a financial holding company or mixed financial holding company established in one of the Member States;]


[2°/2 parent stockbroking firm in a Member State, a stockbroking firm that has a stockbroking firm, a credit institution or a financial institution as a subsidiary or that has a participation in a stockbroking firm, credit institution or financial institution and is not itself a subsidiary of another stockbroking firm or a credit institution to which an authorization has been granted in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;]


3° parent financial holding company in a Member State: a parent financial holding company in a Member State within the meaning of Article 164, § 2, 5°;

4° EEA parent financial holding company: an EEA parent financial holding company within the meaning of Article 164, § 2, 6°;

5° Belgian EEA parent financial holding company: a Belgian EEA-parent holding company within the meaning of Article 164, § 2, 7°;

6° parent mixed financial holding company in a Member State: a mixed financial holding company in a Member State within the meaning of Article 164, § 2, 8°;

7° EEA parent mixed financial holding company: an EEA parent mixed financial holding company within the meaning of Article 164, § 2, 9°;

8° Belgian EEA parent mixed financial holding company: a Belgian parent mixed financial holding company within the meaning of Article 164, § 2, 10°;

9° Belgian EEA parent undertaking: a Belgian EEA parent credit institution, a Belgian EEA parent financial holding company or a Belgian EEA parent mixed financial holding company;

10° [EEA parent undertaking: an EEA parent credit institution, an EEA parent stockbroking firm, an EEA financial parent holding company or an EEA parent mixed financial holding company;]


11° [parent undertaking in a Member State: a parent credit institution in a Member State, a parent stockbroking firm in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State;]


12° group: a parent undertaking and its subsidiaries;

13° Belgian group: a group the parent undertaking of which is a Belgian EEA parent undertaking;

14° group-level resolution authority: the resolution authority in the Member State in which the consolidating supervisor is established;

15° group resolution scheme: a plan drawn up for the purposes of a group resolution as referred to in Article 465, § 1;

16° resolution college: a resolution college as referred to in Article 468 or 469;
17° European resolution college: a resolution college as referred to in Article 470;
18° competent authority: the national authority in a Member State that is tasked pursuant to laws, regulations or administrative provisions with exercising supervision of holding companies and institutions as referred to in Article 424, 1°, 2°, 3° and 4°;
19° appropriate authority: the authority of a Member State which, in accordance with the national law of that Member State is responsible for determining the aspects referred to in Article 250, § 2 and in Article 457, § 1;
20° competent ministry: the ministry competent for finances or another ministry of a Member State indicated as competent ministry pursuant to the national law of that Member State for the transposition of Directive 2014/59/EU;
21° [...] 

**TITLE II. – Scope**

**Article 424.** To the extent and in the manner determined in the present Book, the provisions of Book II, Title II, Chapter VII and of Books IV and VIII shall apply to:

1° [credit institutions governed by the law of a Member State;]


[1°/1 stockbroking firms governed by the law of a Member State and which have a minimum capital of EUR 730 000 in accordance with Article 28, paragraph 2 of Directive 2013/36/EU;]


2° financial holding companies, mixed financial holding companies, and mixed-activity holding companies established in the EEA;

3° parent financial holding company in a Member State, EEA parent financial holding companies, parent mixed financial holding companies in a Member State, EEA parent mixed financial holding companies;

4° financial institutions established in the EEA if they are a subsidiary of a credit institution or a company referred to point 3° or 4°, and that come under the consolidated supervision of the parent undertaking;

5° [branches established in a Member State of credit institutions or stockbroking firms governed by the law of a third country;]


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TITLE III. — Group recovery plans

CHAPTER I. — Drawing up group recovery plans

Article 425. § 1. Every Belgian EEA parent undertaking shall draw up a group recovery plan for the entire Belgian group that they head up and communicate it to the supervisory authority in its capacity of consolidating supervisor.

The group recovery plan shall aim to achieve the stabilization of the group as a whole or any credit institution in the group when it is in a situation of financial stress so as to address or remove the causes of the distress and restore the financial position of the group or the credit institution, at the same time taking into account the financial position of other group entities.

§ 2. The group recovery plan shall include:

1° measures which, based on the objectives referred to in paragraph 1, must be taken at the level of the Belgian EEA parent undertaking, of the subsidiaries, of the group entities referred to in Article 424, 2° and 3° and, where applicable, of the significant branches;

2° rules with a view to safeguarding coordination and consistency of those measures;

3° where applicable, arrangements for intra-group financial support, adopted by virtue of an agreement to that effect.

§ 3. Group recovery plans establish for each scenario whether there are obstacles to the implementation of the recovery measures within the group, including at the level of each group entity covered by the plan, and whether there are substantial practical or legal impediments to the prompt transfer of own funds or to the repayment of assets or liabilities within the group.

Article 426. § 1. Every group recovery plan shall contain a grid of quantitative and qualitative indicators of a potential deterioration in the financial situation of the credit institutions included in the plan, with details of the points in respect of which each credit institution considers whether the corrective measures provided for in the plan are to be taken.

To this end, the recovery plan shall define appropriate procedures for regular monitoring of changes in the indicators mentioned in paragraph 1, and in order to examine the corrective measures to be taken, including any subsequent escalation procedure.

§ 2. For Belgian credit institutions included in the group recovery plan, the indicators mentioned in § 1 shall include a progressive scale of thresholds indicating the proportion of encumbered assets of the credit institution, determined by the supervisory authority [in accordance with Article 110, § 2, paragraph 2]. The group recovery plan shall indicate the corrective measures to be considered if each of the thresholds is crossed.


§ 3. The Belgian credit institution included in a group recovery plan and the Belgian EEA parent undertaking may, where their statutory governing body deems appropriate in light of the circumstances:

1° take the measures as part of the group recovery plan even if the relevant indicator has not been reached;

2° take no measures as part of the group recovery plan even if the relevant indicator has been reached.
The credit institution or Belgian EEA parent undertaking shall inform the supervisory authority forthwith of any decision to take a measure as part of the implementation of a group recovery plan, and of any decision not to do so despite the fact that the relevant indicator has been reached.

§ 4. Without prejudice to other powers conferred on it by the present Law, the supervisory authority can order the Belgian credit institution included in a group recovery plan to take one or more of the corrective measures included in the group recovery plan if the institution fails to take appropriate measures on its own initiative.

Article 427. The Belgian EEA parent undertaking shall update the group recovery plan referred to in Article 425 at least once a year and in any case after any changes occur to the legal or organizational structure, activities or financial situation of the group or group entities, that could have a significant impact on the plan or require changes thereto.

In its capacity of consolidating supervisor, the supervisory authority of the Belgian EEA parent undertaking may require it to update the group recovery plan more frequently.

Article 428. By means of a regulation passed pursuant to Article 12bis § 2, of the Law of 22 February 1998, the Bank may stipulate further rules pertaining to:

1° the minimum contents of the group recovery plan;

2° the information to be submitted by the credit institution, the Belgian EEA parent undertaking, or the group entities to the supervisory authority or other competent authority, where applicable in its capacity of consolidating supervisor, and the frequency with which this should occur.

Article 429. § 1. The supervisory authority may permit a Belgian EEA parent undertaking or a group entity to derogate from its obligations under this Chapter concerning the contents of the group recovery plan, the frequency of the plan’s updates, the information to be provided by the credit institution or the credit institutions in the group, and the periods stipulated in Article 114 § 2, or Article 416, insofar as such an derogation is justified in light of the impact that the failure and liquidation of the credit institution concerned or the credit institutions in the group under the liquidation procedure would have on the financial markets, on other credit institutions, on the financing conditions and on the economy in general.

The supervisory authority shall in particular take into consideration the nature of the work of the credit institution concerned, its shareholder structure, legal form, risk profile, scale and legal status, interconnectedness to other credit institutions or to the financial system in general, the scope and complexity of its work and whether or not it provides investment services or activity.

The supervisory authority may at any time withdraw a derogation granted under paragraph 1. It shall evaluate the necessity and benefit of maintaining the derogations granted at least once a year and after any change in the legal or organizational structure, activities or financial situation of the credit institution concerned.

§ 2. The derogations granted pursuant to paragraph 1 may under no circumstances relate to the obligations pertaining to the progressive scale of thresholds for the proportion of encumbered assets, as referred to in Article 110, § 2, paragraphs 2 and 3.
CHAPTER II. — Assessment of group recovery plans

Section I. - Assessment of group recovery plans drawn up by a Belgian EEA parent undertaking.

Article 430. § 1. The statutory governing body of the Belgian EEA parent undertaking that draws up the group recovery plan in accordance with Article 425 shall approve the group recovery plan prior to submitting it to the supervisory authority in its capacity of consolidating supervisor.

§ 2. The Belgian EEA parent undertaking shall submit its first group recovery plan to the supervisory authority in its capacity of consolidating supervisor within six months after the date on which a Belgian group came into existence.

Subject to the provisions of paragraph 3, the Belgian EEA parent undertaking shall submit an updated plan to the supervisory authority no later than two months after the occurrence of the event that gave rise to the obligation to update the plan, it being understood that the supervisory authority may extend this term up to a maximum of six months.

If the event that gave rise to the obligation to update the plan was a change in the financial situation of the parent undertaking or of a group entity, such that it would have a significant impact on the plan, the parent undertaking shall inform the supervisory authority forthwith and shall submit an updated plan by the deadline communicated by the supervisory authority.

§ 3. In its capacity of consolidating supervisor, the supervisory authority shall provide the group recovery plan and every updated group recovery plan to:

1° the authorities that form part of the colleges of competent authorities referred to in Article 178;

2° the resolution authority, in its capacity of group-level resolution authority;

3° the resolution authorities of the subsidiaries;

4° the competent authorities of the Member States in which significant branches are established, insofar as this is relevant for the branch concerned.

These authorities may, within thirty days of receipt of the group recovery plan, inform the supervisory authority of its recommendations on any measures set out in the plan that could negatively affect the resolvability of the group entities.

Article 431. As quickly as possible after receipt of the group recovery plan, the supervisory authority shall examine the group recovery plan in its capacity of consolidating supervisor, along with the competent authorities of the subsidiaries, where applicable after consulting the competent authorities of significant branches. The assessment shall at least include the aspects referred to in Article 432 to Article 434.

Article 432. The supervisory authority, in its capacity of consolidating supervisor, and the competent authorities of subsidiaries shall assess whether the group recovery plan complies with the requirements specified in Chapter I.

To that end they shall in particular evaluate whether the group recovery plan enables it to be reasonably expected that:

1° the implementation of the measures set out in the plan are of a nature to maintain or recover the viability and financial situation of the credit institution or the group, taking into
account any preparatory measures that the credit institutions or the Belgian EEA parent undertaking have taken or intend to take;

2° the plan, and the different options provided for therein, can be implemented quickly and effectively in financial crisis situations, avoiding wherever possible any adverse effects on the financial system, including in scenarios that involve simultaneous implementation of recovery plans of other credit institutions.

In this evaluation, particular attention shall be paid to the adequacy of the capital and financing structure of the credit institutions, the group or the group entities for the complexity of their organizational structure and their risk profile.

Article 433. The supervisory authority, in its capacity of consolidating supervisor, and the competent authorities of the subsidiaries, shall evaluate whether the credit institutions that form part of the group should draw up an individual recovery plan.

Article 434. § 1. If the supervisory authority, in its capacity of consolidating supervisor, and the competent authorities of the subsidiaries consider that the group recovery plan shows material deficiencies or that there are significant impediments to its implementation, the supervisory authority, in its capacity of consolidating supervisor, shall inform the Belgian EEA parent undertaking thereof and, having given it the opportunity to express its position, ask it to submit, within two months, a revised plan in which the deficiencies or impediments are remedied. The supervisory authority, in its capacity of consolidating supervisor, and the competent authorities may extend the aforementioned term by a maximum of one month.

§ 2. If the supervisory authority, in its capacity of consolidating supervisor, and the competent authorities of the subsidiaries, consider that the deficiencies or impediments they have identified are not duly remedied in the plan revised in accordance with paragraph 1, the supervisory authority, in its capacity of consolidating supervisor, may task the Belgian EEA parent undertaking with, within thirty days of notification of this finding to the parent undertaking, making specific changes to the group recovery plan.

§ 3. If the Belgian EEA parent undertaking fails to respond to the request referred to in paragraph 1 within the term specified, or if the supervisory authority, in its capacity of consolidating supervisor, and the competent authorities of the subsidiaries consider that the revised group recovery plan submitted in accordance with paragraph 1 does not remedy the deficiencies or impediments they identified and it is impossible to duly remedy these by way of a notice in accordance with paragraph 2, the supervisory authority, in its capacity of consolidating supervisor, shall notify the Belgian EEA parent undertaking thereof and require it to, within thirty days, determine which changes can be made to the group’s work in order to remedy these deficiencies or impediments.

§ 4. If the supervisory authority, in its capacity of consolidating supervisor and the competent authorities of the subsidiaries consider that the changes proposed by the Belgian EEA parent undertaking pursuant to paragraph 1, do not remedy the deficiencies or impediments they identified, the consolidating supervisor and the competent authorities of the subsidiaries may, without prejudice to other measures determined by or pursuant to the present Law, task the group entities for which they are competent with taking every measure they deem necessary and reasonable to put an end to these deficiencies or obstacles.

The supervisory authority may in particular task the Belgian EEA parent undertaking or the Belgian credit institutions that form part of the group with taking the measures referred to in Article 116, § 2, paragraph 2.
Article 435. § 1. The supervisory authority, in its capacity of consolidating supervisor, and the competent authorities of subsidiaries, shall aim to come to a joint decision within four months after the communication referred to in Article 430, § 1 of the group recovery plan, on the provisions of Articles 432 to 434.

The supervisory authority may ask for assistance in reaching a joint decision from the EBA in accordance with Article 31 of Regulation No 1093/2010.

§ 2. If the competent authorities do not succeed, within the term referred to in paragraph 1, in reaching a joint decision on the evaluation and assessment of the group recovery plan pursuant to Article 432 or on the measures that the Belgian EEA parent undertaking should take pursuant to Article 434, the following shall apply:

1° the supervisory authority, in its capacity of consolidating supervisor, shall make a decision itself with due regard to the views and reservations expressed by the other competent authorities, and inform the Belgian EEA parent undertaking and the other competent authorities of that decision in writing;

2° if one of these competent authorities has, within the term referred to in paragraph 1, submitted a matter as referred to in Article 437 to the EBA in accordance with Article 19 of Regulation No 1093/2010, the supervisory authority, in its capacity of consolidating supervisor, shall defer its decision and await a decision that the EBA may make in accordance with Article 19, paragraph 3 of that Regulation. It shall make its decision in accordance with the decision of the EBA. The matter shall no longer be submitted to the EBA after the end of the term referred to in paragraph 1 or after a joint decision has been made. If the EBA does not succeed in making a decision within one month, the decision made by the supervisory authority, in its capacity of consolidating supervisor, shall apply.

§ 3. If the supervisory authority does not succeed in reaching a joint decision with the other competent authorities within the term referred to in paragraph 1 on the matters specified in Article 433 or on the application of the measures referred to in Article 434 at the level of the Belgian subsidiaries, the following shall apply:

1° the supervisory authority shall itself make a decision as regards the Belgian subsidiaries of the group;

2° if one of these competent authorities has, within the term referred to in paragraph 1, submitted a matter as referred to in Article 437 to the EBA in accordance with Article 19 of Regulation No 1093/2010, the supervisory authority shall defer its decision and await any decision that the EBA may make in accordance with Article 19, paragraph 3 of that Regulation. The supervisory authority shall make its decision in accordance with that of the EBA. The matter shall no longer be submitted to the EBA after the end of the term referred to in paragraph 1 or after a joint decision has been made. If the EBA does not succeed in making a decision within one month, the decision of the supervisory authority shall apply.

Section II — Assessment of group recovery plans drawn up by an EEA parent undertaking in another Member State

Article 436. § 1. In its capacity of competent authority for the supervision of a Belgian credit institution which is a subsidiary of an EEA parent undertaking in another Member State, the supervisory authority shall do everything possible to reach a joint decision as referred to in Article 8, paragraph 2 of Directive 2014/59/EU.

The supervisory authority may ask for assistance from the EBA in reaching a joint decision pursuant to Article 31, under c) of Regulation No 1093/2010.
§ 2. In the absence of a joint decision as referred to in § 1, on the circumstances referred to in Article 8, paragraph 3 of Directive 2014/59/EU, the following shall apply:

1° the supervisory authority shall provide the consolidating supervisor with its views and reservations on the decision that the consolidating supervisor intends to make on the circumstances referred to in Article 8, paragraph 3 of Directive 2014/59/EU;

2° the supervisory authority may, until the end of the term referred to in Article 8, paragraph 2 of Directive 2014/59/EU and insofar as no joint decision has been reached, submit a matter as referred to in Article 437 to the EBA in accordance with Article 19 of Regulation No 1093/2010.

§ 3. In the absence of a joint decision as referred to in § 1, on the circumstances referred to in Article 8, paragraph 4 of Directive 2014/59/EU, the following shall apply:

1° the supervisory authority shall itself make a decision referred to in Article 433 or on the application of the measures referred to in Article 434 as regards the Belgian subsidiaries;

2° if one of the other competent authorities has, within the term referred to in Article 8, paragraph 2, of Directive 2014/59/EU submitted a matter as referred to in Article 437 to the EBA in accordance with Article 19 of Regulation No 1093/2010, the supervisory authority shall defer its decision and await any decision that the EBA may make in accordance with Article 19, paragraph 3 of that Regulation. The supervisory authority shall make its decision in accordance with that of the EBA. If the EBA does not succeed in making a decision within one month, the decision of the supervisory authority shall apply.

3° the supervisory authority may, until the end of the term referred to in Article 8, paragraph 2 of Directive 2014/59/EU and insofar as no joint decision has been reached, submit a matter as referred to in Article 437 to the EBA in accordance with Article 19 of Regulation No 1093/2010.

Section III. - Common rules

Article 437. The EBA may help the competent authorities in accordance with Article 19, paragraph 3 of Regulation No 1093/2010 with reaching agreement on the assessment of group recovery plans and the implementation of measures referred to in Article 116, § 2, paragraph 2 under 1°, 2° and 4° or in Article 6, paragraph 6, under a), b) and d) of Directive 2014/59/EU.

Article 438. Joint decisions and decisions made in the absence of a joint decision, as referred to in Articles 435 and 436, shall be recognized by the supervisory authority as final and where applicable applied in Belgium:

[TITLE III/1. – Intra-group financial support

Title III/1 inserted by Article 31 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016]
Article 438/1. § 1. Belgian parent credit institutions, Belgian EEA parent credit institutions and entities governed by Belgian law referred to in Article 424, 3° and 4°, as well as Belgian subsidiaries that are credit institutions or financial institutions falling under the consolidated supervision exercised on the parent undertaking, may be party to an agreement for granting intra-group financial support to another party to the agreement that fulfils the conditions referred to in Article 234, § 1 of the present Law or in Article 27 of Directive 2014/59/EU.

§ 2. An agreement for granting intra-group financial support:

1° may only be entered into at a time at which none of the parties to the agreement meets the conditions referred to in Article 234, § 1 or in Article 27 of Directive 2014/59/EU;

2° may not stop a group entity from being active in a Member State;

3° may not stop financial support being granted on a case-by-case basis and in accordance with the group policy to a group entity that comes into financial difficulty, if this does not entail a risk for the group as a whole.

§ 3. An agreement for granting intra-group financial support may:

1° cover one or more subsidiaries of the group and provide for financial support from the parent undertaking to the subsidiaries, from subsidiaries to the parent undertaking, between subsidiaries of the group that are party to the agreement, or any combination of these group entities;

2° provide for financial support in the form of a loan, the provision of guarantees, the provision of assets to be used as collateral, or any combination of these forms of financial support, in one or more transactions, including between the beneficiaries of the support and a third party.

§ 4. Where, in accordance with the terms of the group financial support agreement, a group entity agrees to provide financial support to another group entity, the agreement may include a reciprocal agreement by the group entity receiving the support to provide financial support to the group entity providing the support.

§ 5. Any right, claim or action arising from the agreement may be exercised only by the parties to the agreement, with the exclusion of third parties.

Article 438/2. An agreement for granting intra-group financial support shall at least adhere to the following principles:

1° the agreement includes the basis for calculation of the consideration for each transaction that takes place pursuant to the agreement;

2° the consideration is established at the time of granting the financial support;

3° on entry into force of the agreement and at the time of establishing the consideration for granting financial support, each party must be acting in its own interests, which may take account of any direct or indirect benefit that may accrue to a party as a result of provision of the financial support;

4° any party that grants financial support must have full disclosure of relevant information from any party receiving financial support prior to determination of the consideration for the provision of financial support and prior to any decision to provide financial support;

5° the consideration for the provision of financial support may take account of information in the possession of the party providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market; and
6° the principles for the calculation of the consideration for the provision of financial support are not obliged to take account of any anticipated temporary impact on market prices arising from events external to the group.

**Article 438/3.** A group entity governed by Belgian law may only grant financial support in accordance with Article 438/1 if all of the following conditions are met:

1° the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group;

2° there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the group entity receiving the support;

3° the provision of financial support is in the interests of the group entity providing the support;

4° the financial support is provided on terms, including consideration in accordance with Article 438/2;

5° there is a reasonable prospect, on the basis of the information available to the statutory governing body of the group entity providing financial support at the time when the decision to grant financial support is made, that the consideration for the support will be paid and, if the support is given in the form of a loan, that the loan will be reimbursed, by the group entity receiving the support. If the support is given in the form of a guarantee or any form of security, the same condition shall apply to the liability arising for the recipient if the guarantee or the security is enforced;

6° the provision of the financial support would not jeopardize the liquidity or solvency of the group entity providing the support;

7° the granting of financial support does not pose a threat to financial stability in Belgium;

8° the group entity providing the support complies, at the time when the support is provided with the requirements of the present Law as regards capital or liquidity and with all requirements imposed by virtue of Articles 149 and 150, and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorized by the supervisory authority;
9° the group entity providing the support complies, at the time when the support is provided, with the requirements relating to large exposures laid down in Regulation No 575/2013, in the applicable legislation and regulations and in the rules established pursuant to Article 98, and the provision of the financial support shall not cause the group entity to infringe those requirements, unless authorized by the supervisory authority;

10° the provision of the financial support would not undermine the resolvability of the group entity providing the support;

Article 438/4. § 1. The Belgian EEA parent credit institution shall submit to the supervisory authority, in its capacity of consolidating supervisor, an application for authorization of any proposed agreement pursuant to Article 438/1 or of any changes to an agreement for which the supervisory authority has granted authorization. The application for authorization shall identify the group entities proposed as parties. The supervisory authority, in its capacity of consolidating supervisor, shall send the application forthwith to the competent authorities of each subsidiary proposed as parties to the agreement.

§ 2. The supervisory authority, in its capacity of consolidating supervisor, shall in accordance with the procedure referred to in Article 438/5 grant the authorization if the terms of the proposed agreement are consistent with the conditions for financial support established in Article 438/3. It may prohibit entry into the proposed agreement if it is considered to be inconsistent with the conditions referred to in Article 438/3.

Article 438/5. § 1. The supervisory authority, in its capacity of consolidating supervisor, shall do everything within its power to reach a joint decision with the other competent authorities within four months of receipt of the request referred to in Article 438/4, § 1, on whether the conditions for the proposed agreement or the proposed changes meet the conditions for financial support referred to in Article 438/3. In doing so, they shall take into consideration the potential impact of the execution of the agreement in all the Member States where the group operates, including any fiscal consequences for the Member States concerned. The joint decision shall be set out in a document containing the fully reasoned decision, which shall be provided to the applicant by supervisory authority, in its capacity of consolidating supervisor.

The supervisory authority, in its capacity of consolidating supervisor, may ask for assistance from the EBA in reaching a joint decision pursuant to Article 31, under c) of Regulation No 1093/2010.

§ 2. In the absence of a joint decision by the supervisory authority, in its capacity of consolidating supervisor, and the other competent authorities within the term referred to in § 1, the following shall apply:

1° the supervisory authority, in its capacity of consolidating supervisor, shall make its own decision and set it out in a document containing the full reasoning. That decision shall take into account the views and reservations expressed by the other competent authorities during the four-month period. The supervisory authority shall notify its decision to the applicant and the other competent authorities;

2° if within the period referred to in paragraph 1, another competent authority has referred the matter to the EBA in accordance with Article 19 of Regulation No 1093/2010, the supervisory authority shall defer its decision pending a decision by the EBA. It shall make its decision in accordance with the decision of the EBA.

Article 438/6. The supervisory authority, in its capacity of consolidating supervisor, shall send the agreements for intra-group financial support for which it has granted authorization, and all changes thereto, forthwith to the resolution authorities concerned.
Article 438/7. § 1. If the supervisory authority, in its capacity of competent authority for the supervision of a Belgian credit institution that is a subsidiary of an EEA parent undertaking in another Member State, receives a notification as referred to in Article 20, paragraph 2 of Directive 2014/59/EU, it shall do everything within its power to reach a joint decision with the consolidating supervisor and the other competent authorities as referred to in Article 20, paragraph 5 of Directive 2014/59/EU.

The supervisory authority may ask for assistance in reaching a joint decision from the EBA pursuant to Article 31, under c) of Regulation No 1093/2010.

§ 2. In the absence of a joint decision as referred to in § 1, the following shall apply:

1° the supervisory authority shall provide the consolidating supervisor with its views and reservations on the decision that the consolidating supervisor shall make pursuant to Article 20, paragraph 6 of Directive 2014/59/EU;

2° the supervisory authority may, until the end of the term referred to in Article 20, paragraph 7 of Directive 2014/59/EU and insofar as no joint decision has been reached, submit the matter to the EBA in accordance with Article 19 of Regulation No 1093/2010.

Article 438/8. § 1. All proposed agreements or changes for which the competent authorities have granted authorization, shall be submitted for approval to the shareholders of each group entity that proposes to enter into the agreement. The agreement shall be valid and enforceable only in respect of those parties whose shareholders have approved the agreement, and insofar as that approval has not been revoked.

An intra-group financial support agreement shall be valid in respect of a group entity only if its shareholders have authorized the statutory governing body of that group entity to make a decision that the group entity shall provide or receive financial support in accordance with the terms of the agreement referred to in this title, and that shareholder authorization has not been revoked.

§ 2. The statutory governing body of each entity that is party to the agreement shall report each year to the shareholders on the performance of the agreement and on the implementation of any decision made pursuant to the agreement.

Article 438/9. The statutory governing body of the group entity governed by Belgian law that grants financial support shall make the decision to provide intra-group financial support by virtue of the agreement. That decision shall contain the reasons, and state the objective of the proposed financial support as well as how the provision of financial support meets the conditions specified in Article 438/3.

The statutory governing body of the group entity governed by Belgian law that receives financial support shall make the decision to accept intra-group financial support by virtue of the agreement.

Article 438/10. § 1. Prior to the support effectively being provided by virtue of an intra-group financial support agreement, the statutory governing body of a group entity governed by Belgian law that proposes to grant financial support shall inform:

1° the supervisory authority;

2° where applicable, the consolidating supervisor;

3° the competent authority of the group entity that receives the support; and

4° the EBA.

The notification shall include the decision, and the reasons thereof, of the statutory governing body referred to in Article 438/9 and further information on the proposed financial support, along with a copy of the intra-group financial support agreement.

§ 2. Within five working days after the date of receipt of a full notification as referred to in paragraph 1, the supervisory authority may approve the provision of financial support, or
prohibit or restrict it by way of a decision, including reasons, if it determines that the conditions established in Article 438/3 are not met.

The decision shall be communicated forthwith to:

1° the consolidating supervisor if it differs from the supervisory authority;

2° the competent authority of the group entity that receives the support; and

3° the EBA.

If the supervisory authority is acting in its capacity of consolidating supervisor, it shall inform the other members of the college of competent authorities forthwith as well as the members of the resolution college.
§ 3. If the supervisory authority does not prohibit or restrict the financial support within the term referred to in paragraph 2, or has approved that support prior to the end of that term, financial support may be provided in accordance with the conditions submitted to the supervisory authority.

§ 4. The decision of the statutory governing body of the group entity governed by Belgian law to provide financial support shall be sent to:

1° the supervisory authority;
2° where applicable, the consolidating supervisor;
3° the competent authority of the group entity that receives the support; and
4° the EBA.

If the supervisory authority is acting in its capacity of consolidating supervisor, it shall inform the other members of the college of competent authorities forthwith as well as the members of the resolution college.

§ 5. The supervisory authority, in its capacity of consolidating supervisor, may take the initiative to reassess the group recovery plan in accordance with Article 434 or, where a recovery plan is drawn up on an individual basis, request that the group entity pursuant to Article 114 submit a revised recovery plan, if:

1° the supervisory authority restricts or prohibits the financial support of the group in accordance with paragraph 2 of this Article; and
2° the group recovery plan in accordance with Article 425, § 2 makes reference to intra-group financial support; and
3° the supervisory authority of the group entity in relation to which the support is restricted or prohibited requests this from the supervisory authority, in its capacity of consolidating supervisor.

Article 438/11. § 1. If the supervisory authority, in its capacity of authority competent for a group entity governed by Belgian law that receives the support, receives a notification as referred to in Article 25, paragraph 3 of Directive 2014/59/EU and has objections to the decision of the competent authority to prohibit or restrict financial support, it may submit the matter to the EBA within two days and ask for assistance pursuant to Article 31, under c) of Regulation No 1093/2010.

§ 2. If the competent authority restricts or prohibits financial support, in accordance with Article 25, paragraph 2 of Directive 2014/59/EU from the group to a group entity governed by Belgian law and if the group recovery plan makes reference to intra-group financial support, the supervisory authority, in its capacity of authority competent for the group entity governed by Belgian law that receives the support, may:

1° ask the consolidating supervisor to take the initiative to reassess the group recovery plan as referred to in Article 8 of Directive 2014/59/EU; or
2° if an individual recovery plan was drawn up, ask the group entity concerned to submit a revised recovery plan pursuant to Article 114.

Article 438/12. Group entities shall make public whether or not they have entered into an intra-group financial support agreement pursuant to Article 438/1. This shall include a description of the general terms of any such agreement and, where applicable, the names of the group entities that are party to it. This information shall be updated at least annually. Articles 431 to 434 of Regulation No 575/2013 apply.]
Article 438/13. If the conditions for laying down measures by virtue of Article 234, 235 or 236 are met as regards a Belgian EEA parent undertaking, the supervisory authority, in its capacity of consolidating supervisor, shall inform the EBA and consult the other competent authorities in the college of competent authorities.

In the decision to apply the measures of Article 234, 235 or 236 for the EEA parent undertaking concerned, the supervisory authority shall take into account the effect of these measures on the group entities in other Member States. The supervisory authority shall inform the other competent authorities within the college of competent authorities as well as the EBA, as to the decision.

Article 438/14. § 1. If the conditions for laying down measures by virtue of Article 234, 235 or 236 are met as regards a Belgian subsidiary of an EEA parent undertaking in another Member State, the supervisory authority, where it envisages taking a measure in accordance with Article 234 or 236, shall inform the EBA and consult the consolidating supervisor.

After the notification and consultation, the supervisory authority shall take into consideration any assessment of the consolidating supervisor if it decides to apply measures by virtue of Article 234, 235 or 236. The supervisory authority shall inform the consolidating supervisor and the other competent authorities within the college of competent authorities, as well as the EBA, as to the decision.

§ 2. Where the supervisory authority, in its capacity of consolidating supervisor, receives a notification as referred to in Article 30, paragraph 3 of Directive 2014/59/EU in connection with a foreign subsidiary of a Belgian EEA parent undertaking, it may assess the likely impact of the imposition of recovery measures on the credit institution concerned, the Belgian group or the group entities in other Member States. The supervisory authority shall inform the competent authority of this assessment within three days after receipt of the notification.

Article 438/15. If the supervisory authority envisages taking one or more measures by virtue of Article 234, 235 or 236 for a Belgian credit institution in a group, and the foreign competent authorities also envisages taking one or more measures as referred to in Article 27 or 29 of Directive 2014/59/EU for one or more other foreign credit institutions in the same group, the following shall apply:

1° the supervisory authority shall assess, along with the foreign competent authorities, if it is more appropriate for all group entities concerned for a special commissioner to be appointed or for the application of the recovery measures to be coordinated for several credit institutions, to facilitate solutions enabling the recovery of the financial situation of the credit institutions concerned. The assessment takes the form of a joint decision by the consolidating supervisor and the other competent authorities, made within five days after the date of notification from the consolidating supervisor that the conditions are met for imposing recovery measures relating to the EEA parent undertaking. The joint decision shall be communicated to the EEA parent undertaking, including reasons, by the consolidating supervisor;

2° the supervisory authority may ask for assistance with reaching a joint decision from the EBA in accordance with Article 31 of Regulation No 1093/2010.

3° if no joint decision has been reached within five days, the supervisory authority may make individual decisions as regards the Belgian credit institutions in the group on the application of Article 234, 235 or 236.
Article 438/16. If the supervisory authority does not agree with a decision to take recovery measures communicated to it by a foreign competent authority as referred to in Article 30, paragraph 1 or paragraph 3 of Directive 2014/59/EU, or if no joint decision is made as referred to in Article 438/15, the supervisory authority may submit the matter to the EBA as referred to in Article 30, paragraph 6 of Directive 2014/59/EU.

Article 438/17. § 1. Every decision by the supervisory authority made by virtue of this Chapter shall include reasons, taking into account the views and reservations expressed by the other competent authorities as well as the potential effect of the decision on the financial stability in the Member States concerned. The supervisory authority shall, depending on the case, communicate these decisions to the Belgian EEA parent undertaking or the Belgian subsidiaries concerned.

§ 2. If a foreign competent authority concerned has submitted a matter to the EBA in accordance with Article 30, § 7, paragraph 2 of Directive 2014/59/EU, the supervisory authority shall defer its decision and await any decision that the EBA may make in accordance with Article 19, § 3 of Regulation No 1093/2010. The supervisory authority shall make a decision, where applicable jointly with the other competent authorities, in accordance with the decision of the EBA. The matter shall no longer be submitted to the EBA after the end of the period of five days as referred to in Article 438/15 or after a joint decision has been made. If the EBA has not made a decision within three days, the individual decisions made in accordance with Article 438/13, Article 438/14 or Article 438/15, 3° shall apply.

TITLE IV. — Group resolution plans

CHAPTER I. — Drawing up group resolution plans

Section I. - Resolution plans of Belgian groups

Article 439. § 1. In its capacity of group-level resolution authority, the resolution authority shall draw up a group resolution plan, along with the resolution authorities of the subsidiaries, for the resolution of each Belgian group as a whole, either through resolution at the level of the Belgian EEA parent undertaking, or through break up and resolution of the subsidiaries.

The group resolution plan shall include measures for the resolution of:

1° the Belgian EEA parent undertaking;

2° the subsidiaries established in the EEA that form part of the group;

3° the entities referred to in Article 424, 2° and 3° that form part of the group;

4° without prejudice to Chapter VI, the subsidiaries that form part of the group and are governed by a third country.

§ 2. In its capacity of group-level resolution authority, the resolution authority may require that the group entities provide assistance with drawing up and updating the group resolution plan, and provide all necessary information.

The resolution authority may in particular oblige the group entities to keep detailed information on financial contracts to which they are a party. If all or part of this
information is already available to another competent authority, this authority shall provide that information to the resolution authority.

§ 3. The resolution authority shall provide a summary of the key aspects of the group resolution plan to the Belgian EEA parent undertaking.

**Article 440.** § 1. The group resolution plan shall determine the resolution measures that may be taken as regards the group entities included in the plan, and shall include the resolution measures as regards the Belgian EEA parent undertaking, the subsidiaries and the entities referred to in Article 424, 2°, 3° and 4°, as well as the coordinated resolution measures as regards the subsidiaries, if the conditions referred to in Article 244 or 454 are met.

The group resolution plan shall in particular be drawn up with a view to ensuring the continuity of critical functions of the entities concerned, to avoiding jeopardizing the stability of the Belgian and international financial system and to protecting covered deposits.

§ 2. The group resolution plan shall take into consideration relevant scenarios, including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system-wide events.

§ 3. The group resolution plan shall not assume any exceptional government intervention, [without prejudice to the interventions of a financing arrangement as referred to in Article 100 of Directive 2014/59/EU,] or any emergency liquidity assistance by central banks or any recourse to other facilities for the provision of liquidity by central banks under guarantee, duration or interest conditions that vary from the norm.

§ 3, paragraph 1 amended by Article 33 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

The plan shall however contain an analysis of how and when a group entity may apply for the use of central bank facilities and identify those assets which would be expected to qualify as collateral.

**Article 441.** § 1. The group resolution plan:

1° shall examine the extent to which the resolution tools and powers could be applied and exercised in a coordinated way to group entities established in the EEA, including measures to facilitate the purchase by a third party of the group as a whole, or separate business lines or activities that are delivered by a number of group entities, or particular group entities, and identify any potential impediments to a coordinated resolution;

2° shall identify, where a group includes entities incorporated in third countries, appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within the EEA;

3° shall specify which measures, including the legal and economic separation of particular functions or business lines, are necessary to facilitate group resolution when the conditions for group resolution are met;

4° shall set out any additional actions, not referred to in the present Law, which the resolution authority, in its capacity of group-level resolution authority, intends to take in relation to the resolution of the group;

5° shall specify how the group resolution actions could be financed and, where the financing arrangement would be required, set out principles for sharing responsibility for that financing between sources of funding in different Member States.
Those principles shall be set out on the basis of equitable and balanced criteria and shall in particular take into account the impact on financial stability in all Member States concerned.

§ 2. By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may further define the following:

1° the minimum content of the group resolution plan; and

2° the information to be submitted to the resolution authority, in its capacity of group-level resolution authority, by the group entities and the frequency of transmission of that information.

Article 442. The resolution authority shall update the group resolution plan at least once a year and in any case after any changes occur to the legal or organizational structure, activities or financial situation of the group or group entities, that could have a significant impact on the plan or require changes thereto.

The resolution authority shall send the changes to the resolution plan to the competent authorities concerned.

Article 443. § 1. The resolution authority may exempt the credit institutions referred to in Article 239, § 1, from the obligations under this Title.

§ 2. Where the resolution authority grants an exemption pursuant to paragraph 1, it shall apply the requirements specified in the present Title on the basis of the general situation of the central institution and the credit institutions affiliated thereto as referred to in Article 239.

§ 3. The Belgian credit institutions which come under the direct supervision of the European Central Bank, pursuant to Article 6, paragraphs 4 and 5, under b) of the SSM Regulation, or the institutions whose work forms an important part of the Belgian financial system, may not be exempted by virtue of paragraph 1. For the application of this paragraph, the work of an institution is deemed to form an important part of the Belgian financial system if the following conditions are met:

1° the total value of its assets is greater than EUR 30,000,000,000; or

2° the ratio of its total assets and the gross domestic product is greater than 20%.

§ 4. The resolution authority may derogate from the obligations under this Chapter concerning the contents of the group resolution plan, the frequency of the plan’s updates, and the information to be provided by the Belgian EEA parent undertaking or the group entities, insofar as such a derogation is justified in light of the impact that these entities’ failure and liquidation under the liquidation procedure would have on the financial markets, on other credit institutions, on financing conditions and on the economy in general.

The resolution authority shall in particular take into consideration the nature of the work of the entities concerned, their shareholder structure, legal form, risk profile, scale and legal status, interconnectedness to other credit institutions or to the financial system in general, the scope and complexity of their work and whether or not they provide investment services or activity.

Article 444. § 1. In its capacity of group-level resolution authority, the resolution authority shall provide the relevant information communicated in accordance with Article 439, § 2 to:

1° the EBA.

2° the foreign resolution authorities of the subsidiaries;
the foreign resolution authorities in jurisdictions where significant branches are established, if relevant to them;
4° the authorities that form part of the colleges of competent authorities referred to in Article 178; and
5° the foreign resolution authorities of Member States in which the entities referred to in Article 424, §1, 2° and 3° are established.

§ 2. The information that the resolution authority in its capacity of group-level resolution authority provides to the competent authorities for subsidiaries, to the foreign resolution authorities in the jurisdictions where significant branches are established and to the authorities that form part of the colleges of competent authorities referred to in Article 178, shall include at least all information relevant for the subsidiary or the significant branch.

The information provided to the EBA shall include all information relevant for the role of the EBA as regards the group resolution plans.

If this pertains to information relating to subsidiaries in third countries, the resolution authority is not obliged to provide this information without the consent of the supervisory authority or the resolution authority of the third country in question.

Article 445. § 1. In its capacity of group-level resolution authority, the resolution authority shall draw up the group resolution plan in a resolution college along with the foreign resolution authorities referred to in Article 444, § 1 and after consulting with the competent authorities concerned, including the competent authorities in jurisdictions where significant branches are established if this is relevant for these branches.

§ 2. In its capacity of group-level resolution authority, the resolution authority shall do everything in its power to reach a joint decision with the foreign resolution authorities that do not disagree therewith to establish a group resolution plan within four months after the information referred to in Article 444, § 2 being sent.

The resolution authority may ask for assistance with reaching a joint decision from the EBA pursuant to Article 31, under c) of Regulation No 1093/2010.

§ 3. If the resolution authority and the foreign resolution authorities do not reach a joint decision within four months, the resolution authority, in its capacity of group-level resolution authority, shall make a decision itself on the group resolution plan.

The decision shall include all reasons and take into consideration the views and reservations of the foreign resolution authorities that disagree.

If a foreign resolution authority has submitted the matter to the EBA pursuant to Article 19 of Regulation No 1093/2010 within the term referred to in paragraph 2, the resolution authority shall defer its decision pending a decision by the EBA.

It shall make its decision in accordance with that of the EBA. The decision shall be provided by the resolution authority to the EEA parent undertaking and communicated to the other members of the resolution college.

As regards individual resolution plans, the resolution authority shall, in its capacity of group-level resolution authority, formulate its views and reservations prior to the foreign resolution authorities that disagree making a decision and drawing up a resolution plan for the entities within their jurisdiction.

In its capacity of group-level resolution authority, the resolution authority may submit matters to the EBA pursuant to Article 19 of Regulation No 1093/2010 until the end of the term referred to in § 2, and as long as no joint decision has been made.
§ 4. In its capacity of group-level resolution authority, the resolution authority shall take the initiative to reassess the group resolution plan jointly decided upon, including the minimum requirement for own funds and eligible liabilities, where a foreign resolution authority that disagrees assesses that the subject matter of a disagreement impinges on the fiscal responsibilities of its Member State.

§ 5. In its capacity of group-level resolution authority, the resolution authority shall not make a joint decision as referred to in paragraph 2, until the measures to remove the substantial impediments to the resolvability of the group are established in accordance with Article 450.

§ 6. If the resolution authority, in its capacity of group-level resolution authority, decides that a subject on which disagreement exists, on which an individual decision is made pursuant to § 3, paragraph 4, and that has been submitted to the EBA, may in any way impinge on Belgium’s fiscal responsibilities, it can communicate these concerns to the EBA and the foreign resolution authority concerned.

Section II. – Resolution plans of foreign groups

Article 446. § 1. In its capacity of competent authority for the resolution of group entities governed by Belgian law that are subsidiaries of an EEA parent undertaking, the resolution authority shall do everything in its power to reach a joint decision with the foreign group-level resolution authority on the establishment of a group resolution plan for the group entities concerned, within four months from the date on which the foreign group-level resolution authority sent the information referred to in Article 13, paragraph 1 of Directive 2014/59/EU.

In cases of a difference of opinion, the resolution authority can ask the foreign group-level resolution authority to consult the EBA.

§ 2. In the absence of a joint decision as referred to in paragraph 1, the resolution authority, in its capacity as referred to in paragraph 1, shall make a decision itself and draw up a resolution plan for the group entities governed by Belgian law referred to in paragraph 1.

The decision shall be fully reasoned, include the reasons for which the resolution authority does not agree with the proposed group resolution plan, and take into consideration the views and reservations of the other competent authorities and the foreign resolution authorities.

If another resolution authority has submitted the matter pursuant to Article 19 of Regulation No 1093/2010 to the EBA within the term referred to in paragraph 1, the resolution authority shall defer its decision pending a decision by the EBA.

It shall make its decision in accordance with that of the EBA. The resolution authority shall communicate its decision to the other members of the resolution college.

In its capacity as referred to in paragraph 1, the resolution authority shall communicate its views and reservations to the foreign group-level resolution authority, on the decision that the foreign group-level resolution authority intends to make on the group resolution plan.

The resolution authority may submit the matter to the EBA pursuant to Article 19 of Regulation No 1093/2010 until the end of the term referred to in paragraph 1, and as long as no joint decision has been made.
In its capacity as referred to in paragraph 1, the resolution authority shall communicate to the foreign resolution authority that will make an individual decision on a resolution plan, its views and reservations on that decision.

The resolution authority may submit the matter to the EBA pursuant to Article 19 of Regulation No 1093/2010 until the end of the term referred to in paragraph 1, and as long as no joint decision has been made.

§ 3. Where the resolution authority in its capacity as referred to in paragraph 1, decides that a subject disagreed on, and on which a joint decision is made, impinges on Belgium’s fiscal responsibilities, it can communicate these concerns to the foreign group-level resolution authority and ask for a reassessment of the group resolution plan.

§ 4. If the resolution authority determines that a subject disagreed on, on which an individual decision is made, and that is submitted to the EBA, could in any way impinge on Belgium’s fiscal responsibilities, it can communicate these concerns to the EBA and the other foreign resolution authorities concerned.

**Article 447.** Joint decisions and decisions made in the absence of a joint decision, as referred to in Articles 445 and 446:

1° shall be recognized by the resolution authority as final and, depending on the case, applicable in Belgium;

2° shall be updated on an annual basis.

**CHAPTER II. — Assessment of group resolution plans**

**Section I. — Assessment of the resolvability of groups**

**Article 448.** § 1. In drawing up and updating the group resolution plan following the decision-making procedure as referred to in Article 445, the resolution authority shall assess, in its capacity of group-level resolution authority, along with the foreign resolution authorities of subsidiaries, and after consulting the consolidating supervisor, the competent authorities for the subsidiaries and the foreign resolution authority of the jurisdiction where significant branches are established, to what extent Belgian groups are resolvable.

§ 2. In drawing up and updating the group resolution plan following the decision-making procedure as referred to in Article 446, the resolution authority shall assess, in its capacity of authority responsible for the resolution of group entities governed by Belgian law that are subsidiaries of an EEA parent undertaking, along with the foreign group-level resolution authority and the other competent authorities, to what extent this group is resolvable.

§ 3. The assessment referred to in paragraphs 1 and 2 shall be made in a resolution college.

§ 4. For the application of paragraphs 1 and 2, a group shall be deemed resolvable if the resolution authority is able, in a credible manner, either to liquidate the group entities or resolve them by applying one or more resolution tools and powers, while avoiding to the maximum extent possible any significant adverse effects on the financial system of Belgium or other Member States, including in the case of broader financial instability or systemic events, with a view to ensuring the continuity of critical functions of the group entities.

§ 5. By a Decree deliberated on in the Council of Ministers, passed on the advice of the resolution authority, the King may stipulate the elements to be examined by the resolution authorities in order to evaluate the resolvability of a group in accordance with this Article.
§ 6. In its assessment of the resolvability of a group, the resolution authorities shall not assume the possibility of exceptional government intervention [without prejudice to the intervention of a financing arrangement as referred to in Article 100 of Directive 2014/59/EU] or of any emergency liquidity assistance by central banks or any other use of facilities for the provision of liquidity by central banks under conditions as regards guarantees, duration or interest that vary from the norm.

§ 6 amended by Article 34 of the Law of 27 June 2016 - Belgian Official Gazette, 6 July 2016

§ 7. In its capacity of group-level resolution authority, the resolution authority shall promptly inform the EBA where a group is not deemed resolvable.

Section II. — Mitigation or elimination of impediments for the resolvability of Belgian groups

Article 449. § 1. If, on conclusion of an assessment of resolvability in accordance with Article 448, § 1, the resolution authority considers that there are major impediments to the resolvability of the credit institution in the group, it shall inform the credit institutions concerned, the competent authority and the foreign resolution authorities in the jurisdictions where significant branches are established.

During the four months after the date of receipt of the notification mentioned in paragraph 1, the credit institution shall propose to the resolution authority measures intended to mitigate or remove the impediments encountered.

Article 450. § 1. In its capacity of group-level resolution authority, the resolution authority shall do everything possible along with the foreign resolution authorities of the subsidiaries, to reach a joint decision on measures relating to the credit institutions that form part of a Belgian group, that can be taken with a view to removing or mitigating impediments for the resolvability of the group.

The resolution authority can in particular require measures from the credit institutions governed by Belgian law concerned, as referred to in Article 232, second paragraph.

The joint decision is made in the resolution college, after consultation of the college of competent authorities and of the foreign resolution authorities in the jurisdictions where branches are established, insofar as relevant for the significant branch, and with due regard to the assessment made pursuant to Article 448.

§ 2. In its capacity of group-level resolution authority, the resolution authority, in cooperation with the consolidating supervisor and with the EBA and after consultation with the competent authorities, shall draw up a report containing at least the following:

1° an analysis of the significant impediments for the effective application of the resolution tools and exercise of the resolution powers.

2° the impact on the business model of the group entities;

3° the measures referred to in Article 232, paragraph 2 which are necessary or appropriate according to the resolution authority to remove these impediments.

The resolution authority must submit the report to the Belgian EEA parent undertaking, to the foreign resolution authorities of the subsidiaries and to the foreign resolution authorities in the jurisdictions where significant branches are established.

§ 3. Within four months after the date of receipt of the notification referred to in paragraph 2, the Belgian EEA parent undertaking may submit comments and propose alternative
measures to the resolution authority with which the impediments contained in the report can be mitigated or removed.

In its capacity of group-level resolution authority, the resolution authority shall communicate these proposed measures to the supervisory authority, to the EBA, to the foreign resolution authority of the subsidiaries, and to the foreign resolution authorities in the jurisdictions where significant branches are established, if relevant to the significant branch.

§ 4. Within four months after submission of the comments referred to in paragraph 3 or the proposals from the Belgian EEA parent undertaking, or after the expiry of the period referred to paragraph 3, the resolution authority and the foreign resolution authorities of the subsidiaries and the significant branches shall, after consultation with the competent authorities, reach a joint decision within the resolution college on:

1° the establishment of significant impediments;

2° where necessary the assessment of the measures proposed by the Belgian EEA parent undertaking, and

3° the measures required by the authorities to mitigate or remove the impediments, taking into account the possible consequences of the measures in all Member States in which the group is active.

The resolution authority may ask for assistance with reaching a joint decision from the EBA pursuant to Article 31, under c) of Regulation No 1093/2010.

The joint decision shall include reasons and be provided by the resolution authority in its capacity of group-level resolution authority to the Belgian EEA parent undertaking.

§ 5. If the resolution authority, in its capacity of group-level resolution authority, and the foreign resolution authorities, do not reach a joint decision within the term specified in paragraph 4, the resolution authority, in its capacity of group-level resolution authority, shall itself make a decision on the group-level measures that must be taken.

The decision shall contain reasons and take into consideration the views and reservations of the foreign resolution authorities.

If a foreign resolution authority has submitted a matter as referred to in Article 452 to the EBA pursuant to Article 19 of Regulation No 1093/2010, within the term referred to in paragraph 4, the resolution authority shall defer its decision pending a decision by the EBA.

It shall make its decision in accordance with that of the EBA.

The resolution authority shall provide the decision to the Belgian EEA parent undertaking and inform the other members of the resolution college thereof.

§ 6. The resolution authority, in its capacity of group-level resolution authority, shall formulate its views and reservations prior to the foreign resolution authorities of the subsidiaries making a decision themselves on the appropriate measures that the subsidiaries must take on an individual level.

In its capacity of group-level resolution authority, the resolution authority may, until the end of the term referred to in paragraph 4, and as long as no joint decision has been reached, submit a matter to the EBA as referred to in Article 452 pursuant to Article 19 of Regulation No 1093/2010.

§ 7. Joint decisions and decisions made in the absence of a joint decision, as referred to in this article, shall be recognized by the resolution authority as final and where applicable applied in Belgium:
Section III. — Mitigation or elimination of impediments for the resolvability of foreign groups

Article 451. § 1. In its capacity of authority competent for the resolution of group entities governed by Belgian law that are subsidiaries of an EEA parent undertaking, the resolution authority shall do everything in its power to reach a joint decision, along with the foreign group-level resolution authority, on measures relating to the credit institutions that form part of the group, that can be taken with a view to removing or mitigating impediments for the resolvability of the group, within the term referred to in Article 18, paragraph 5 of Directive 2014/59/EU.

In cases of a difference of opinion, the resolution authority can ask the foreign group-level resolution authority to consult the EBA.

§ 2. In the absence of a joint decision as referred to in § 1, the resolution authority shall make a decision itself on the appropriate measures that the Belgian subsidiaries must take on an individual level.

The decision shall contain reasons and take into consideration the views and reservations of the foreign resolution authorities.

If a foreign resolution authority has submitted a matter as referred to in Article 452 within the term referred to in paragraph 1, to the EBA pursuant to Article 19 of Regulation No 1093/2010, the resolution authority shall defer its decision pending a decision by the EBA.

It shall make its decision in accordance with that of the EBA.

The resolution authority shall communicate its decision to the subsidiary concerned and to the foreign group-level resolution authority.

§ 3. In the absence of a joint decision as referred to in paragraph 1, the resolution authority shall communicate its views and reservations to the foreign group-level resolution authority, on the decision that the foreign group-level resolution authority will make itself on the measures that must be taken at a group level.

The resolution authority may, until the end of the term referred to in paragraph 1, and as long as no joint decision has been reached, submit a matter as referred to in Article 452 to the EBA pursuant to Article 19 of Regulation No 1093/2010.

§ 4. Joint decisions and decisions made in the absence of a joint decision, as referred to in this Article, shall be recognized by the resolution authority as final and where applicable applied in Belgium:
Section IV. — Common rules

Article 452. In the absence of a joint decision on the taking of any measures referred to in Article 232, paragraph 2, 7° or 8° or as referred to in Article 17, paragraph 5 under g), h) or k) of Directive 2014/59/EU, the resolution authority may ask the EBA for assistance in reaching an agreement, in accordance with Article 19, paragraph 3 of Regulation No 1093/2010.

TITLE V. - Resolution of groups

CHAPTER I. – Scope

Article 453. Subject to the provisions of this Title, Articles 242 to 310 apply to holding companies governed by Belgian law and financial institutions governed by Belgian law as referred to in Article 424, 2°, 3° and 4°.

CHAPTER II. — Objectives, conditions and general principles of resolution

Section I.—Conditions for initiating a resolution procedure

Article 454. § 1. The resolution authority may apply a resolution tool or power to a financial institution governed by Belgian law as referred to in Article 424, 4º if the conditions referred to in Article 244, §1 have been met, as regards the financial institution and the parent undertaking on which consolidated supervision is conducted.

§ 2. The resolution authority may apply a resolution tool or power to an entity governed by Belgian law as referred to in Article 424, 2° or 3° if the conditions referred to in Article 244, § 1 have been met, as regards the entity referred to in Article 424, 2° or 3° and as regards the subsidiaries that are credit institutions or, if the subsidiary is not established in the EEA, if the authority of the third country has established that it meets the conditions for resolution pursuant to the legislation of that third country.

Where the subsidiary credit institutions of a mixed-activity holding company are held directly or indirectly by an intermediate financial holding company governed by Belgian law, the resolution authority shall adapt the resolution tools and powers to the intermediate financial holding company.

§ 3. Even if the entity governed by Belgian law referred to in Article 424, 2° or 3° does not meet the conditions referred to in Article 244, § 1, the resolution authority may apply a resolution tool or power to this entity if:

1° one or more subsidiaries that are credit institutions meet the conditions referred to in Article 244, §1;

2° these subsidiaries’ assets and liabilities are such that their failure poses a threat to a credit institution or the group as a whole; and

3° it is necessary to apply resolution tools to entities referred to in Article 424, 2° or 3° that are necessary for the resolution of the group as a whole or for the resolution of the subsidiaries that are credit institutions.

§ 4. For the purposes of paragraph 2 and 3, when assessing whether the conditions in Article 244, § 1 are met in respect of one or more subsidiaries which are credit institutions, the resolution authority may decide to disregard any intra-group capital or loss transfers between the entities within a Belgian group that is not cross-border, including the exercise of write down or conversion powers.
The resolution authority and the competent resolution authority of a credit institution governed by foreign law, when assessing whether the conditions in Article 244, § 1 are met in respect of one or more subsidiaries which are credit institutions, may jointly decide to disregard any intra-group capital or loss transfers between the entities within the group, including the exercise of write down or conversion powers.

Section II. —General principles governing resolution

Article 455. When making decisions or applying measures by virtue of this Title, which may have an impact in one or more other Member States, the resolution authority, where applicable in its capacity of group-level resolution authority, and where applicable with the other competent authorities, shall have regard to the following general principles:

1° the imperatives of efficacy of decision-making and of keeping resolution costs as low as possible when taking resolution measures;

2° that decisions are made and action is taken in a timely manner and with due urgency when required;

3° that resolution authorities and competent authorities cooperate with each other to ensure that decisions are made and action is taken in a coordinated and efficient manner;

4° that due consideration is given to the interests of Belgium in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of Belgium;

5° that due consideration is given to the interests of each individual Member State where a subsidiary is established, in particular the impact of any decision or action or inaction on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of those Member States;

6° that due consideration is given to the interests of each Member State where significant branches are located, in particular the impact of any decision or action or inaction on the financial stability of those Member States;

7° that due consideration is given to the objectives of balancing the interests of the various Member States involved and of avoiding unfairly prejudicing or unfairly protecting the interests of particular Member States, including avoiding unfair burden allocation across Member States;

8° that any obligation under this Title to consult an authority before any decision or action is taken implies at least that such an obligation to consult that authority on those elements of the proposed decision or action which have or which are likely to have an effect on:

i) the EEA parent undertaking, subsidiary or the branch; and

ii) an impact on the stability of the Member State where the EEA parent undertaking, the subsidiary or the branch is established or located;

9° that resolution authorities, when taking resolution measures, take into account and follow the resolution plans referred to in Article 226 or Article 439 unless the resolution authorities consider, taking into account the circumstances of the case, that the objectives of the resolution will be achieved more effectively by taking actions which are not provided for in the resolution plans;
10° that the requirement for transparency whenever a proposed decision or action is likely to have implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of any relevant Member State; and

11° recognition that coordination and cooperation are most likely to achieve a result which lowers the overall cost of resolution.

**Article 456.** In the case of resolution of a group entity, the resolution authority shall make reasonable efforts to apply resolution tools and exercise resolution powers in a way that minimizes the impact on other group entities and on the group as a whole, and minimizes the adverse effects on financial stability in the European Economic Area and its Member States, in particular in the countries where the group operates.

**CHAPTER III. — Write-down or conversion of capital instruments**

**Article 457.** § 1. The resolution authority shall exercise the power referred to in Article 250, § 1 where at least one of the following conditions is met:

1° in the case of relevant capital instruments issued by a subsidiary governed by Belgian law and where those capital instruments are recognized for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the appropriate authority of the Member State of the consolidating supervisor and the resolution authority make a joint determination taking the form of a joint decision in accordance with Article 465, § 2 that unless the resolution authority exercises those powers, the group will no longer be viable;

2° in the case of relevant capital instruments issued by a parent undertaking governed by Belgian law and where those capital instruments are recognized for the purposes of meeting own funds requirements on an individual basis at the level of the parent undertaking governed by Belgian law or on a consolidated basis, the resolution authority makes a determination that unless it exercises this power, the group will no longer be viable;

§ 2. A relevant capital instrument issued by a subsidiary governed by Belgian law shall not be written down to a greater extent or converted on worse terms pursuant to § 1, 1° than equally ranked capital instruments at the level of the parent undertaking which have been written down or converted.

§ 3. 1° in the case of relevant capital instruments issued by a subsidiary of a Belgian group and where those capital instruments are recognized for the purposes of meeting own funds requirements on an individual and on a consolidated basis, the resolution authority, in its capacity of group-level resolution authority and the appropriate authority of the Member State of the subsidiary, may make a joint determination taking the form of a joint decision in accordance with Article 465, § 2 that unless the power of write down or conversion of capital instruments is exercised, the group will no longer be viable;

**Article 458.** § 1. Before making a determination referred to in Article 250, § 2, 2° and 3° and Article 457, § 1 and § 3 in relation to a subsidiary that issues relevant capital instruments that are recognized for the purposes of meeting the own funds requirements on an individual and on a consolidated basis, the resolution authority shall inform the consolidating supervisor thereof forthwith and, where applicable, the appropriate authority of the Member State in which the consolidating supervisor is established.

§ 2. Before making a determination referred to in Article 457, § 1, 1° and § 3, the resolution authority shall inform the competent authority of each credit institution or holding company as referred to in 424, 1°, 2°, 3° and 4° that issues relevant capital
instruments on which write-down or conversion powers should be exercised if such a determination has been made, forthwith, and, where applicable, the appropriate authority of the Member State in which the competent authority is established.

§ 3. The notification made pursuant to § 1 and § 2 shall be accompanied by an explanation of the reasons why the resolution authority is considering making the determination in question.

§ 4. Where a notification has been made pursuant to § 1 or § 2, the resolution authority, after consulting the authorities notified, shall assess whether an alternative measure is available for the exercise of the power referred to in Article 250, § 1.

Where the resolution authority assesses that such an alternative measure is available, it shall ensure that this measure is applied.

Where the resolution authority assesses that no alternative measures are available, it shall decide whether the determination considered under § 1 or § 2 is appropriate.

§ 5. For the purposes of § 4, “alternative measures” mean recovery measures or measures or capital transfer of the parent undertaking which can, within a suitable timeframe, address the circumstances which otherwise would require a determination as referred to in § 1 or § 2.

§ 6. When making the determination referred to in § 1 and § 2, the resolution authority shall take into account the possible effects of the exercise of the power referred to in Article 250, § 1, in all Member States in which the credit institution or group operates.

§ 7. Where the resolution authority makes the determination referred to in Article 457, § 1, 1°, it shall inform the appropriate authorities of the Member States in which the subsidiaries are established forthwith.

CHAPTER IV. — Resolution tools

Section I. – Minimum requirements for own funds and eligible liabilities

Article 459. The resolution authority may, after consulting the competent authority, decide to apply the minimum requirements on own funds and eligible liabilities referred to in Article 267/3 and, where applicable, in Article 267/4 to the holding companies governed by Belgian law and the financial institutions governed by Belgian law as referred to in Article 424, 2°, 3° and 4°.

Article 460. § 1. Without prejudice to Article 267/3, § 4, the Belgian EEA parent undertakings on a consolidated basis shall meet the minimum requirements on own funds and eligible liabilities referred to in Article 267/3 and, where applicable, in Article 267/4.

§ 2. In its capacity of group-level resolution authority, the resolution authority shall aim to reach a joint decision with the foreign resolution authorities concerned as to:

1° the minimum requirement to be applied at consolidated level;

2° the minimum requirement to be applied to each subsidiary of the group individually;

It shall, to this end, set up a resolution college pursuant to Article 468.

The minimum requirements on own funds and eligible liabilities referred to in 1° shall be met at the level of the Belgian EEA parent undertaking. The level of that requirement shall be established by the group-level resolution authority, after consulting the consolidating supervisor based on the criteria of Article 267/3, § 4 and taking into account whether the
group resolution plan determines that the subsidiaries of the group in third country are to be resolved individually.

The level of the minimum requirement for own funds and eligible liabilities referred to in 2° shall be established based on the criteria of Article 267/3, § 4, taking into account the level of the minimum requirement for own funds and eligible liabilities referred to in 1°.

§ 3. In order to reach a joint decision on the level of minimum requirement for own funds and eligible liabilities referred to in § 2, 1°, the resolution authority may submit the matter to the EBA in accordance with Article 19 of Regulation No 1093/2010.

The resolution authority may also submit the matter to the EBA in accordance with Article 19 of Regulation No 1093/2010 in the case of a difference of opinion with the resolution authorities concerned, which intend to make decisions themselves on the level of the minimum requirement for own funds and eligible liabilities referred to in § 2, 2° that applies to the subsidiaries under their competence.

§ 4. In the absence of a joint decision as referred to in § 2 within four months, the resolution authority shall make a decision itself on:

1° the level of minimum requirements for own funds and eligible liabilities referred to in § 2, 1°, after having studied the result of the assessment of the subsidiaries made by the foreign resolution authorities concerned;

2° the level of minimum requirements for own funds and eligible liabilities referred to in § 2, 2°, that applies to the subsidiaries that come under its competence.

If the resolution authority or a foreign resolution authority concerned has submitted the matter to the EBA pursuant to Article 19 of Regulation No 1093/2010, the resolution authority shall defer the decision referred to in 1° pending a decision by the EBA.

The resolution authority shall make its decision in accordance with that of the EBA.

If the EBA does not succeed in making a decision within one month, the decision referred to in 1° shall apply.

§ 5. The decisions made by the foreign resolution authorities on the subsidiaries under their competence shall apply in Belgium.

§ 6. The resolution authority:

1° shall inform the Belgian EEA parent undertaking of the joint decisions referred to in § 2, and of the decisions referred to in § 4 and § 5;

2° shall inform the subsidiaries under its competence of decisions referred to in § 2, 2° and § 4, 2°.

Article 461. § 1. Where the resolution authority, in its capacity of group-level resolution authority of a subsidiary, is submitted a matter by the foreign group-level resolution authority in order to reach a joint decision on the level of minimum requirements for own funds and eligible liabilities referred to in Article 460, § 2, 1° and 2°, it shall lend the cooperation required and form part of the college of resolution authorities set up for that purpose.

The resolution authority shall take into consideration the criteria referred to in Article 267/3, § 4, and the minimum requirements for own funds and eligible liabilities applied on a consolidated level to the group in order to determine the level of minimum requirements to be applied to the subsidiaries that come under its competence.
§ 2. In order to reach a joint decision on the level of minimum requirement for own funds and eligible liabilities to be applied on a consolidated level, the resolution authority may submit the matter to the EBA in accordance with Article 19 of Regulation No 1093/2010.

The resolution authority is responsible for ensuring that the assessment of the subsidiaries that come under its competence is taken into account by the foreign group-level resolution authority if the latter intends to make a decision itself that applies on a consolidated basis.

§ 3. In the absence of a joint decision within four months, the resolution authority shall make a decision itself on the level of minimum requirement for own funds and eligible liabilities to be applied to the subsidiaries that come under its competence.

If the group-level resolution authority has submitted the matter to the EBA pursuant to Article 19 of Regulation No 1093/2010, the resolution authority shall defer its decision pending a decision by the EBA. The resolution authority shall make its decision in accordance with that of the EBA.

If the EBA does not succeed in making a decision within one month, the decision referred to in paragraph 1 shall apply.

§ 4. The common decisions made pursuant to § 1 and § 2, and the decisions made by the foreign group-level resolution authority, shall apply in Belgium.

§ 5. The resolution authority shall inform the subsidiaries that come under its competence of the decisions referred to in § 1 that concern them, and of the decisions referred to in § 3.

Article 462. § 1. In its capacity of group-level resolution authority, the resolution authority may grant an exemption to the application of the minimum requirement for own funds and eligible liabilities referred to in Article 460, § 2, 1° to a Belgian EEA parent institution if:

1° the EEA parent credit institution meets the minimum requirement for own funds and eligible liabilities on a consolidated basis;

2° the competent authority of the EEA parent credit institution has granted full exemption from the application to that institution of individual capital requirements in accordance with Article 7, paragraph 3 of Regulation No 575/2013.

§ 2. In its capacity of resolution authority of a credit institution that is a subsidiary of a group, the resolution authority may grant an exemption from the individual application to the latter of the minimum requirement for own funds and eligible liabilities referred to in Article 267/3, § 4, if:

1° both the subsidiary and its parent undertaking come under the authorization requirements and the supervision of the same Member State;

2° the subsidiary is involved in the consolidated supervision of its parent undertaking;

3° the highest level group institution in Belgium, where different to the EEA parent credit institution, complies on a sub-consolidated basis with the minimum requirement for own funds and eligible liabilities referred to in Article 267/3, § 4;

4° there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities to the subsidiary by its parent undertaking;

5° either the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;

6° the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;
7° the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary; and

8° the competent authority of the EEA parent credit institution has granted full exemption from the application to the subsidiary of individual capital requirements in accordance with Article 7, paragraph 1 of Regulation No 575/2013.

Section II. – Implementation of the bail-in tool

Article 463. Within a month after the application of the bail-in tool to different legal entities that form part of a Belgian group to achieve the objectives specified in Article 267/1, § 1, 1°, the Belgian EEA parent undertaking for all credit institutions in the group shall draw up a business reorganization plan as referred to in Article 267/11 and submit it for approval to the resolution authority, in its capacity of group-level resolution authority, in accordance with the procedure referred to in Article 267/12.

In its capacity of group-level resolution authority, the resolution authority shall communicate the business reorganization plan to the resolution authorities of the subsidiaries of the Belgian EEA parent undertaking and to the EBA.

CHAPTER V. – Procedural requirements

Article 464. If the resolution authority receives a notification itself as referred to in Article 81, paragraph 2 or paragraph 3 of Directive 2014/59/EU, it may inform the following authorities:

1° the supervisory authority;

2° the Deposit and Financial Instrument Protection Fund;

3° the Minister responsible for Finance;

CHAPTER VI. - Cross-border group resolution

Section I. – General principles

Article 465. § 1. Where a group resolution scheme is drawn up pursuant to this Chapter:

1° group resolution plans referred to in Article 439 shall be taken into account and followed unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;

2° the resolution measures are described that must be taken by the resolution authorities concerned as regards the EEA parent undertaking or certain group entities, in order to comply with the objectives of the resolution and principles referred to in Articles 243, 245, 454, 455 and 456;

3° it describes how these resolution measures should be coordinated;

4° a financing plan is established which takes into account the group resolution plan and the principles for sharing responsibilities in accordance with Article 441, § 1, 5°.
§ 2. Unless otherwise specified, the group resolution scheme shall take the form of a joint decision by the group-level resolution authority, and the resolution authorities competent for the subsidiaries that come under the group resolution scheme.

The EBA may, at the request of a resolution authority, provide assistance with reaching a joint decision pursuant to Article 31, under c) of Regulation No 1093/2010.

Article 466. § 1. The resolution authority shall perform all actions under this Chapter without delay, and with due regard to the urgency of the situation.

§ 2. If a group resolution scheme is not implemented and the resolution authority takes resolution measures as regards a group entity, it shall work closely with the resolution college to come to a coordinated resolution strategy for all group entities in default or likely to be in default.

§ 3. Where a resolution authority takes a resolution measure as regards a group entity, it shall regularly keep the members of the resolution college fully informed of those measures and of the progress made with the implementation thereof.

Article 467. Where a joint decision is made pursuant to Articles 472 to 477, or a decision is made in the absence of a joint decision, the resolution authority shall recognize these decisions as final and where applicable, apply them in Belgium.

Section II. – Resolution colleges

Article 468. § 1. In its capacity of group-level resolution authority, the resolution authority shall set up resolution colleges to carry out the tasks referred to in Articles 439, 449, 450 and 460 and in Section IV of this Chapter and to, where applicable, ensure cooperation and coordination with third-country resolution authorities.

In its capacity of group-level resolution authority, the resolution authority is not obliged to establish a resolution college if other groups or colleges perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in resolution colleges established in this Article and in Article 471. In such a case, all references to resolution colleges in the present Law shall also be understood as references to those other groups or colleges.

§ 2. Within the resolution colleges, the resolution authority, in its capacity of group-level resolution authority, shall perform the following tasks with the other members of the college:

1° exchanging information relevant for the development of group resolution plans, for the application to groups of preparatory and preventative powers and for group resolution;

2° developing group resolution plans;

3° assessing the resolvability of groups;

4° exercising powers to mitigate or eliminate impediments to the resolvability of groups;

5° deciding on the need to establish a group resolution scheme as referred to in Section IV of this Chapter;

6° reaching the agreement on a group resolution scheme proposed in accordance with Section IV of this Chapter;

7° coordinating public communication of group resolution strategies and schemes;
coordinating the use of financing arrangements;

9° setting the minimum requirements for groups at consolidated and subsidiary level under Article 460.

In addition, resolution colleges may be used as a forum to discuss any issues relating to cross-border group resolution.

§ 3. The resolution authority, in its capacity of group-level resolution authority, and the other members of the college, shall work closely together.

§ 4. The resolution authority shall, in its capacity of group-level resolution authority, be the chair of the resolution college. In that capacity it shall:

1° establish written arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;

2° coordinate all activities of the resolution college;

3° convene and chair all its meetings and keep all members of the resolution college fully informed in advance of the organization of meetings of the resolution college, of the main issues to be discussed and of the items to be considered;

4° notify the members of the resolution college of any planned meetings so that they can ask to participate;

5° decide which members and observers shall be invited to attend particular meetings of the resolution college, on the basis of specific needs, taking into account the relevance of the issue to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned and taking into account the right of the resolution authorities to participate in meetings whenever matters subject to joint decision-making or relating to a group entity located in their Member State are on the agenda;

6° keep all of the members of the college informed, in a timely manner, of the decisions and outcomes of those meetings.

§ 5. In its capacity of group-level resolution authority, the resolution authority may invite the following authorities to be involved in the resolution college it sets up:

1° the foreign resolution authorities of each Member State in which a subsidiary is established which is subject to consolidated supervision;

2° the foreign resolution authorities of the Member States in which a parent undertaking of one or more institutions in the group, which is an entity as referred to Article 424, 3°, is established.

3° the foreign resolution authorities of Member States where significant branches are established;

4° the consolidating supervisor and the competent authorities of the Member States the resolution authority of which is a member of the resolution college;

5° the competent ministries, if the resolution authorities that are a member of the resolution college are not competent ministries;

6° the public authority of a Member State competent for the deposit guarantee schemes if the resolution authority of that Member State is a member of a resolution college;

7° the EBA.

8° at their request and solely as an observer, the resolution authorities of third countries if a parent undertaking or a credit institution established in the EEA has a subsidiary credit institution in those countries, or a branch that would be deemed significant if it was located
in the EEA, and with the proviso that they are subject to confidentiality requirements which, in the opinion of the resolution authority in its capacity of group-level resolution authority, are equivalent to those that apply to the resolution authority.

**Article 469.** In its capacity of resolution authority that is competent for the resolution of group entities governed by Belgian law that are subsidiaries of an EEA parent undertaking, the resolution authority shall take part in the resolution colleges set up by the foreign group-level resolution authority.

**Article 470.** § 1. If a credit institution governed by the law of a third country or a parent undertaking governed by the law of a third country has subsidiaries in Belgium and in one or more other Member States, or has two or more branches which, in light of the assessment criteria in Article 51, § 1, paragraph 2 of Directive 2013/36/EU would be considered significant by Belgium and by one or more other Member States, the resolution authority shall set up a European resolution college with the foreign resolution authorities concerned.


§ 2. The European resolution college shall perform the functions and carry out the tasks specified in Article 468, § 2 with respect to the subsidiary institutions and, insofar as those tasks are relevant, to branches. Unless otherwise specified, the European resolution college functions as described in Article 468.

§ 3. The members of the European resolution college shall mutually agree on the chair of the college.

Where a financial holding company established in accordance with Article 219, § 4, paragraph 3 has EEA subsidiaries or significant branches, the European resolution college shall be chaired by the resolution authority of the Member State where the consolidating supervisor is located for the purposes of consolidated supervision.

§ 4. Resolution authorities may, by mutual agreement of all the relevant parties, waive the requirement to establish a European resolution college if other groups or colleges, including a resolution college established under Article 468, perform the same functions and carry out the same tasks specified in this Article and comply with all the conditions and procedures, including those covering membership and participation in European resolution colleges, established in this Article and in Article 471. In such a case, all references to European resolution colleges in the present Law shall also be understood as references to those other groups or colleges.

**Section III. – Information exchange**

**Article 471.** § 1. For the resolution authority of cross-border groups, the resolution authority shall work closely with the resolution authorities competent for the resolution of group entities governed by foreign law. For this purpose they shall share all relevant information with each other upon request and share all essential information of their own accord.

In its capacity of group-level resolution authority, the resolution authority shall coordinate the flow of all relevant information between the resolution authorities concerned. In particular, it shall provide the resolution authorities with all the relevant information in a timely manner with a view to facilitating the exercise of the tasks of the resolution college referred to in Article 468, § 2.
§ 2. The resolution authority shall share information with the Minister responsible for Finance on the resolution of cross-border groups if this information relates to a decision or matter as referred to in Article 268, § 2 and Article 292, 5°, or which may have implications for public funds.

Section IV. - Procedural requirements for cross-border group resolution

Subsection I. - Group resolution involving the Belgian subsidiary of a Belgian EEA parent undertaking

Article 472. § 1. Where a resolution authority decides that a credit institution governed by Belgian law or a group entity governed by Belgian law referred to in Article 424, 2°, 3° or 4° that is a subsidiary of a Belgian EEA parent undertaking, meets the conditions referred to in Article 244 or 454, that authority shall notify the following information without delay to the supervisory authority and the members of the resolution college concerned:

1° the decision that the credit institution or group entity concerned meets the conditions specified in Article 244 or 454; and

2° the resolution measures or the winding-up proceedings that the resolution authority considers to be appropriate for that credit institution or group entity.

§ 2. In its capacity of group-level resolution authority, the resolution authority shall assess, after consulting the other members of the resolution college, the likely impact of the measures notified of in accordance with paragraph 1, on the group and on the group entities in other Member States, and in particular whether the measures concerned would increase the likelihood that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

§ 3. If the resolution authority in its capacity of group-level resolution authority assesses that the resolution actions or other measures notified in accordance with paragraph 1, would not increase the likelihood that the conditions laid down in Article 244 or 454 would be satisfied in relation to a group entity in another Member State, it may apply the notified or other measures.

§ 4. If the resolution authority in its capacity of group-level resolution authority, assesses that the resolution actions or other measures notified in accordance with paragraph 1, would increase the likelihood that the conditions laid down in Article 244 or 454 would be satisfied in relation to a group entity in another Member State, it shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme that meets the requirements of Article 465, § 1 and submit it to the resolution college. It may also extend that period of 24 hours.

§ 5. In its capacity of group-level resolution authority, the resolution authority may reach a joint decision on a group resolution scheme with the foreign resolution authorities which did not disagree covering the relevant group entities, in accordance with Article 465, § 2.
Subsection II. - Group resolution involving the Belgian subsidiary of an EEA parent undertaking in another Member State

Article 473. § 1. Where a resolution authority decides that a credit institution governed by Belgian law or a group entity governed by Belgian law referred to in Article 424, 2°, 3° or 4° that is a subsidiary of an EEA parent undertaking in another Member State, meets the conditions referred to in Article 244 or 454, that authority shall notify the following information without delay to the foreign group-level resolution authority, the consolidating supervisor and the members of the resolution college concerned of:

1° the decision that the credit institution or group entity concerned meets the conditions specified in Article 244 or 454; and

2° the resolution measures or the insolvency measures that the resolution authority considers to be appropriate for that credit institution or group entity.

§ 2. The resolution authority shall discuss with the foreign group-level resolution authority the likely impact of the measures notified of in accordance with paragraph 1, on the group and on the group entities in other Member States, and in particular whether the measures concerned would increase the likelihood that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

§ 3. If the foreign group-level resolution authority assesses that the measures notified of in accordance with paragraph 1, would not increase the likelihood that the conditions laid down in Article 244 or 454 would be satisfied in relation to a group entity in another Member State, the resolution authority may apply the notified or other measures.

§ 4. If the foreign group-level resolution authority assesses that the measures notified in accordance with paragraph 1, would increase the likelihood that the conditions laid down in Article 244 or 454 would be satisfied in relation to a group entity in another Member State, the following shall apply:

1° the resolution authority may consent to an extension to the time within which the foreign group-level resolution authority must submit a group resolution scheme to the resolution college;

2° if the foreign group-level resolution authority has not made an assessment within 24 hours or within a longer period of time agreed, after receipt of a notification referred to in paragraph 1, the resolution authority may take the resolution measures notified in accordance with paragraph 1 or other measures;

3° if the foreign group-level resolution authority has submitted a group resolution scheme and the resolution authority agrees with it, they shall reach a joint decision with the foreign group-level resolution authority and the foreign resolution authorities on the resolution scheme;

4° if the resolution authority does not agree with the group resolution scheme submitted by a foreign group-level resolution authority, or for reasons of financial stability considers that independent resolution measures should be taken as regards the Belgian credit institution or group entity concerned that differ from those proposed in the scheme, it shall explain in detail why it does not agree, communicate these reasons to the foreign group-level resolution authority and the foreign resolution authorities concerned and communicate which measures it intends to take. In its reasoning, the resolution authority shall take into account the group resolution plan referred to in Article 439, the likely effects for the financial stability in the Member States concerned, and the likely effects of the measures on the other group entities.
Subsection III. - Group resolution involving a foreign subsidiary of a Belgian EEA parent undertaking

**Article 474.** § 1. Where the resolution authority in its capacity of group-level resolution authority receives a notification of a decision as referred to in Article 91, paragraph 1 of Directive 2014/59/EU on a credit institution or group entity governed by foreign law as referred to in Article 424, 2º, 3º or 4º which is a subsidiary of a Belgian EEA parent undertaking, it shall assess, after consulting the other members of the resolution college concerned, the likely impact of the resolution or insolvency measures on the group and on the group entities in other Member States, and in particular whether the measures concerned would increase the likelihood that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

§ 2. If the resolution authority in its capacity of group-level resolution authority, after consulting the other members of the resolution college, assesses that the measures notified in accordance with paragraph 1, would not increase the likelihood that the conditions laid down in Article 244 or 454 would be satisfied in relation to a group entity in another Member State, it shall inform the foreign resolution authority that has made the notification thereof forthwith.

If the resolution authority in its capacity of group-level resolution authority, after consulting with the other members of the resolution college, assesses that the resolution measures notified in accordance with paragraph 1, would increase the likelihood that the conditions laid down in Article 244 or 454 would be satisfied in relation to a group entity in another Member State, it shall, no later than 24 hours after receiving the notification under paragraph 1, propose a group resolution scheme that meets the requirements of Article 465, §1 and submit it to the resolution college. It may extend this 24-hour term with the consent of the foreign resolution authority that has made the notification referred to in paragraph 1.

§ 3. In its capacity of group-level resolution authority, the resolution authority may reach a joint decision on a group resolution scheme with the foreign resolution authorities which did not disagree covering the relevant group entities, in accordance with Article 465, § 2.

Subsection IV. - Group resolution involving a foreign subsidiary of an EEA parent undertaking in another Member State

**Article 475.** § 1. Where the resolution authority in its capacity of member of a resolution college receives a notification of a decision as referred to in Article 91, paragraph 1 of Directive 2014/59/EU on a credit institution or group entity governed by foreign law as referred to in Article 424, 2º, 3º or 4º which is a subsidiary of an EEA parent undertaking in another Member State, it shall discuss with the other members of the resolution college concerned the likely impact of the resolution or insolvency measures notified on the group and on the group entities in other Member States, and in particular whether the measures concerned would increase the likelihood that the conditions for resolution would be satisfied in relation to a group entity in another Member State.

§ 2. If the foreign group-level resolution authority assesses that the measures notified in accordance with paragraph 1, would increase the likelihood that the conditions for resolution would be met by a group entity in another Member State, and has proposed a group resolution scheme within the term of 24 hours after receipt of the notification referred to in §1, the following applies:
1° if the resolution authority agrees with the proposed group resolution scheme, they shall reach a joint decision with the foreign group-level resolution authority and the foreign resolution authorities on the resolution scheme;

2° if the resolution authority does not agree with the group resolution scheme submitted by a foreign group-level resolution authority, or for reasons of financial stability considers that independent resolution measures should be taken as regards the Belgian credit institution or group entity governed by Belgian law that differ from those proposed in the scheme, it shall explain in detail why it does not agree, communicate these reasons to the foreign group-level resolution authority and the foreign resolution authorities concerned, and communicate which measures it intends to take. In its reasoning, the resolution authority shall take into account the group resolution plan referred to in Article 439, the likely effects for the financial stability in the Member States concerned, and the likely effects of the measures on the other group entities.

Subsection V. - Group resolution involving a Belgian EEA parent undertaking

Article 476. § 1. Where a resolution authority, in its capacity of group-level resolution authority, decides that a Belgian EEA parent undertaking meets the conditions referred to in Article 244 or 454, that authority shall notify the following information without delay to the supervisory authority and other members of the resolution college concerned:

1° the decision that the parent undertaking concerned meets the conditions specified in Article 244 or 454; and

2° the resolution measures or the insolvency measures that the resolution authority considers to be appropriate for that parent undertaking.

§ 2. The resolution or insolvency measures referred to in paragraph 1 may include a group resolution scheme in one or more of the following circumstances:

1° the measures notified of in accordance with paragraph 1 at the level of the parent undertaking make it likely that the conditions for resolution would be satisfied in relation to a group entity in another Member State;

2° the measures at the level of the parent undertaking are not sufficient to stabilize the situation or are not likely to provide an optimum outcome;

3° one or more subsidiaries meet the conditions for resolution according to a determination by the resolution authorities responsible for those subsidiaries; or

4° resolution measures at group level will benefit the subsidiaries of the group in a way which makes a group resolution scheme appropriate.

§ 3. Where measures proposed by the resolution authority in its capacity of group-level resolution authority under paragraph 1 do not include a group resolution plan, it shall make its decision after consulting the members of the resolution college.

This decision takes into account the financial stability of the Member States concerned and takes into account and follows the group resolution plans referred to in Article 439, unless the resolution authorities consider, taking into account the circumstances of the case, that the resolution objectives will be achieved more effectively by taking actions which are not provided for in the resolution plans;

§ 4. If the measures proposed by the resolution authority in its capacity of group-level resolution authority, pursuant to paragraph 1, include a group resolution scheme, it shall
reach a joint decision with the foreign resolution authorities which do not disagree, in accordance with Article 465, § 2.

Subsection VI. - Group resolution involving an EEA parent undertaking in another Member State

Article 477. Where a foreign group-level resolution authority notifies the resolution authority that an EEA parent undertaking in another Member State satisfies the conditions for resolution, the following applies:

1° the resolution authority may notify the foreign group-level resolution authority and the other members of the resolution college that, in its opinion, one or more Belgian subsidiaries of the same group also satisfy the conditions for resolution specified in Article 244 or 454;

2° if the measure proposed by the foreign group-level resolution authority does not include a group resolution scheme, the foreign group-level resolution authority shall make its decision after consulting the members of the resolution college;

3° if the measure proposed by the foreign group-level resolution authority does include a group resolution scheme, the resolution authority shall make a joint decision on the resolution scheme with the foreign group-level resolution authority and the foreign resolution authority that agree;

4° if the resolution authority does not agree with the group resolution scheme submitted by a foreign group-level resolution authority, or for reasons of financial stability considers that independent resolution measures should be taken as regards the credit institution governed by Belgian law or group entity concerned that differ from those proposed in the scheme, it shall explain in detail why it does not agree, communicate these reasons to the foreign group-level resolution authority and the foreign resolution authorities concerned, and communicate which measures it intends to take. In its reasoning, the resolution authority shall take into account the group resolution plan referred to in Article 439, the likely effects for the financial stability in the Member States concerned, and the likely effects of the measures on the other group entities.

CHAPTER VII. - Relations with third countries

Article 478. This Chapter applies to the recognition and enforcement of third-country resolution proceedings and cooperation with third countries, unless and until an international agreement as referred to in Article 93, paragraph 1 of Directive 2014/59/EU enters into force with the third country concerned.

It shall remain applicable after entry into force of such an international agreement with the third country concerned and insofar as the recognition and enforcement of third-country resolution proceedings and cooperation with third countries is not governed by that agreement.

Article 479. § 1. Where there is a European resolution college established in accordance with Article 470, the resolution authority shall make a joint decision with the other members of that resolution college on the recognition, except as provided for in Article 483, of third-country resolution proceedings relating to a third-country credit institution or parent undertaking that:
1° has EEA subsidiary credit institutions or branches regarded as significant in Belgium and one or more other Member States; or

2° has assets, rights or liabilities located in or governed by the law of Belgium and one or more other Member States.

§ 2. Where a joint decision is reached on the recognition of the third-country resolution proceedings, the resolution authority shall seek the enforcement in Belgium of the recognized third-country resolution proceedings in accordance with the present Law.

§ 3. In the absence of a joint decision between the resolution authorities participating in the European resolution college, or in the absence of a European resolution college, the resolution authority shall make its own decision on whether to recognize and enforce, except as provided for in Article 483, third-country resolution proceedings relating to a third-country credit institution or parent undertaking.

The decision shall give due consideration to the interests of each individual Member State where a third-country credit institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement of the third-country resolution proceedings on the other parts of the group and the financial stability in those Member States.

Article 480. The resolution authority is empowered to exercise the resolution powers referred to in Articles 276 to 281 in relation to:

1° [assets of a credit institution or parent undertaking governed by the law of a third country, located in Belgium or coming under Belgian law;]


2° [rights or liabilities of a credit institution governed by the law of a third country, that are booked by its branch established in Belgium, or governed by the law of Belgium, or where claims in relation to such rights or liabilities are enforceable in Belgium;]


3° shares or instruments of ownership of an EEA subsidiary credit institution established in Belgium;

4° rights of each party to a contract with an entity referred to in Article 479, § 1 if those powers are necessary to enforce third-country resolution proceedings; and

5° rights to terminate, liquidate or accelerate contracts, or affect the contractual rights of entities as referred to in Article 479, § 1 and other group entities, where such a right arises from resolution action taken in respect of third-country institutions, parent undertakings of such entities or other group entities, whether by the third-country resolution authority itself or otherwise, pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

Article 481. Resolution authorities may take, where necessary in the public interest, resolution measures with respect to a Belgian parent undertaking where the relevant third-country authority determines that a credit institution that is incorporated in that third country meets the conditions for resolution under the law of that third country.

To that end, resolution authorities are empowered to use any resolution power in respect of that Belgian parent undertaking, and Article 287 shall apply.
Article 482. The recognition and enforcement of third-country resolution proceedings shall be without prejudice to the application of winding-up proceedings.

Article 483. The resolution authority may, after consulting the foreign resolution authorities, where a European resolution college is established under Article 479, refuse to recognize or to enforce third-country resolution proceedings if it considers:

1° that the third-country resolution proceedings would have adverse effects on financial stability in Belgium or that the proceedings would have adverse effects on financial stability in another Member State;

2° [that a resolution measure pursuant to Article 484 in relation to a Belgian branch of a credit institution or stockbroking firm governed by the law of a third country is necessary to achieve one or more of the objectives of the resolution;]


3° that creditors, including in particular depositors located or payable in a Member State, would not receive the same treatment as part of third-country resolution proceedings as creditors and depositors with similar legal rights under the third-country home resolution proceedings;

4° that recognition or enforcement of the third-country resolution proceedings would have material fiscal implications for Belgium; or

5° that the effects of such recognition or enforcement would be contrary to national law.

Article 484. § 1. [The resolution authority has the power to take measures in relation to a Belgian branch of a credit institution or stockbroking firm governed by the law of a third country if they are not subject to resolution proceedings pursuant to the law of a third country or if these proceedings come under Article 483. Article 287 shall apply to the exercise of this power.]


§ 2. The resolution authority may exercise the powers referred to in § 1 if it considers that measures are necessary in the general interest and one or more of the following conditions are satisfied:

1° [The Belgian branch of a credit institution or stockbroking firm governed by the law of a third country no longer meets or is likely not to meet the conditions laid down by Articles 333 and 336 or 603 and 605 for the granting of an authorization and the pursuit of business in Belgium, and there is no prospect that any private sector, supervisory or relevant third-country action would restore the branch to compliance or prevent failure in a reasonable timeframe;]


2° the third-country credit institution is, in the opinion of the resolution authority, unable or unwilling, or is likely to be unable, to pay its obligations to EEA creditors, or obligations that have been created or booked through the branch, as they fall due, and the resolution authority is satisfied that no third-country resolution proceedings or insolvency proceedings have been or will be initiated in relation to that third-country institution in a reasonable timeframe;

3° the relevant third-country resolution authority has initiated third-country resolution proceedings in relation to the third-country credit institution, or has notified to the resolution authority its intention to initiate such a proceeding.
§ 3. Where the resolution authority takes an independent measure in relation to a Belgian EEA branch, it shall have regard to the objectives of the resolution and take the measure in accordance with the following principles and requirements, insofar as they are relevant:

1° the principles specified in Article 245;

2° the requirements of Book II, Title VIII, Chapter V as regards the application of the resolution tools.

Article 485. § 1. Where appropriate, the competent authorities or the resolution authority shall enter into non-binding cooperation agreements with third countries in line with the framework agreements drawn up by the EBA pursuant to Article 97, paragraph 2 of Directive 2014/59/EU.

This Article does not prevent competent authorities from entering into bilateral or multilateral agreements with third countries in accordance with Article 33 of Regulation (EU) No 1093/2010.

§ 2. Cooperation arrangements entered into with third countries in accordance with this Article may include provisions on the following matters:

1° the exchange of information necessary for the preparation and maintenance of resolution plans;

2° consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under this Chapter and similar powers under the law of the relevant third countries;

3° the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;

4° early warning to or consultation of parties to the cooperation arrangement before taking any significant action under the present Law or relevant third-country law affecting the institution or group to which the arrangement relates;

5° the coordination of public communication in the case of joint resolution measures;

6° procedures and arrangements for the exchange of information and cooperation under points 1° to 5°, including, where appropriate, through the establishment and operation of crisis management groups.

§ 3. The competent authorities and the resolution authority shall inform the EBA of any cooperation arrangements they have entered into pursuant to this Article.

BOOK XII -STOCKBROKING FIRMS


TITLE I - Definitions - General provisions

CHAPTER I - Definitions

Article 486. For the application of this Book and its implementing decrees and regulations, the following definitions apply:

1° small stockbroking firm: a stockbroking firm that meets the following two conditions:
a) total amount of financial instruments in custody less than or equal to EUR 5 000 000 000 during two successive financial years; and

b) the stockbroking firm meets at least two of the following criteria:
- fewer than an average of 250 employees over the financial year concerned;
- balance sheet total less than or equal to EUR 43 000 000;
- annual net turnover less than or equal to EUR 50 000 000;

The Bank may decide that a stockbroking firm that meets the two conditions of paragraph 1 does not qualify as a small stockbroking firm, in particular because of its internal organization and the nature, scale, interconnectedness with entities internal or external to the group, complexity and cross-border nature of its activity;

2° a significant stockbroking firm,

a) a systemically important stockbroking firm; or

b) a stockbroking firm that does not meet at least two of the following criteria:
- fewer than an average of 250 employees over the financial year concerned;
- balance sheet total less than or equal to EUR 43 000 000;
- annual net turnover less than or equal to EUR 50 000 000;

The Bank may decide that a stockbroking firm that meets at least two of the criteria referred to in b) qualifies as a significant stockbroking firm in particular because of its internal organization and the nature, scale, interconnectedness with entities internal or external to the group, complexity and cross-border nature of its activity;

3° authority acting as contact point for Belgium: the FSMA in its capacity of competent authority designated as the contact point pursuant to Article 79, paragraph 1 of Directive 2014/65/EU.

CHAPTER II – General provisions

Article 487. This Book regulates the establishment, work, supervision and resolution of stockbroking firms as referred to in Article 1, § 3, paragraph 2 that operate in Belgium.

Article 488. The provisions of Books II to X declared applicable shall apply mutatis mutandis.

Where the provisions of Books II to X include references to other provisions of the same Books or of Annexes I, II, IV, V and VI, the other provisions referred to also apply mutatis mutandis to stockbroking firms, namely taking into account any specific characteristics of stockbroking firms in accordance with the provisions of this Book.

Article 489. Where use is made of the term “activities included in the list in Article 4” in a provision of Books II to X to which this Book refers, this term should be interpreted for the application of this provision to stockbroking firms as “investment services and/or activities and ancillary services”.

Where use is made of the term “significant within the meaning of Article 3, 30°” in a provision of Books II to X to which this Book refers, this term should be interpreted for the application of this provision to stockbroking firms as “significant within the meaning of Article 486, 2°”.

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Article 490. This Book regulates, along with the provisions of Title II of the Law of 25 October 2016 the matters referred to in Article 487, § 1.

TITLE II – Stockbroking firms governed by Belgian law
CHAPITRE I. — Access to activity
Section I. - Authorization
Subsection I. — Authorization requirement

Article 491. In accordance with Article 6 of the Law of 25 October 2016 and irrespective of where it conducts its business, each stockbroking firm governed by Belgian law must obtain an authorization prior to commencing its activity.

Subsection II. – Procedure

Article 492. Article 8 shall apply with the proviso that the applicants must also state in their application for authorization which investment services and/or activities and ancillary services referred to in Article 3, 71° and 72°, and, where applicable, which service referred to in Article 499, § 2, fifth indent, they wish to pursue. They shall also clarify which categories of financial instruments these services and activities relate to.

Article 493. Articles 9 and 10 shall apply.

Article 494. Article 11 shall apply, with the proviso that:

1° references in the said Article to Articles 27, 32, 33, and 34 must be read as references to Articles 504, 506, 507 and 508;

2° paragraph 2 must be interpreted as follows:

“If the Bank does not take into account the opinion of the FSMA on the matters referred to in the first paragraph, § 1, this fact shall be communicated, including reasons, in the explanation accompanying the decision on the application for authorization. The aforementioned opinion of the FSMA on the first paragraph, § 1, 1° shall be attached to the notification of the decision on the application for authorization.”.

Article 495. § 1. The Bank shall grant authorization to stockbroking firms that fulfil the conditions under Section II. The Bank shall provide its opinion on an application within six months of submission of the full dossier.

The decision on the authorization shall state the investment services and activities as well as the ancillary services that the stockbroking firm may pursue.

Having regard to the need for sound and prudent management of the stockbroking firm, the Bank may restrict the authorization to a stockbroking firm to certain services or activities or to certain categories of financial instruments, and attach conditions in its authorization to the pursuit of certain services or activities or with regard to certain financial instruments.

Decisions on authorization shall be notified to the applicants within fifteen days by registered letter or letter with recorded delivery.

§ 2. By way of derogation from paragraph 1, the Bank, in the cases referred to in Article 15, 3°, paragraphs 2 and 3 of Directive 2004/39/EC, shall limit or suspend its decisions on the application for authorization of investment firms governed by Belgian law that are
subsidiaries of one or more parent undertakings governed by the law of one or more third countries in accordance with the rules and for the duration established pursuant to those provisions by the Council of the European Union or the European Commission.

**Article 496.** Article 13 shall apply.

*Section II. - Conditions for authorization*

*Subsection I – General provisions*

**Article 497.** Aside from the conditions laid down in this Section, the Bank shall also take into consideration the applicant stockbroking firm’s capacity to meet the conditions for pursuing activity referred to in Chapter II and to achieve its development objectives under the conditions necessary for the proper functioning of the banking and financial system and for the safety of investors.

*Subsection II. - Legal form*

**Article 498.** Article 16 shall apply.

*Subsection III. —Initial capital*

**Article 499.** § 1. In order to be granted authorization, a minimum capital of EUR 250 000 shall be required.

The capital shall be fully paid up to the minimum amount set out in paragraph 1.

§ 2. Stockbroking firms are required to have paid-up capital totalling at least EUR 730 000 to:

- be able to execute transactions in financial instruments for their own account;
- underwrite issues of financial instruments;
- act as guarantor for the placement of those issues;
- operate an MTF;
- be able to act as a custodian for financial instruments of insurance companies, undertakings for collective investment or for credit institutions, insofar as these latter deal on account of their clients.

For the application of this provision, the following is not considered executing transactions for own account:

1° holding non-trading book positions in financial instruments to invest its own resources;
2° holding financial instruments for own account, with the proviso that:

a) the positions are only the result of the fact that the stockbroking firm is not able to exactly close an order received;

b) the total market value of these positions does not represent more than 15% of the initial capital of the stockbroking firm;
c) the stockbroking firm takes into account the requirements laid down for the supervision of solvency and the mitigation of risks associated with its activity under Regulation No 575/2013 and, where applicable, by or pursuant to Article 552, insofar as Article 96, § 1, 1° declares this applicable to stockbroking firms that pursue the activity referred to in Article 2, 1°, 3 and 6 of the Law of 25 October 2016 and Articles 554, 565, and 583 insofar as they declare Articles 98, 149, 150 and 234 § 2, 1°, applicable to stockbroking firms.

d) these positions have an incidental and provisional nature and are strictly limited to the time required for the execution of the transaction concerned.

§ 3. For existing firms applying for authorization, the issue premiums, reserves and results brought forward, with the exception of revaluation gains, shall be considered as capital for the application of paragraph 1.

Subsection IV. — Shareholders or members

Article 500. Article 18 shall apply.

Subsection V. — Management

Article 501. Articles 19 and 20 shall apply.

Subsection VI. — Organization

Article 502. Articles 21, 22 and 23 shall apply with the proviso that references in Article 21 to Articles 27, 32, 33 and 34 should be interpreted as references to Articles 504, 506, 507 and 508.

Article 503. Articles 24, 25, and 26 shall apply to stockbroking firms.

Article 504. Without prejudice to the tasks of the statutory governing body, stockbroking firms shall establish the following committees within this body:

1° an audit committee;
2° a risk committee;
3° a remuneration committee;
4° a nomination committee;

which shall be exclusively composed of members of the statutory governing body who are not executive members thereof and with at least one member being independent within the meaning of Article 526ter of the Companies Code; one member may not sit in more than two of the aforementioned committees.

Article 505. Articles 28, 29, 30 and 31 shall apply to stockbroking firms, with the proviso that reference in Article 28 to Article 27 should be interpreted as a reference to Article 504.

Article 506. Articles 28, 30 and 504 are without prejudice to the provisions of the Companies Code that relate to the audit committee and the remuneration committee in listed companies within the meaning of Article 4 of that Code.

Article 507. § 1. Stockbroking firms that are not significant within the meaning of Article 486, 2° shall be exempt from the obligation to set up the two committees as referred to in Articles 30 and 31 within their statutory governing body. These firms can moreover decide
that one single committee shall be responsible for the tasks of the committees referred to in Articles 28 and 29.

§ 2. If no committees are set up under paragraph 1, as referred to in Article 504, the tasks entrusted to such committees shall be carried out by the statutory governing body as a whole. If, pursuant to a derogation permitted under Article 26, the person chairing the statutory governing body is an executive member, he/she shall not chair the statutory governing body where it acts in the capacity of one of the committees referred to in Article 504.

§ 3. The Bank may permit a stockbroking firm that is a subsidiary or a sub-subsidiary of a mixed financial holding company, an insurance holding company, a financial holding company, another credit institution, an insurance company, a reinsurance company, another investment firm, a management company of undertakings for collective investment, or a management company of alternative investment funds, to derogate in whole or in part from the provisions of this subsection and may lay down specific conditions for granting such derogations, as long as one or more committees are set up within the groups or subgroups in question, within the meaning of Articles 28 to 31, which are competent for the stockbroking firm concerned and satisfy the requirements of the present Law.

Article 508. Articles 503 to 507 do not apply to small stockbroking firms within the meaning of Article 486, 1°.

Article 509. Articles 35, 36, 37, 38, 39, and 40 apply.

Article 510. Articles 41 and 42 apply.

Subsection VII. — Central administration

Article 511. Article 43 applies.

Subsection VIII. — Investor protection

Article 512. All stockbroking firms must join a collective investor protection scheme in accordance with Article 613 of the present Law.

CHAPTER II.- Conditions for pursuing activity

Section I. — General provisions

Article 513. All stockbroking firms must continuously meet the conditions laid down by or pursuant to Articles 497 to 512 and the conditions that, where applicable, are laid down pursuant to Article 495, § 1, paragraph 3.

They shall inform the Bank of any occurrence that could fail to meet the conditions laid down pursuant to Article 495, § 1, paragraph 3.

Section II. — Changes in the capital structure

Article 514. Article 46 shall apply.
Article 515. § 1. Articles 47, 48 and 49 shall apply with the proviso that the Bank has the sole competence for the assessment referred to in these Articles and that it does not have any obligation to notify the European Central Bank in this respect.

§ 2. At the request of the European Commission, the Bank shall inform it of any intention by a parent undertaking governed by the law of a third country to acquire a participation, notified by virtue of Article 46, in a Belgian stockbroking firm, as a result of which it would become its subsidiary.

The Bank shall restrict or suspend such an acquisition of a participation referred to in paragraph 1 in the cases under the conditions and for the duration provided for in Article 15, paragraphs 3 and 5 of Directive 2004/39/EC.

Article 516. Articles 50, 51 and 52 shall apply.

Article 517. Article 53 shall apply with the proviso that Bank has the sole competence for the assessment of the information referred to in this Article and that it has no obligation to notify the European Central Bank in this respect.

Article 518. Article 54 shall apply.

Section III. — General conditions

Subsection I. — Minimum own funds

Article 519. Without prejudice to Articles 77 and 78 of Regulation No 575/2013, the own funds of a stockbroking firm may not fall below the amount established as minimum capital in accordance with Article 499.

Subsection II. — Management and managers

Article 520. Article 56 shall apply, with the proviso that:

1° the periodic assessment conducted by the statutory governing body also relates to the effectiveness of the organizational structure referred to in Articles 528, 529 and 533;

2° reference in Article 56, § 4 to Article 27 should be interpreted as reference to Article 504.

Article 521. Article 57 shall apply, with the proviso that Articles 8, § 8, paragraph 2, and 4, § 2, of Annex I do not apply.

Article 522. Article 58 shall apply.

Article 523. Article 59 shall apply, with the proviso that:

1° the measures referred to in paragraph 1 and the report referred to in paragraph 2 also relate to the effectiveness of the organizational structure referred to in Articles 528, 529 and 533;

2° the Bank makes the aforementioned report available to the FSMA by way of the means specified in application of Article 138;

3° in the application of the provisions of Annex I, account must be taken of the nature and specific characteristics of the activity of the stockbroking firm and with the fact that Article 8, § 8, paragraph 2 and Article 4, § 2 of the aforementioned Annex do not apply.

Article 524. Articles 60 and 61 shall apply.
Article 525. Article 62 shall apply with the proviso that where the Bank makes use of the possibility referred to in paragraph 7, it informs the European Securities and Markets Authority and the European Banking Authority.

Subsection III. — Risk management:

Article 526. Article 63 applies, with the proviso that account must be taken of the nature and specific characteristics of the activity of the stockbroking firm and that Article 8, § 8, paragraph 2 and Article 4, § 2 of Annex I do not apply.

Article 527. Article 64 shall apply.

Article 528. Article 65 shall apply.

In addition, where stockbroking firms hold monies belonging to clients, they shall take appropriate measures to protect the rights of their clients and to prevent the monies belonging to their clients from being used for their own account.

Article 529. Article 65/1 shall apply with the proviso that the power of the King specified in paragraph 2 of that Article also relates to the establishment of the requirements for accounting procedures and accounting rules for the deposit of monies with stockbroking firms.

Subsection IV. — Outsourcing

Article 530. Article 66 shall apply.

Subsection V. — The remuneration policy and the implementation thereof

Article 531. Articles 67, 68, 69, 70 and 71 shall apply.

Subsection VI. — Transactions subject to limitation or prohibition, payments subject to being declared null and void and custody of client assets

Article 532. Aside from the services and activities that they may pursue in accordance with their authorization and, without prejudice to Article 539 aside from the activities associated with services or activities that are a direct extension thereof, or that relate thereto or form an addition thereto, stockbroking firms may not pursue any other activity, except by authorization from the Bank.

Article 533. § 1. Stockbroking firms may not receive cash deposits from their clients, with the exception of sight deposits and renewable term deposits of a maximum of three months that are intended for the acquisition of financial instruments or that must be repaid. The duration of renewed term deposits may not be longer than one year, unless a longer term is necessary for those deposits as part of the portfolio management agreement entered into with the client.

§ 2. The deposits referred to in paragraph 1 must be placed with one or more entities with the capacity of:

1° central bank;
2° credit institution governed by the law of another Member State;
3° credit institution governed by the law of a third country;
4° recognized money market funds.

The obligation referred to in paragraph 1 does not apply to immediately withdrawable funds or funds that can be withdrawn within a maximum term of three working days, or to funds provided to cover client commitments.

The entities referred to in paragraph 1 may not make claims to funds on a joint or individualized client account based on own receivables from the stockbroking firm that has opened that account. Attachment orders by the creditors of the stockbroking firm on these accounts and their balance are also prohibited.

§ 3. If insolvency proceedings are opened against a stockbroking firm, the funds placed pursuant to paragraph 2 on a joint client account or on an individualized account that allows for the identification of individual clients, with the exception of deposits that were able to be recovered by their holders, shall be allocated in priority to the repayment of the deposits as referred to in paragraph 1, with the exception of the deposits referred to in paragraph 2, 2º.

§ 4. The King may, upon the recommendation of the Bank and the FSMA, establish the conditions and rules with which cash deposits by clients with stockbroking firms must comply, as well as the conditions and rules for the investments that the stockbroking firms may make with these funds. The King may also determine the rules for the organization, protection of and provision of information to clients as regards the acceptance of these funds by the stockbroking firms and their investment with other intermediaries.

In order to protect the assets of clients, the Bank may, upon the recommendation of the FSMA, by means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, add to the provisions of paragraph 1 in exceptional circumstances. The Bank shall inform the European Commission forthwith of all additional provisions it wishes to lay down pursuant to this paragraph, at least two months prior to the entry into force thereof. The communication shall include the reasons for those additional requirements.

Article 534. Stockbroking firms may not grant loans or credits, directly or indirectly, with the exception of:

1° the loans and credit referred to in Article 2, 2°, 2 of the Law of 25 October 2016;
2° advances to undertakings in which the stockbroking firm has a participation, as reinvestment of its own funds;
3° loans of financial instruments;
4° loans to the stock exchange firms and the firms that manage the regulated market, on the condition that they are member or partner thereof.

Article 535. Without prejudice to Article 534, Article 72 shall apply with the proviso that the amount of EUR 100 000 as referred to in paragraph 1, 4 is reduced to EUR 25 000.

Article 536. Article 73 shall apply.

Article 537. § 1. Stockbroking firms may only call on intermediaries in bank and investment services established in Belgium that are duly registered in accordance with Article 5, § 1, of the Law of 22 March 2006 on intermediation in bank and investment services and the distribution of financial instruments.
If they wish to call on tied agents established in another Member State, stockbroking firms must ascertain that these persons are registered in the Member State concerned in the register referred to in Article 29, paragraph 3 of Directive 2014/65/EU. They shall ascertain the restrictions that apply to tied agents in the Member State concerned.

§ 2. Stockbroking firms that work with tied agents shall remain fully and unconditionally responsible for all acts or any omission by these tied agents that act on their account, in particular where they allow these tied agents to execute transactions with client funds and/or financial instruments.

Stockbroking firms shall ensure that the tied agents with which they work disclose the capacity in which they act prior to doing business with a client.

§ 3. The stockbroking firms must oversee the work of their tied agents. They shall take sufficient measures to prevent the negative effects that any additional activities of tied agents could have on the work that these tied agents do on behalf of the stockbroking firms.

§ 4. The Bank may add to the provisions of this Article by way of regulations passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998. Those regulations may in particular determine the obligations that apply to stockbroking firms that call on tied agents.

**Subsection VII. — Communication of information on the situation of the stockbroking firm**

**Article 538.** Article 75 applies.

**Section IV. — Changes to the programme of activities and special transactions**

**Subsection I. — Changes to the programme of activities**

**Article 539.** Article 76 shall apply.

**Article 540.** Where changes to the programme of activities aim to extend the activities of the stockbroking firm to offer additional services and/or activities as referred to in Article 3, 71° and 72°, for which it does not yet have an authorization, the stockbroking firm shall submit a request for extension of its authorization in accordance with Article 492. Article 493, insofar as declared applicable by Article 10 to stockbroking firms, Articles 494 to 496 and Article 7 of the Law of 25 October 2016 shall apply.

**Subsection II. — Strategic decisions, investment decisions, mergers and transfers between stockbroking firms**

**Article 541.** Article 77 applies, with the proviso that paragraph 1, 2° should be interpreted as follows:

“decisions to buy shares representing the capital of an undertaking whose activities are not governed by Article 3, 71° and 72°, to the value of at least EUR 100 000 or a figure amounting to 5% of the capital of the stockbroking firm.”.

**Article 542.** Article 78 applies.
Subsection III. — Opening or acquisition of subsidiaries abroad

**Article 543.** All stockbroking firms that wish to acquire or set up a subsidiary abroad which exercises activity as referred to in Article 4 or Article 3, 71° and 72° directly or through the intermediation of a financial holding company or of a mixed financial holding company, shall notify the Bank thereof. This notification shall include information on the activity, organization, shareholder structure and the management of the undertaking concerned.

Subsection IV. — Exercising activity abroad

**Article 544.** Article 86 shall apply, with the proviso that:

1° the activities referred to in paragraph 1 should be interpreted as the investment services and/or activities and ancillary services referred to in Article 3, 71° and 72°;

2° the programme of activities referred to in paragraph 2 must in particular specify: the financial instruments, investment services and/or activities as well as the ancillary services that the branch wishes to pursue, and whether the branch intends to call on tied agents.

**Article 545.** Article 87 applies with the proviso that the Bank provides further information to the competent authority of the host Member State on the investor protection scheme in which the stockbroking firm participates in accordance with Article 613. Any changes to this information shall be communicated by the Bank to the competent authority of the host Member State.

**Article 546.** Articles 88 and 88/1 shall apply.

**Article 547.** Article 89 shall apply, including as regards the information referred to in Article 544, 2°, and 545.

**Article 548.** § 1. Every stockbroking firm that wishes to pursue for the first time all or part of the investment services and/or activities or ancillary services referred to in Article 3, 71° and 72° that it may pursue in Belgium on the territory of another Member State without establishing a branch there, or that wishes to extend its offer of services or activities, shall provide the Bank with the following information:

1° the Member State in which it wishes to pursue those activities;

2° a programme of activities stating in particular which investment services and/or activities and ancillary services it wishes to pursue, regarding which financial instruments it wishes to offer services and whether it plans to call on tied agents established in Belgium on the territory of the Member State, in which case it shall communicate the identification details of those tied agents to the Bank.

§ 2. Article 90 shall apply with the exception of paragraph 1, 1.

**Article 549.** Article 91 shall apply.

**Article 550.** In the event of any change to any of the information provided pursuant to Article 548, the stockbroking firm shall inform the Bank thereof in writing at least one month prior to the change taking effect.

The Bank shall inform the competent authority of the host Member State of the change and, where applicable, the FSMA.
Section V. - Regulatory standards and obligations

Subsection I. - Prospective management of own funds and liquidity

**Article 551.** Article 94 shall apply.

Subsection II. - Combined requirement of a common equity tier 1 capital buffer

**Article 552.** Articles 95 and 96 shall apply to stockbroking firms that pursue activities referred to in Article 2, 1°, 3 and 6 of the 2016 [FSMA] law.

Subsection III. — Macro-prudential or systemic risk

**Article 553.** Article 97 shall apply.

Subsection IV. — Regulatory powers of the Bank

**Article 554.** Article 98 shall apply.

Subsection V — Measures intended to reconstitute common equity tier 1 capital

**Article 555.** Articles 99 to 105 shall apply including all provisions of Annex V.

Section VI. — Periodic provision of information and accounting rules

**Article 556.** Articles 106 and 107 shall apply.

Section VII. — Recovery plans

**Article 557.** Articles 108 to 116, with the exception of Article 110, § 2, shall apply to the stockbroking firms referred to in Article 499, § 2.

CHAPTER III. — Supervision of stockbroking firms

Section I. — Supervision by the Bank and by the FSMA

**Article 558.** § 1. The Bank oversees that each stockbroking firm works in accordance with the provisions of the present Law, its implementing decrees and regulations and directly applicable European regulations, without prejudice to the powers conferred on the FSMA by virtue of Article 45, § 1, first paragraph, 3° and § 2, of the Law of 2 August 2002.

§ 2. Article 134, § 2 shall apply.
Article 559. Articles 135, 136, 136/1, 137, 138, 139 and 140 shall apply.

Section II. — Prudential supervision procedure
Subsection I. — Prudential supervision programme

Article 560. Article 141 shall apply.

Subsection II. — Prudential review and evaluation process

Article 561. Article 142 shall apply.

Where an exemption is granted by virtue of Article 15 of Regulation No 575/2013, the requirements contained in Article 142 shall apply to the supervision of the stockbroking firm on an individual basis.

Article 562. Without prejudice to Regulation No 575/2013, Article 143 shall apply.

Subsection III. - Examination of internal approaches and methods

Article 563. Articles 144, 145, 146, and 147 shall apply.

Subsection IV. — Stress tests

Article 564. Article 148 shall apply.

Subsection V. — Prudential measures

Article 565. Articles 149, 150, 151, 152 and 153 shall apply.

Subsection VI. — Stockbroking firms with similar risk profiles

Article 566. Article 154 shall apply.

Section III. - Supervision of activity conducted in another Member State
Subsection I. — Definitions

Article 567. Article 155 shall apply.

Subsection II. — Supervision of activity

Article 568. Article 156 shall apply.
Subsection III. — Exceptional measures

Article 569. Where the competent authorities of another Member State in which a stockbroking firm governed by Belgian law has established a branch or pursues investment services or activities or ancillary services as referred to in Article 3, 71° and 72° within the scope of the free provision of services, notify the Bank that the legal provisions that apply in that Member State and on which it exercises supervision in accordance with Directive 2014/65/EU are infringed, the Bank shall as quickly as possible take all appropriate measures, and in particular those referred to in Articles 234 to 236, to remedy this situation or request that such measures be taken.

The Bank shall communicate the nature of such measures to the competent authority of the host Member State forthwith.

Subsection IV. — Cooperation

Article 570. Article 158 applies.

Article 120 of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016 - provides that, insofar as Article 570 declares Article 158, §§ 2 to 5 applicable to stockbroking firms, it enters into force on the date of entry into force of Articles 50 and 51 of Directive 2013/36/EU in accordance with Article 151 of this Directive.

Subsection V. — Significant branches

Article 571. Articles 159, 160 and 161 apply to stockbroking firms that have an authorization to offer the services referred to in Article 2, 2, 1°, 3 and 6 of the Law of 25 October 2016.

Article 120 of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016 - provides that, insofar as Article 571 declares Article 160 §§ 3 and 4 applicable to stockbroking firms that may offer the services referred to in Article 2, 1°, 3 and 6 of the Law of 25 October 2016 (Belgian Official Gazette, 18 November 2016), it enters into force on the date of entry into force of Articles 50 and 51 of Directive 2013/36/EU in accordance with Article 151 of this Directive.

Subsection VI. — On-site inspections

Article 572. Article 162 applies.
Section IV. — Group supervision

Subsection I. — Consolidated supervision of stockbroking firms

**Article 573.** Stockbroking firms governed by Belgian law that form part of a consolidated whole that also includes a credit institution governed by Belgian law and with as a parent undertaking:

1° a parent credit institution governed by Belgian law; or

2° a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State,

are subject, for their consolidated supervision, to the provisions of Book II, Title III, Chapter IV, Section II and Section IV.

References in Article 168, § 1, to Articles 27, 32, 33 and 34 must be interpreted as references to Articles 504, 506, 507 and 508.

**Article 574.** The provisions of Book II, Title III, Chapter IV, Section II and Section IV shall apply mutatis mutandis to the consolidated supervision of stockbroking firms governed by Belgian law that form part of a consolidated whole that also includes a credit institution governed by Belgian law and with a stockbroking firm governed by Belgian law as a parent undertaking.

References in Article 168, § 1, to Articles 27, 32, 33 and 34 must be interpreted as references to Articles 504, 506, 507 and 508.

**Article 575.** The provisions of Book II, Title III, Chapter IV, Section II and Section IV shall apply mutatis mutandis to the consolidated supervision of stockbroking firms governed by Belgian law that form part of a consolidated whole that does not include a credit institution governed by Belgian law and that have as a parent undertaking:

1° a stockbroking firm governed by Belgian law; or

2° a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State.

References in Article 168, § 1, to Articles 27, 32, 33 and 34 must be interpreted as references to Articles 504, 506, 507 and 508.

**Article 576.** The consolidated supervision of stockbroking firms governed by Belgian law as referred to in Article 575, shall be exercised by the Bank.

**Subsection II. - Supplementary conglomerate supervision**

**Article 577.** As regards supplementary conglomerate supervision,

the provisions of Book II, Title III, Chapter IV, Section III and Section IV shall apply mutatis mutandis to stockbroking firms governed by Belgian law:

1° that head up a financial conglomerate; or

2° that have as their parent undertaking a mixed financial holding company in a Member State,
Section V. — Audit supervision

Article 578. Articles 220, 221, 222, 223 and 224 shall apply.

Article 579. Article 225 shall apply, with the proviso that:
1° as regards the cases referred to in Article 225, paragraph 1, 4°, a) to c), the accredited statutory auditors also need to communicate to the Bank facts or decisions that have come to their knowledge during the performance of one of the tasks referred to in this Article at an undertaking with close links with the stockbroking firm in which they perform their task;
2° the report referred to in Article 225, paragraph 1, 5º must also refer to the soundness of the measures that the stockbroking firm has taken to safeguard the assets of clients pursuant to Article 533 and the implementing measures taken by the King pursuant to this provision.

Article 580. Article 225/1 shall apply.

CHAPTER IV. - Resolution plans

Article 581. Articles 226 to 232 shall apply to the stockbroking firms referred to in Article 499, § 2.

CHAPTER V. — Withdrawal of authorization

Article 582. Article 233 shall apply with the proviso that the decision of withdrawal and its reasons are communicated by the Bank to the European Securities and Markets Authority.

CHAPTER VI. — Recovery measures

Section I. — Binding measures

Article 583. Article 234 shall apply.

Section II. — Implementation of the recovery plan

Article 584. Articles 235 shall apply to the stockbroking firms referred to in Article 499, § 2.

Section III. — Extraordinary recovery measures

Article 585. Article 236 shall apply with the proviso that the Bank makes the revocation decision and that this decision and its reasons are communicated by the Bank to the European Securities and Markets Authority.

Article 586. Article 237 shall apply.

Article 587. Article 238 shall apply.
CHAPTER VII. – Resolution of stockbroking firms

**Article 588.** Articles 242 to 311 shall apply to the stockbroking firms referred to in Article 499, § 2.

**TITLE III. – Stockbroking firms governed by foreign law**

**CHAPTER I - Introductory provisions**

**Article 589.** For the application of this Title, “foreign stockbroking firms” shall mean undertakings governed by foreign law, irrespective of whether this is the law of a Member State or a third country, which, in accordance with the law to which they are subject, are authorized to provide services and activities as referred to in Article 1, § 3, paragraph 2, in their home Member State.

**CHAPTER II. — Branches and activity under the free provision of services in Belgium by foreign stockbroking firms governed by the law of another Member State**

**Section I. — Access to activity in Belgium**

**Article 590.** § 1. In accordance with Article 10 of the Law of 25 October 2016, foreign stockbroking firms governed by the law of another Member State and which pursuant to their national law in their home Member State are authorized to provide investment services and/or activities and ancillary services, shall perform this work through the establishment of a branch as soon as the Bank has notified them by way of a registered letter or letter with recorded delivery of their registration as a branch of a foreign stockbroking firm of another Member State. Such notification shall be made at the latest two months after the competent authority of the home Member State of the foreign stockbroking firm has communicated the information dossier required by virtue of the European regulations on the subject. If the stockbroking firm has not been notified by the deadline stated, it may nevertheless open the branch and commence the envisaged activity with the proviso that it informs the authority acting as contact point for Belgium thereof.

Ancillary services may only be provided in Belgium together with an investment service and/or an investment activity.

§ 2. The Bank shall inform the FSMA of the aspects relevant to the supervision of compliance with the conduct of business rules in the information dossier that falls under its competence.

§ 3. Where a foreign stockbroking firm governed by the law of another Member State plans to call on tied agents established in Belgium in order to provide investment services and/or activities as well as ancillary services there, paragraphs 1, and 2 shall apply mutatis mutandis. The provisions of this Chapter that refer to branches shall also apply to these tied agents.

**Article 591.** § 1. In accordance with Article 11 of the Law of 25 October 2016, foreign stockbroking firms governed by the law of another Member State and which pursuant to their national law in their home Member State are authorized to provide investment services and/or activities and ancillary services, may perform this work in Belgium under
the free provision of services, as soon as the competent authority from the home Member State has sent the required notification to the authority acting as contact point for Belgium pursuant to the European regulations on the subject.

Ancillary services may only be provided in Belgium together with an investment service and/or an investment activity.

§ 2. Paragraph 1 shall apply mutatis mutandis to foreign stockbroking firms governed by the law of another Member State and that wish to offer investment services or activities in Belgium as well as ancillary services by calling on tied agents established in that other Member State.

The Bank shall publish on its website the identities of the tied agents on which the firm wishes to call.

Section II. — Pursuit of business

Article 592. The following provisions shall apply without prejudice to the rules established by or pursuant to the Law of 2 August 2002 and without prejudice to the other provisions that confer powers on the Bank as regards the branches referred to in Article 590 and the undertakings referred to in Article 591:

1° Article 527 relating to transactions executed by a branch;

2° Article 533, § 3, insofar as the branches referred to in Article 590 opt for this, with the consent of the competent authority of the home Member State, to comply with the rules for investment of cash deposits laid down in Article 533, § 2, and the decisions made for the implementation of Article 533.

Section III. - Periodic reporting and accounting rules

Article 593. Articles 317 and 318 shall apply with the proviso that references in those Articles to Article 312 should be interpreted as references to Article 590.

Section IV. — Branch supervision

Subsection I. — The Bank in its capacity of authority of the host Member State

Article 594. The branches referred to in Article 590 come under the supervision of the Bank for the purposes stated in Articles 592 and 593, insofar as the matters referred to in these provisions come within the competence of the Bank. Article 558 and 559, insofar as this latter Article declares Articles 135, 136 and 139 applicable to stockbroking firms, shall apply to the same extent.

Article 595. Article 320 shall apply.

Article 596. Article 321 shall apply.
Article 120 of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016 - provides that, insofar as Article 596 declares Article 321 applicable to stockbroking firms, it enters into force on the date of entry into force of Articles 50 and 51 of Directive 2013/36/EU in accordance with Article 151 of this Directive.

Subsection II. — Significant branches

Article 597. Articles 322 and 323 shall apply to foreign stockbroking firms that have an authorization to offer the services specified in Article 2, 1°, 3 and 6 of the Law of 25 October 2016.

Article 120 of the Law of 25 October 2016 - Belgian Official Gazette, 21 November 2016 - provides that, insofar as Article 597 declares Article 323 applicable to stockbroking firms that have an authorization to provide the services referred to in Article 2, 1°, 3 and 6 of the Law of 25 October 2016 (Belgian Official Gazette, 18 November 2016), it enters into force on the date of entry into force of Articles 50 and 51 of Directive 2013/36/EU in accordance with Article 151 of this Directive.

Subsection III. — On-site inspections

Article 598. Articles 324, 325 and 326 shall apply with the proviso that references in those Articles to Articles 312, 315 and 319 should be interpreted as references to Articles 590, 592 and 594.

Section V. — Exceptional measures

Article 599. Article 329 shall apply, with the proviso that paragraph 5 does not apply to foreign stockbroking firms.

Article 600. Article 330 shall apply.

Section VI. - Branches and service activities in Belgium of foreign stockbroking firms that do not come under Directive 2014/65/EU.

Article 601. Articles 590 to 600 do not apply to foreign stockbroking firms governed by the law of another Member State and that fall outside the scope of application of Directive 2014/65/EU, pursuant to Article 2, paragraph 1, under l) and m) and Article 3 of that Directive.

The provisions of Chapter III shall apply to the branches and service activities in Belgium of those firms.

CHAPTER III. - Branches in Belgium of foreign stockbroking firms from third countries

Article 602. The provisions of this Chapter are without prejudice to the application of Articles 46 to 49 of Regulation No 600/2014 and of Articles 13 and 14 of the Law of 25 October 2016.
Section I. — Access to activity in Belgium

Article 603. § 1. The foreign stockbroking firms governed by the law of a third country must, prior to opening a branch to provide investment services or activities in Belgium, obtain authorization from the Bank.

In this respect, the following Articles shall apply:

1° Articles 491, 492, 493 insofar as Article 9 declares the latter applicable to stockbroking firms, as well as Articles 495, 496 and 497 with the proviso that:

- the reference to Article 493, insofar as Article 9 declares it applicable to stockbroking firms, applies to the foreign stockbroking firm the branch is governed by;
- the foreign stockbroking firm must have received authorization in its home country to perform the work included in its programme of activity;

2° Article 498, with the proviso that Article 498 applies to the foreign stockbroking firm the branch is governed by. An authorization can also be granted to branches of institutions that have a legal form without being commercial undertakings;

3° Article 499, §§ 1 and 2, by way of which the initial capital is replaced by a provision, the amount of which may be determined by the Bank by means of a regulation passed pursuant to Article 12bis, § 2, of the Law of 22 February 1998, as well as the parts and conditions for the corresponding assets, namely from the viewpoint of their location in Belgium;

4° Articles 500 to 502, insofar as they declare Articles 18 to 22 applicable to stockbroking firms, with the proviso that the reference to Article 500 applies for the stockbroking firm the branch is governed by and the reference to Articles 501 to 502 for the branch in Belgium;

5° Article 512, insofar as the foreign stockbroking firm cannot demonstrate that the associations of its Belgian branch are covered at least to the same extent by an investor protection scheme from its home country as by a Belgian investor protection scheme with respect to the covered assets and the coverage level established.

§ 2. The provisions of Article 333, §§ 2, 3, 4 and 5 shall apply.

Section II. — Pursuit of business

Article 604. Articles 335 shall apply with the proviso that references in those Articles to Articles 45, 55 and 333 should be interpreted as references to Articles 513, 519 and 603.

The following Articles shall also apply:

1° Article 46; if the Bank has grounds to believe that the influence of natural or legal persons that directly or indirectly hold a qualifying holding in the foreign stockbroking firm, could hinder the sound and prudent management of that firm, without prejudice to the other measures provided for in the present Law, it may suspend or withdraw, for the duration it determines, the authorization of a branch; Article 236, § 1, 4° and 6°, and § 3 shall apply to such decisions.

2° Articles 532 to 534, 537 to 539, 559 insofar as this latter Article declares Article 137 applicable to stockbroking firms and Article 28quater of the Law of 2 August 2002.
Article 605. § 1. The foreign stockbroking firm must have assets in Belgium eligible for reporting for an amount in line with the amount of deposits, as referred to in Article 615, paragraph 2, which the branch has received, unless it demonstrates that it meets the following conditions:

1° the legislation relating to insolvency procedures of the third country guarantees that the creditors that have deposited their assets with the Belgian branch receive the same treatment as the creditors that have deposited their assets with the foreign stockbroking firm in the third country;

2° in the case of insolvency proceedings opened against the foreign stockbroking firm in the third country, the law governing those proceedings grants investors who have deposited their funds with the Belgian branch a rank that offers similar protection to that provided in Article 533, § 3 of the present Law.

§ 2. The Belgian branch of the foreign stockbroking firm may only accept financial instruments from clients if, at the time of opening the insolvency procedure against the foreign stockbroking firm in the third country, the legislation regarding such procedures recognizes the property right in rem as referred to in Article 13, paragraph 2 of Royal Decree No 62 of 10 November 1967 governing the custody of fungible financial instruments and the settlement of transactions on these instruments, consolidated on 27 January 2004, for the investors that have deposited their financial instruments at the Belgian branch or, where this legislation grants a right to the investors as a result of the custody of the financial instruments, which forms a right in rem on the basis of which the investor may exercise a claim for return on these financial instruments, with the exclusion of a pure right of action.

Section III. – Supervision

Article 606. Articles 337, 338, and 339 shall apply, with the proviso that Article 134 which is referred to in Article 337 should be interpreted as referring to Articles 134, § 2, and 558.

Section IV. - Withdrawal, exceptional measures, sanctions

Article 607. Article 340 shall apply, with the proviso that the Bank takes into account the protection of investors.

TITLE IV.- Fines and other penalties

Article 608. Articles 345 and 346 shall apply, with the proviso that Article 315 which is referred to in Article 346 should be interpreted as referring to Article 592.

TITLE V.- Sanctions

CHAPTER I. — Administrative fines

Article 609. Article 347 shall apply.
CHAPTER II. - Criminal sanctions

Article 610. Articles 348, 349, 350, 351 and 352 shall apply with the proviso that the words in Article 348, § 1, 2°, “which pursue the business of a credit institution as referred to in Article 7 or Book III, Title II” should be interpreted as “which pursue the business of a stockbroking firm as referred to in Article 491 or in Book XII, Title III, Chapter III”.

TITLE VI. - Rules of private international law concerning reorganization measures and winding-up proceedings

Article 611. Articles 353 to 377 shall apply with the proviso that references in the stated Articles to Article 90 must be interpreted as references to Article 548.

TITLE VII.- Aspects of substantive law of winding-up proceedings

Article 612. Articles 378 to 379/1 shall apply.

TITLE VIII. — Investor protection scheme

Article 613. Article 384/2 shall apply.

Article 614. Article 384/3 shall apply, with the proviso that:

1° the first, third, fourth and fifth paragraph also relate to the compensation in the cash deposit section referred to under Article 615, second paragraph.

2° paragraph 2 must be interpreted as follows:

“Except in cases where bankruptcy has been ruled, the Bank makes the decision by which it is determined that a stockbroking firm referred to in Article 613 appears to be unable for the time being, for reasons which are directly related to its financial circumstances, to repay the cash deposits or to meet its commitments vis-à-vis the investors as regards repayment of the investors’ financial instruments held on their account or owed by the stockbroking firm and to have no current prospect of being able to do so. Such a determination shall occur as quickly as possible and in any case at the latest five working days after the first indication that a stockbroking firm has failed to repay cash deposits that are owed and payable or a financial instrument.”.

Article 615. Article 384/4 shall apply as regards the financial instruments section of the investor protection scheme set up by the Deposit and Financial Instrument Protection Fund.

The cash deposit section of the investor protection scheme set up by the Deposit and Financial Instrument Protection Fund shall provide for a maximum amount of EUR 100,000 per investor and per stockbroking firm that takes part in this scheme, for the repayment of cash deposits held on behalf of the investors and intended for the acquisition of financial instruments or that must be repaid, irrespective of the currency in which they are expressed on the condition that these cash deposits are not already covered by a deposit protection scheme as referred to Articles 380 to 384/1.

Article 616. Article 384/5 shall apply, with the proviso that the first sentence of the second paragraph should be interpreted as follows:
“The use in advertisements of the information referred to in paragraph 1 is limited to simply stating the investor guarantee scheme that offers a guarantee for the cash deposits or financial instruments to which the advertisement pertains.”.

**Article 617.** Article 384/6 shall apply.

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**TITLE IX. — Amending provisions**

**Article 618.** Articles 495, § 2, and 515, § 2, are abrogated on the date stated in Article 93, paragraph 1, 2 of Directive 2014/65/EU for entry into force of the national provisions that transpose the Directive concerned.

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**TITLE X. - Transitional provisions**

**Article 619.** Until the date provided for in Article 93, paragraph 1, 2 of Directive 2014/65/EU for entry into force of the national provisions that transpose the Directive concerned, all references in the present Law to that Directive should be interpreted as references to Directive 2004/39/EC.

**Article 620.** For the application of Articles 613 to 617 of the present Law, the words “Protection Fund for Deposits and Financial Instruments” shall be understood to mean the Special Protection Fund for deposits, life insurance and the capital of approved cooperative societies and the Protection Fund for Deposits and Financial Instruments depending on their respective tasks detailed in the Royal Decree of 14 November 2008 implementing the crisis measures provided for in the Law of 22 February 1998 as regards the set up of the Deposit and Financial Instrument Protection Fund, and in the Law of 17 December 1998 creating a deposit and financial instrument protection fund and reorganizing the protection schemes for deposits and financial instruments.

**Article 621.** For the period starting from the date of entry into force of this Book to 31 December 2018, Article 1 of Annex IV, that is declared applicable by Article 552, shall apply in accordance with the methods provided for in this Article.

The percentage of common equity tier 1 capital conservation buffer expressed as a percentage of the total amount of the risk exposure of a stockbroking firm, calculated in accordance with Article 92, § 3 of Regulation No 575/2013 shall be equal to:

1) 0.625% for the period from the date of entry into force of this Book to 31 December 2016;

2) 1.25% for the period from 1 January 2017 to 31 December 2017;

3) 1.875% for the period from 1 January 2018 to 31 December 2018.

**Article 622.** For the period starting from the date of entry into force of this Book to 31 December 2018, the Articles 13 and 14 of Annex IV, declared applicable by Article 552, shall apply in accordance with the following methods:

1) on the date of entry into force of this Book, 25% of the requirement established pursuant to Article 13, § 2, of Annex IV must be complied with;

2) on 1 January 2017, 50% of the requirement established in accordance with Article 13, § 2, of Annex IV must be complied with;
3) on 1 January 2018, 75% of the requirement established in accordance with Article 13, § 2, of Annex IV must be complied with.”.

ANNEXES

The Annexes of this Law shall form an integral part of the Law. They are made up of Articles. Whenever they are referred to, it shall be explicitly stated that reference is being made to the Articles of the Annex in question.

ANNEX 1 TREATMENT OF RISKS

Section I. — Credit and counterparty risk

Article 1. § 1. Credit institutions shall introduce clear procedures for approval, amendment, extension and refinancing of credits and shall use sound and clearly defined criteria for granting credit.

§ 2. They shall have internal procedures that put them in a position to be able to assess the credit risk associated with risk positions on different debtors, securitization securities or positions and the credit risk at the level of their entire portfolio.

In particular, the internal procedures shall be based not only or automatically on external ratings; they shall take account of the relevant information on debtors.

§ 3. Credit institutions shall make use of appropriate systems for the management and permanent supervision of the various loan portfolios and risk positions to which credit risk is linked. These systems shall include the detection and management of problem loans, the application of appropriate value adjustments and appropriate provisioning.

§ 4. They shall ensure appropriate diversification of their credit portfolios, taking into account their target markets and their overall credit strategy.

§ 5. Credit institutions that are significant shall aim to develop internal expertise for assessing credit risk with a view to using an Internal Rating Approach for calculating own funds requirements for credit risk if their exposures are substantial in absolute terms and if they have, at the same time, many significant counterparties.

§ 6. By means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the Bank can stipulate the arrangements for implementing § 5.

Section II. — Residual risk

Article 2. The risk mitigation techniques used by credit institutions, such as taking collateral, must be effective and regularly assessed. The use of these techniques must be in line with the management established pursuant to Article 57 and must be the subject of specific written procedures that ensure that they have the desired effects.

For collateral, the procedures must ensure that its effectiveness can be assessed and assure that it is monitored. These procedures must include at least the following:

- for collateral security: correct evaluation and monitoring of the value of the asset given as security, the legal effectiveness of the contractual mechanism used, in particular with regard to the location of the asset concerned;

- for personal collateral: correct evaluation and monitoring of the financial capacity of the guarantee as well as the legal effectiveness of the contractual mechanism used.

Section III. — Concentration risk
Article 3. Credit institutions shall take appropriate measures, including laying down written policies and procedures, for identifying, measuring and controlling concentration risk arising from risk positions on counterparties.

Paragraph 1 shall in particular include:
- risk on central counterparties, groups of linked counterparties or counterparties in the same economic sector or geographical area or from the same activity or commodities sector, as well as
- risk arising from the use of credit risk mitigation techniques such as risks associated with indirect risk positions on credit risk which in particular arise from risk positions on one single issuer of guarantees or on issuers of guarantees that run similar risks.

Section IV. — Securitization risk

Article 4. § 1. Credit institutions shall ensure that risks arising from securitization transactions in which they act as the investor, initiator or sponsor, including reputational risk, in particular those that arise from complex structures or products, shall be assessed and handled using appropriate policies and procedures. These policies and procedures must ensure that when assessing risks and when making decisions in the area of risk management, the economic reality of the transaction is fully taken into account.

§ 2. A credit institution that acts as initiator of securitization transaction that include early repayment clauses to the benefit of the investors must have an appropriate liquidity plan to be able to absorb the consequences of all of the planned and early repayments.

Section V. — Market risk

Article 5. § 1. Credit institutions shall adopt policies and procedures for identifying, measuring and managing all significant causes and consequences of market risk.

§ 2. They shall cover themselves against illiquidity risk arising from the short position falling due before the corresponding long position.

§ 3. In the assessment and supervision of the own funds requirements, which in accordance with Article 94 is conducted by the credit institution, sufficient attention must be paid to significant market risks that are not subject to specific legal or regulatory own funds requirements, in particular to the risk linked to insufficient or incorrect coverage of risk positions on financial instruments.

In accordance with Part 3, Title IV, Chapter 2, of Regulation No 575/2013, a credit institution may compensate its positions in one or more of the financial instruments that form a stock market index, with one or more positions in a forward contract on that stock market index. In such a case, the credit institution must possess sufficient own funds to cover the risk of loss resulting from the fact that the value of the forward contract or of that other product does not follow the development of the value of the financial instruments that form the stock market index; this must be shown from the calculation of its own funds requirements for the position risk. It must also possess sufficient own funds if it holds opposite positions in forward contracts on a stock market index that is not identical with regard to maturity and/or composition.
Institutions that use the procedure referred to in Article 345 of Regulation No 575/2013 shall ensure that they possess sufficient own funds to cover the risk of loss that arises in the period between entering into the initial commitment and the following working day.

§ 4. Credit institutions that are significant shall aim to develop internal expertise for assessing risk with a view to using internal models for calculating own funds requirements for the specific risk linked to the debt instruments included in the trading book and for the calculation of own funds requirements for the default and migration risks of the ratings, if their exposures to specific risks are substantial in absolute terms and if they have, at the same time, a large number of substantial positions in debt instruments of different issuing institutions.

§ 5. By means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the Bank can stipulate the arrangements for implementing § 4.

Section VI. — Interest risk arising from non-trading book activities

Article 6. Credit institutions shall adopt systems that enable them to assess and manage risk arising from any changes in interest rates which have an impact on their non-trading book activity.

Section VII. — Operational risk

Article 7.

§ 1. Credit institutions shall adopt policies and procedures to enable them to assess and manage their exposure to operational risk, including the risk linked to the use of internal models, and cover rare but serious events. Institutions shall further outline what shall be understood as operational risk for the application of these policies and procedures.

§ 2. Institutions shall clearly define contingency and business continuity plans to demonstrate that in case of serious disruption of the business activity, they can ensure the mitigation of losses and the continuity of their operations.

Section VIII. — Liquidity risk

Article 8. § 1. Credit institutions shall have appropriate procedures and systems for detecting, measuring, managing and controlling liquidity risk on relevant positions, including intraday periods, to guarantee the existence of are sufficient liquidity buffers.

These procedures and systems shall be specifically adapted to the activity of the credit institution, in particular to branches and legal entities through which the institution exercises its activity, as well as to the currencies in which its transactions are executed, and shall include appropriate mechanisms for the distribution of liquidity costs, benefits and risks.

§ 2. The procedures and systems referred to in § 1 must be in proportion to the complexity, risk profile and scale of the activity of the institution and to the risk tolerance established in accordance with Article 57, and take into account the interests of the institution in every State in which it operates.

§ 3. Credit institutions shall use methods for detecting, measuring, managing and controlling risks for their funding position. These methods shall take into account the existing and expected significant cash flows linked to the assets, liabilities and off-balance
sheet items, including those that arise from any of the institution’s obligations and from possible consequences of reputational risk.

§ 4. Credit institutions shall differentiate between assets underlying a security and unencumbered assets that are available at all times, and in particular in emergencies. They shall take into account the consequences linked to the entity in which the assets are held, to the country in which the assets are registered in a register or on an account, and with their admissibility as collateral. Institutions shall ascertain how these assets can be mobilized in a timely manner.

§ 5. Credit institutions shall take into account legal, administrative and operational restrictions on any transfers of liquidity and unencumbered assets between the entities of the group that the institution forms a part of, irrespective of whether these entities are established in a Member State.

§ 6. Credit institutions shall rely on different instruments for mitigating liquidity risk, including a system of specific limits for that risk and liquidity buffers, in order to be able to cope with different types of crises. They shall also rely on appropriate diversification of the funding structure and funding sources. Institutions shall regularly review these policies.

§ 7. Credit institutions shall review the hypotheses on which their funding decisions are based at least once a year. They shall consider different hypotheses for their liquidity position and their liquidity risk mitigation than those established pursuant to § 1 and § 3. In these other hypotheses, account shall in particular be taken of off-balance sheet items and any other obligations, including those of securitization special-purpose entities or of special-purpose entities as defined in Regulation No 575/2013, in which the credit institution acts as their sponsor or offers them significant liquidity support.

Credit institutions shall also take account of the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time periods and varying degrees of stress conditions shall be considered.

Institutions shall adjust their strategies, internal policies and liquidity risk limits and shall draw up appropriate contingency plans on the basis of the results of the scenarios referred to in paragraphs 1 and 2.

§ 8. Credit institutions shall have liquidity recovery plans. These plans shall include appropriate strategies and implementation measures to be able to cope with any liquidity shortages, including in branches established in other Member States. Institutions shall test these plans at least once a year and update them based on the results of the scenarios referred to in § 7.

Institutions shall take previous appropriate operational measures to ensure that the liquidity recovery plans can be implemented immediately if necessary. These measures shall include keeping assets that are immediately available to be accepted as collateral by a central bank. These can be assets in the credit currency of another Member State or in the currency of a third country in which the credit institution has exposures, and that are held, in case this is necessary for operational purposes, on the territory of a host Member State or of a third country in the currency to which they are exposed.

Section IX. — Risk of excessive leverage

Article 9. § 1. Credit institutions shall have policies and procedures for the detection, management and control of the risk of excessive leverage. Excessive leverage risk indicators shall include, inter alia, the leverage ratio established in accordance with the
methodology in Article 429 of Regulation No 575/2013 and mismatches between the institution’s assets and liabilities.

§ 2. Institutions shall take the necessary measures to prevent the risk of excessive leverage by taking account of any increases in leverage caused by a decrease of own funds as a result of expected or realized losses, in accordance with the applicable valuation rules. These measures must enable the institutions to be able to cope with different crisis scenarios from the angle of mitigating the risk of excessive leverage.

ANNEX II

REMUNERATION POLICY

Section I. — Structure of the remuneration policy

Article 1. § 1. The remuneration policy shall provide for a balanced distribution between the fixed and variable components of the total remuneration. The fixed component part in the total remuneration package shall be sufficiently high to be able to adopt a fully flexible policy on variable remuneration, including the option of not paying out variable remuneration.

§ 2. The remuneration policy shall lay down the appropriate ratios between the fixed and variable components of the total remuneration. It shall specify that the variable remuneration is limited for each person and in every case to the highest of the following two amounts:
— 50% of the fixed remuneration;
— EUR 50 000, as long as this amount is not higher than the fixed remuneration.

Section II. — Variable remuneration

Article 2. The total variable remuneration may not limit the institution’s ability to strengthen its own funds.

Article 3. The total amount of the variable remuneration shall be based on a combination of the performance of the person concerned and the business unit concerned, and the results of the institution as a whole.

When evaluating personal performance, both financial and non-financial criteria shall be used.

Performance evaluations shall be spread out over several years to guarantee that the evaluation is based on long-term performance and that the actual payment of the variable remuneration components is spread out over a period in which account is taken of the duration of the institution’s underlying business cycle and its business risks.

Article 4. When evaluating performance with a view to calculating the variable remuneration of individuals or of groups to which they belong, a correction shall be applied for all types of current and future risks and account shall be taken of the costs of the capital and liquidity required.

When allocating the variable remuneration component within an institution, account shall also be take of all types of current and future risks.

Article 5. Guaranteed variable remuneration is only permitted in exceptional circumstances for the recruitment of new members of staff and as long as the institution has sound and solid capital, and the guaranteed variable remuneration is strictly limited to the first year following recruitment.
Article 6. At least 50% of the variable remuneration, including the part that is deferred pursuant to Article 7 of the present Annex, shall be made up of an appropriate balance between:

1° shares or comparable participations in the capital, depending on the legal structure of the institution concerned or, where the securities issued by the institution are not registered on a regulated market, share-based financial instruments or comparable instruments (non-cash instruments); and,

2° where possible, other capital instruments that meet the conditions to be designated as additional tier 1 instruments or tier 2 capital instruments, pursuant to the provisions established by or by virtue of the present Law or Regulation No 575/2013, or other instruments that can be converted fully into common equity tier 1 capital or fully written down, and that in all cases are a good reflection of the credit quality of the institution from the angle of continuity.

The instruments referred to in this Article shall be subject to an appropriate retention policy that stipulates that the holder of the instruments must remain their owner, and that has the objective of aligning the incentives with the long-term interests of the institution. The supervisory authority can prohibit or restrict the types of instruments the features of which do not meet this requirement.

Article 7. The payment of a part amounting to at least 40% of the variable remuneration shall be deferred over a period of a minimum of three to five years. This part shall depend on the nature of the institution’s activities and risks and on the activity of the person concerned.

Where the amount of variable remuneration is exceptionally high, the deferred part of the variable remuneration, as referred to in paragraph 1, shall amount to at least 60%.

The duration of the deferral period shall be established in accordance with the institution’s business cycle, its nature, its risks and the activity of the person concerned.

Article 8. § 1. Without prejudice to Article 101, the variable remuneration, including the deferred part, shall only be paid out or due if the amount thereof is acceptable given the financial situation of the institution as a whole and can be justified by the performance of the institution, the business unit and the person concerned.

§ 2. Without prejudice to the general principles of contract law and labour law, the total variable remuneration of the credit institution shall be substantially reduced if the credit institution delivers subdued or negative financial performance.

The reduction as referred to in paragraph 1 shall also be applied on the variable remuneration not yet due as well as on the variable remuneration that is due but not yet paid out and on the already paid out variable remuneration, inter alia, through malus or clawback arrangements.

For the total amount of the variable remuneration, a malus or clawback clause shall apply, in particular in cases where the person concerned:

a) was involved or responsible for the practices leading to substantial losses for the institution;

b) has not met the applicable standards of expertise and professional integrity.

c) was involved in a special mechanism with the aim or effect of promoting tax fraud by third parties.

Section III. — Pensions

Article 9. The pension policy shall correspond with the business strategy, the objectives, the values and the long-term interests of the institution.
If a member of staff leaves the institution prior to his/her retirement, the institution shall keep the payments under the discretionary pension for that member of staff for five years in the form of instruments as referred to in Article 6 of this Annex.

Where a member of staff reaches retirement age, the payments under the discretionary pension shall be paid out to him/her in the form of instruments as referred to in Article 6 of this Annex, and these instruments must be kept for a period of five years.

The provisions of Article 8, § 2 of this Annex shall apply to payments under the discretionary pension.

Section IV. — Anti-fraud provisions

Article 10. The persons referred to in Article 67, second paragraph shall refrain from executing transactions—including insurance transactions—that breach, in whole or in part, the provisions of this Annex, in particular transactions that have the objective of neutralizing the risk arising from the rules for their variable remuneration or that could neutralize those risks.

Article 11. Institutions shall refrain from granting or paying out variable remuneration through vehicles or methods that facilitate non-compliance with the provisions of the present Law or of Regulation No 575/2013.

Section V. — Severance pay and employment benefits

Article 12. Without prejudice to the Companies Code, every severance pay package must be in line with the performance over the time of employment and be designed in such a way as to ensure that errors or irregular conduct are not rewarded.

If a contract provides for a severance pay package higher than 12 months of salary or, based on the reasoned opinion of the remuneration committee, higher than 18 months of salary, such a derogation shall first be approved by the next general meeting. Any contractual provision contrary to this shall automatically be deemed null and void. The procedure contained in [Article 554, paragraph 5] of the Companies Code shall apply mutatis mutandis.

paragraph 2 amended by Article 39 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Article 13. Employment benefits paid at the time of recruitment as compensation for a loss resulting from a change in credit institution, must be in line with the long term interests of the institution, in particular in the area of retention, payment extension, performance evaluation and clawback policies.

Section VI. — Exceptional government intervention

Subsection I. — Variable remuneration — General restriction

Article 14. For the application of this Section, the following shall apply:

1° an irrebuttable presumption exists for exceptional government intervention where:

- loans granted by the Federal State have not yet been repaid;
- collateral granted by the Federal State has not been cancelled or terminated;

2° without prejudice to the provisions under 1°, exceptional government intervention shall end when the following conditions are cumulatively met:

- the institution does not need to draw up a restructuring plan based on the decision of the European Commission or has complied in whole and correctly with the requirements of such a plan, which must be understood to mean that the institution can demonstrate that it has carried out all structural measures (in particular the sale of participations) and that the mitigating measures (in particular the prohibition to acquire control of undertakings) no longer apply and that it has furthermore proven that it complies with its obligations relating to the planned withdrawal of government intervention; and

- the supervisory authority shall confirm that the institution complies with the provisions of the present Law and its implementing decrees and regulations as well as with Regulation No 575/2013 for the solvency and liquidity requirements.

**Article 15.** In institutions that benefit from exceptional government intervention, the variable remuneration shall be strictly limited, without prejudice to Article 16 of this Annex, to a percentage of the total profit of the institution if that remuneration is not in line with maintaining a solid capital basis and a timely end to the government intervention.

Institutions that benefit from intervention as referred to in paragraph 1, shall restructure the remuneration in such a way as to bring it in line with sound risk management and long-term development, inter alia through, where necessary, limiting the remuneration of the members of the statutory governing body and of the persons who, in the absence of a management committee, are involved in the senior management.

**Article 16.** Where an institution benefits from exceptional government intervention, variable remuneration shall neither directly nor indirectly be paid to the members of the statutory governing body of that institution and to persons who, in the absence of a management committee, are involved in its senior management, unless this pertains to one person per institution who is specifically recruited after the aforementioned financial support to contribute to the implementation of the restructuring plan imposed on the institution.

The King lays down, in the Royal Decree deliberated on in the Council of Ministers, the maximum limits for the variable part permitted pursuant to paragraph 1. That variable part shall furthermore be subject to the provisions of Articles 2 to 9 of this Annex.

**Subsection 3. — Limitation of severance pay**

**Article 17.** Where the credit institution benefits from exceptional government intervention, it shall not be allowed to grant severance pay to the persons referred to in Article 15, second paragraph of this Annex, amounting to more than 9 months of their fixed remuneration. Moreover, this compensation shall be subject to the provisions of Article 8, § 2, of this Annex relating to the malus and clawback regulations.

By way of derogation from paragraph 1, the credit institution can grant a higher severance pay if the person concerned, prior to being appointed to the position of manager, would have had a right, in accordance with the existing contractual framework and on the basis of his/her length of service accrued, to a termination indemnity higher than the severance pay referred to in paragraph 1, to a maximum of that termination indemnity.

**Article 18.** The enforcement of contractual or other provisions that regulate the legal relationship between a person referred to in Article 15, second paragraph of this Annex and
the institution, and that are contrary to the provisions of this Section, shall be suspended ipso jure for the entire period during which exceptional government intervention is granted. In the event of exceptional government intervention, the contractual or other provisions that regulate the legal relationship between a person referred to in Article 15, second paragraph of this Annex and the institution may under no circumstances have retroactive effect.

Section VII. — Publication and provision of information

Article 19. Credit institutions shall publish their remuneration policy in accordance with the applicable provisions of European Regulations, in particular Article 450 of Regulation No 575/2013.

Institutions shall provide the supervisory authority with the information that they have published in accordance with paragraph 1 so that it can make the necessary comparative analyses of remuneration trends and practices.

Article 20. Institutions shall provide the supervisory authority with information on the number of persons in the institution that benefit from remuneration of at least EUR 1 million per financial year, in remuneration tranches of EUR 1 million, and on their job description, the financial sector concerned, and the primary elements of remuneration, including contributions, long-term benefits and pension contributions. This information shall be passed on to the European Banking Authority.

ANNEX III

PROVISIONS ON THE ISSUANCE OF COVERED BONDS

Section I. — Characteristics, use and management of cover assets

Article 1. The following definitions shall apply to Articles 79 to 84 and this Annex:

1° Belgian covered bond: a debt instrument that meets the following criteria:
   a) the debt instrument is issued by a credit institution governed by Belgian law included in the list referred to in Article 82, § 3, 1°;
   b) the debt instrument or—in the case of issuance under a programme—the issue programme and all other debt instrument issued under that programme, is or is planned to be included in the list referred to in Article 82, § 3, 2°;
   c) a special fund is set up in accordance with Article 3 of this Annex;

2° cover assets: the assets included in the special fund in accordance with Article 3, § 2 of this Annex;

3° Belgian “lettre de gage/pandbrief”: all Belgian covered bonds with cover assets that meet the conditions laid down by virtue of Article 2, § 1 of this Annex, and that as such are included in the list referred to in Article 82, § 3, 2°;

4° representative of the holders of Belgian covered bonds: the agent, trustee or any other person appointed in accordance with Article 14, § 2, of this Annex, to protect the interests of the holders of Belgian covered bonds;

5° cover pool monitor: the person appointed in accordance with Article 16 of this Annex;

6° cover pool administrator: the person appointed in accordance with Article 8 of this Annex;

Article 2. § 1. Where the Belgian covered bond concerned is a Belgian “pandbrief/lettre de gage”, the composition and the valuation of the cover assets must guarantee that this Belgian covered bond complies with the specific conditions for obtaining a favourable
weighting as laid down in the Belgian own funds regulations included within the transposition of Directive 2013/36/EU. In the exercise of the authorization referred to in Article 81, the King can lay down or clarify the criteria on the basis of which it is determined whether the Belgian covered bonds comply with these regulations.

§ 2. The cover assets that make up the special fund must offer sufficient cover during the term of the Belgian covered bond to be able to provide for the repayment of the principal and the payment of interests with respect to the Belgian covered bond in order to guarantee that the commitments vis-à-vis the creditors, that are or could be established in accordance with the conditions of issuance of the debt instrument concerned, are met, and to make the payments linked to the management and administration of the cover assets.

For this reason, the cover assets that could be valued in accordance with the valuation criteria established by virtue of Article 81, must maintain a surplus so that their value is higher than the remainder of the principal of the Belgian covered bonds they cover. The sufficient cover offered by the credit institution, including the surplus, must be periodically assessed and the issuing credit institution must adjust the portfolio to the cover assets to maintain adequate cover, including the surplus.

§ 3. The King may establish requirements for the minimum level of surplus, the valuation and adjustment of the portfolio to cover assets, as well as for the periodic verification of the liquidity position of that portfolio and can, where applicable, clarify the requirements referred to in § 2. If the King determines that, when exercising this power, with a view to compliance with the requirements referred to in § 2 and the valuation thereof, certain cover assets may only be eligible up to a certain percentage, this shall have no effect on the assets concerned belonging to the special fund they form part of.

Article 3. § 1. The funds of a credit institution that has issued Belgian covered bonds shall be composed, ipso jure, of general funds on the one hand and one or more special funds on the other.

§ 2. A special fund shall be composed, ipso jure, of:

1° all movable property that is registered, in accordance with Article 15, § 2 of this Annex, in the register of cover assets that is kept for one or more specific Belgian covered bonds, or where applicable, for all Belgian covered bonds issued under an issue programme;

2° the assets—cash or financial instruments—received as collateral for cover assets registered as such;

3° all business or personal security, collateral or preferential rights given, in any form whatsoever, in connection with the cover assets as well as rights relating to the insurance and other agreements linked with the cover assets or the management of the special fund;

4° all amounts that a credit institution holds as a result of the collection (repayment, payment) of the assets or of the exercise of rights referred to in 1° or 3° for the account of the special fund set up within this credit institution or, held in any other way for the account of that special fund; and

5° the obligatory reserves with the Bank, insofar as these are connected with the special fund.

If the credit institution that issues Belgian covered bonds holds amounts as referred to in paragraph 1, 4°, for the account of a special fund and these amounts are unable to be identified in the general funds at the time that these funds are requested to be allocated to the special fund, the right of ownership of these amounts included in the special fund shall be transferred to other assets that are free in the general funds of the credit institution for the same value. These assets shall then be identified after consultation with the representative of the special fund (the cover pool administrator or, in the absence of a cover
pool administrator, the cover pool monitor) and the issuing credit institution or, where applicable, the liquidator or the trustee in bankruptcy of the credit institution, under the criteria established in the conditions of issuance. The credit institution or its trustee in bankruptcy or its liquidator, as the case may be, must make these replacement assets available to the cover pool administrator as soon as he/she requests their return.

Article 4. Where a credit institution transfers assets as referred to in Article 80, § 3, 2°, a), b), c) or d), with a view to the issuance of Belgian covered bonds by the acquiring institution, the special fund that is set up within the issuing credit institution shall include the amounts held by the transferring institution as a result of the collection of the transferred assets or the exercise of the rights referred to in Article 3, § 2, first paragraph, 1° and 3° of this Annex, for the account of the special fund that was set up within the acquiring credit institution, or that are held in any other way by the transferring institution for the account of that special fund. If these amounts that are held on account of a special fund cannot be identified in the funds of the transferring institution at the time that these funds are requested to be allocated to the special fund, the right of ownership of these amounts that are included in the special fund of the acquiring institution shall be transferred to other assets of the transferring credit institution that are free for the same value. These assets shall then be identified after consultation with the representative of the special fund and the transferring credit institution or, where applicable, the liquidator or the trustee in bankruptcy of the credit institution, under the criteria that the transferor and transferee have established in the conditions of issuance. The transferring credit institution or its trustee in bankruptcy or its liquidator, as the case may be, must make these replacement assets available to the acquiring credit institution or, where applicable, to the cover pool administrator of the special fund of the acquiring institution as soon as it/he/she requests their return.

Article 5. In the case of winding-up proceedings opened against a credit institution that issues Belgian covered bonds or against the transferring credit institution as referred to in Article 4 of this Annex, all amounts and all payments relating to the assets included in the special fund and that, from the date of commencement of the winding-up proceedings, are collected by the credit institution concerned or for the account of that special fund, shall be automatically excluded from the mass assets and shall exclusively be allocated to the special fund concerned. The trustee in bankruptcy, or where applicable, the liquidator, must be accountable for these amounts and make them available to the acquiring credit institution or, where applicable, to the cover pool administrator as soon as it/he/she requests their return.

Article 6. Subject to the first, sixth and seventh paragraphs, every special fund shall be applied exclusively to the compliance with obligations vis-à-vis (a) the holders of the Belgian covered bonds concerned or, where applicable, the Belgian covered bonds issued under the issue programme concerned, as well as vis-à-vis (b) the creditors established or that could be established in accordance with the conditions of issuance of the Belgian covered bonds concerned or the issue programme concerned.

Subject to the provisions included in paragraph 7, the exclusive application provided for in paragraph 1 shall prevent the exercise of any right, including that of seizure, by any other creditor of the issuing credit institution on the cover assets that make up the special fund.

The assets (cash or financial instruments) allocated to the issuing credit institution as part of a hedging transaction that forms a cover asset, may only be used to comply with the commitments linked to the special fund, under the circumstances and the conditions provided for in the conditions of issuance of the Belgian covered bonds concerned and the agreements entered into as part of their issue.
The rules for the allocation of commitments referred to in paragraph 1 shall be established in the conditions of issuance and in the agreements entered into as part of the issue of the Belgian covered bond or of the issue programme concerned.

To improve the liquidity of the special fund, additional commitments may be entered into for this fund. Whether these additional commitments are paid out preferentially or deferred with respect to the commitments referred to in paragraph 1 shall be determined in the conditions of issuance of the Belgian covered bonds. In the absence of such a provision, these additional commitments shall be paid out in accordance with the same order of ranking as the commitment referred to in paragraph 1.

By way of derogation from paragraph 1, the cover pool administrator may, where applicable and subject to contrary contractual provisions, withhold his/her remuneration and that of his/her staff from the special fund as well as all other costs relating to the exercise of his/her task, including the costs incurred by his/her subcontractors, insofar as such a settlement is to the benefit of the special fund.

After closing the settlement of a special fund, the positive balance shall ipso jure become part of the general funds of the issuing credit institution.

Neither the legal allocation as referred to in paragraph 1, nor any other provision of this Annex shall affect the general right of recourse that the creditors of the commitments referred to in paragraph 1 have on the general funds of the issuing credit institution, so that the debts of those creditors can be drawn both from the general funds or from the special fund that is kept for that purpose.

**Article 7.** The issuing credit institution shall be responsible for the management of the special fund until winding-up proceedings are opened or until a cover pool administrator is appointed if that falls on an earlier date.

The rights and obligations relating to transactions between the issuing credit institution and the special fund that take place during the existence of the special fund and the Belgian covered bonds linked to it shall be put down in writing as though the special fund were a separate legal person.

**Article 8.** § 1. The supervisory authority shall appoint a cover pool administrator for each special fund:

1° where a measure referred to in Article 236 is taken against the issuing institution that, according to the supervisory authority, could have a negative impact on the Belgian covered bonds concerned;

2° where winding-up proceedings are opened against an issuing institution;

3° where the supervisory authority deems that assessing the position of the issuing credit institution could seriously jeopardize the interests of the holders of the Belgian covered bonds.

The supervisory authority can also appoint a cover pool administrator where the issuing credit institution is struck off in accordance with Article 17 of this Annex.

§ 2. As soon as he/she is appointed, the cover pool administrator shall be responsible for the full management of the special fund and shall automatically possess all authorizations that are useful or necessary to carry out this management and to exercise all possible disposals. The objective of this management is to ensure continuing compliance with the commitments included in the conditions of issuance of the Belgian covered bonds. Transactions relating to the special fund and those carried out by the issuing credit institution or on behalf of that institution after the appointment of the cover pool
administrator by persons other than the cover pool administrator, shall be deemed null and void, unless they have been ratified by the cover pool administrator.

§ 3. With respect to the issuing credit institution and with respect to third parties:

a) the cover pool administrator shall exercise the business and personal rights from his/her appointment and in the name of the special fund and comply with the obligations of the special fund, with the same prerogatives as a full legal person;

b) the cover pool administrator can, from the time of his/her appointment act in the name of the special fund to enter into additional commitments to improve the liquidity thereof.

**Article 9.** The King can establish further rules pertaining to:

1° the requirements for appointment as a cover pool administrator;

2° the specific tasks, skills and reporting obligations of the cover pool administrator, including the decisions for which the cover pool administrator must obtain agreement by the supervisory authority and/or the representative of the holders of Belgian covered bonds.

**Article 10.** Where a transfer takes place as a result of the establishment of a resolution tool as referred to in Book II, Title VIII in which a special fund is involved, the rights of holders of Belgian covered bonds and of other creditors as referred to in Article 6, first paragraph of this Annex, shall remain and shall be transferred along with the cover assets that form the special fund.

**Article 11.** Where winding-up proceedings are opened against an issuing institution:

1° such a procedure is limited to the general funds of the issuing credit institution; the special funds and the commitments and liabilities covered by these special funds, do not form part of the bankruptcy estate;

2° the trustee in bankruptcy must offer his/her assistance to the supervisory authority and to the cover pool administrator so that the special fund can be managed in accordance with this legislation;

3° this procedure shall not lead to the commitments and debts covered by a special fund becoming payable;

4° the creditors of the commitments and liabilities covered by a special fund reserve their rights in the winding-up proceedings, in accordance with Article 6, paragraph 8 of this Annex;

5° the cover pool administrator can, in the interests of the holders of the Belgian covered bonds concerned and after consultation with the representative of the holders of Belgian covered bonds and with the consent of the supervisory authority, transfer the special fund (assets and liabilities) and the management thereof to an institution that shall take over the further performance of the obligations vis-à-vis the holders of the Belgian covered bonds in accordance with the original conditions of issuance;

6° the cover pool administrator can, after consultation with the representative of the holders of Belgian covered bonds and with the consent of the supervisory authority, opt for settlement of a special fund and for the early repayment of the Belgian covered bonds concerned if the cover assets are not sufficient or risk no longer being sufficient to meet the commitments relating to these Belgian covered bonds;

7° the cover pool administrator can, after consultation with the supervisory authority and the representative of the holders of the Belgian covered bonds, opt for settlement, in whole or in part, of the special fund and for the early repayment, if the holders approve, in a general meeting of the holders of the Belgian covered bonds concerned at which at least
two thirds of the outstanding amount of the principal are represented, the settlement of the special fund and the early repayment, by a simple majority;

8° the trustee in bankruptcy has the right, after consultation with the supervisory authority, to request from the cover pool administrator that the assets identified as no longer necessary as cover assets be returned to the estate.

Article 12. § 1. Credit institutions that issue Belgian covered bonds can subscribe to their own Belgian covered bonds and acquire and hold their own Belgian covered bonds. For as long as the Belgian covered bonds are held by their issuing credit institution, the Belgian covered bonds subscribed to or acquired in this way, do not benefit from the rights established in Articles 568 to 580 of the Companies Code and equivalent rights included in the articles of association of the issuing institution, unless the conditions of issuance provided therefor.

§ 2. Where winding-up proceedings are opened against the issuing credit institution, it may continue, notwithstanding Article 233, to exercise the activities outside these winding-up proceedings that are necessary or useful for the management by the cover pool administrator to safeguard the interests of the holders of the Belgian covered bonds issued with regard to the special fund, at most until all obligations relating to the special fund are fully met or complied with in any other way.

§ 3. Insofar as permitted by the supervisory authority, a credit institution may hold the reserves mandatory for every special fund with the Bank.

Section II. — Conditions of issuance

Article 13. The conditions of issuance, including the various contractual provisions relating to the Belgian covered bonds, shall provide for mechanisms to enable the Belgian covered bonds to be repaid within the term specified in the conditions of issuance. The King can determine that these mechanisms at least contain a provision for a periodic verification of the cash reserves (and other liquid assets) generated during a certain period by the cover assets, in which these reserves are compared with the payments that must be made in accordance with the conditions of issuance within a certain period of time, and the requirement that the issuing credit institution bring in additional assets if this verification brings to light liquidity problems.

Article 14. § 1. Articles 568 to 580 of the Companies Code shall only apply to Belgian covered bonds insofar as the conditions of issuance do not derogate therefrom.

§ 2. For holders of Belgian covered bonds that form part of the same issue or the same issue programme, one or more representatives can be appointed insofar as the conditions of issuance include rules for the organization of general meetings for the holders of the Belgian covered bonds concerned. These representatives can enter into commitments on behalf of all holders of the Belgian covered bonds within this issue or this issue programme, within the limits of the tasks conferred on them, vis-à-vis third parties; to demonstrate their authority to do so it is sufficient that they present the deed of their appointment. They can act and represent the holders of the Belgian covered bonds in winding-up proceedings or similar proceedings, without revealing the identity of these persons.

The representatives of the holders of a Belgian covered bond shall be appointed either prior to the issue by the issuing credit institution or after the issue by the general meeting of the holders of the Belgian covered bonds concerned. Their powers shall be laid down in the
conditions of issuance or by the general meeting of the holders of the Belgian covered bond concerned.

The general meeting of the holders of the Belgian covered bonds concerned can revoke the appointment of the representative(s) at any time on the condition that they appoint one or more other representative(s) at the same time. The general meeting shall decide by simple majority of the Belgian covered bonds represented.

The representatives of the holders of a Belgian covered bond can also be appointed to act for the other creditors that are holders of liabilities covered by the cover assets as long as these creditors agree to this and insofar as the conditions of issuance of the Belgian covered bond concerned include appropriate rules for cases of conflicts of interest.

The representatives shall exercise their task exclusively in the interests of the holders of the Belgian covered bond and, where applicable, of the other creditors they represent and shall be fully accountable in accordance with the further rules established in the conditions of issuance or, where applicable, in the appointment decision.

Section III. — Special obligations of the issuers of Belgian covered bonds

Article 15. § 1. Every credit institution that has issued Belgian covered bonds must, for these Belgian covered bonds:

1° have separate administration for each special fund for:
   a) the debt instruments issued that belong to that category; and
   b) the cover assets that these debt instruments cover;

2° take account of the specific reporting obligations, the content and format of which the Bank can specify, where applicable by means of a regulation passed pursuant to Article 12bis, § 2 of the Law of 22 February 1998;

3° offer any necessary assistance to its statutory auditor, each cover pool monitor and each cover pool administrator, to enable them to carry out the tasks conferred on them by virtue of the present Law, the conditions of issuance and agreements relating to this issue;

4° periodically provide proof to the supervisory authority that the category of debt instruments concerned continues to comply with the conditions laid down by or pursuant to Articles 79 to 81 or by the provisions of this Annex, in particular:
   a) by reporting on the special administration it has in accordance with point 1° hereinabove;
   b) by providing further information in that report on the cover assets and their valuation;
   c) if applicable, by reporting the result of the verification provided for by virtue of Article 13 of these Annexes and where applicable on the additional assets provided;

5° be able to prove to the supervisory authority that the Belgian covered bonds from that category continue to comply with the conditions of Article 80, § 3, every time that material changes are proposed in relation to a Belgian covered bond, the issue programme and the legal documentation on the Belgian covered bonds or the issue programme;

6° take measures, where applicable, to limit the foreign-exchange risk and the interest risk.

§ 2. The special administration shall provide for, inter alia, a register to be kept in which all cover assets held are registered for one or more specific Belgian covered bonds or, where applicable for all Belgian covered bonds issued under an issue programme.
§ 3. The King can establish further rules pertaining to the manner in which the special administration referred to in §§ 1 and 2 must be carried out as well as to the format, content and integrity of the information.

Section IV. — Specific supervision

Article 16. § 1. After the unanimous opinion of the supervisory authority and as soon as the Belgian covered bonds are issued, the issuing credit institution shall appoint a cover pool monitor who reports to the supervisory authority on the compliance by the issuing credit institution with the legal and regulatory requirements relating to Belgian covered bonds. The costs and remuneration that must be paid to that cover pool monitor shall be borne by the issuing credit institution.

§ 2. The cover pool monitor shall regularly provide information on:

1° the categories of cover assets held;
2° the supervision of compliance with the obligations referred to in Article 15, § 1 of this Annex;
3° the permanent maintenance of the imposed surplus; and
4° where applicable, the additional assets.

§ 3. The King can establish further rules pertaining to:

1° the requirements for appointment as a cover pool monitor;
2° the specific tasks and reporting obligations of the cover pool monitor.

Article 17. § 1. If the supervisory authority establishes that a certain category of debt instruments no longer complies with the conditions imposed by or pursuant to Articles 79 to 81 or by the provisions of this Annex, or that the issuing credit institution concerned no longer fulfils its particular obligations as an issuer of Belgian covered bonds, it shall lay down a deadline by which this situation must be remedied. If the situation has not been remedied after this deadline, the supervisory authority can strike the issuing credit institution off from the list referred to in Article 82, § 3, 1°, without prejudice to the other measures referred to in Articles 234 to 236.

In cases of extreme urgency, the supervisory authority can strike the issuing credit institution off from the list referred to in Article 82, § 3, 1°, without first setting a deadline by which the situation should be remedied.

§ 2. If the supervisory authority strikes off an issuing credit institution, it shall communicate this forthwith to the European Commission and immediately post this fact on its website. If a credit institution is struck off, this shall have no effect on the rights of the holders of the Belgian covered bonds that were issued by the struck off credit institution. After being struck off, for each new issue of Belgian covered bonds, all the conditions relating thereto must be met anew as well as the conditions that must be met to be able to be registered on the list of the issuing credit institution.

ANNEX IV
COMMON EQUITY TIER 1 CAPITAL
CONSERVATION BUFFER AND MACRO-PRUDENTIAL POLICY INSTRUMENTS
CHAPTER I. — Common equity tier-1 capital conservation buffer

Article 1. The common equity tier 1 capital conservation buffer of a credit institution shall amount to 2.5% of the total amount of its risk exposure, calculated in accordance with Article 92, paragraph 3 of Regulation No 575/2013.

CHAPTER II. — Macro-prudential policy instruments

Article 2. For the application of this Chapter, the designated authority shall be understood to mean the authority that, in a Member State or in a third country, has the power to set the countercyclical common equity tier 1 capital buffer and/or the common equity tier 1 capital buffer for systemically important [institutions] and/or the common equity tier 1 capital buffer for systemic or macro-prudential risks, irrespective of whether or not this authority is a competent authority or an authority tasked with the supervision of credit institutions in a third country.

Article amended by Article 40 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Section I. — Credit institution specific-countercyclical common equity tier 1 capital buffer

Article 3. For the calculation of the capital buffer required to be held pursuant to this Section, the relevant exposures to credit risk are those that fall under the different categories as referred to in Article 112 of Regulation No 575/2013, with the exception of points a) to f), and that are subject to:

1° the regulatory own funds requirements for credit risk pursuant to Part 3, Title II of the aforementioned Regulation;

2° where the exposure is included in the trading book, the regulatory own funds requirements for specific risk, pursuant to Part 3, Title IV, Chapter 2 of Regulation No 575/2013, or for the additional default and migration risk, pursuant to Part 3, Title IV, Chapter 5 of the aforementioned Regulation;

3° if the exposure exists in a securitization, the regulatory own funds requirements laid down in Part 3, Title II, Chapter 5 of Regulation No 575/2013.

The calculation of the capital buffer referred to in the first paragraph depends, inter alia, on the geographical location of the relevant exposures to credit risk, which is determined in accordance with the technical standards established by the European Commission pursuant to Article 140, paragraph 7 of Directive 2013/36/EU.

Article 4. § 1. The countercyclical common equity tier 1 capital buffer of a credit institution is equal to the total amount of the risk exposure of that credit institution, calculated in accordance with Article 92, paragraph 3 of Regulation No 575/2013, multiplied by the percentage of its institution-specific countercyclical common equity tier 1 capital buffer.

That percentage is equal to the weighted average of the countercyclical buffer percentages that apply to the territories where the relevant exposures to credit risk of the credit institution concerned are located.

§ 2. For the calculation of the weighted average of the countercyclical common equity tier 1 capital buffer percentages referred to in § 1, second paragraph, credit institutions shall multiply each of the countercyclical buffer percentages that apply in accordance with Article 6 of this Annex by the total amount of their regulatory own funds requirements that cover their relevant exposures to credit risk on that territory, determined in accordance with
Part 3, Title II of Regulation No 575/2013, and divide the result obtained by the total amount of their regulatory own funds requirements that cover all their relevant exposures to credit risk.

**Article 5.** § 1. For the relevant exposures to credit risk on counterparties established on the Belgian territory, the countercyclical buffer percentage referred to in Article 4, § 2, of this Annex shall be the countercyclical buffer percentage established by the Bank.

§ 2. The Bank shall set this percentage every quarter on the basis of one or more reference indicators that reflect the credit cycle and the risks as a result of excessive credit growth in Belgium and that take into account the specific characteristics of the national economy. These indicators are based on the gap between the ratio, based on the long-term trend thereof, between the volume of credits granted on the Belgian territory and the gross domestic product, taking into account, inter alia:

a) the increase in volume of the credits granted on the Belgian territory and the evolution of the gross domestic product;
b) the guidelines and recommendations of the ESRB;
c) any other variable that the Bank deems relevant in that case to counteract cyclical system risk.

§ 3. The countercyclical buffer percentage established by the Bank, expressed as a percentage of the total amount of the relevant exposures to credit risk on the Belgian territory, must lie between 0% and 2.5%, calibrated in tranches of 0.25 percentage points or multiples of 0.25 percentage points. Where necessary on the basis of the variables referred to in § 2, the Bank can set a countercyclical buffer percentage of more than 2.5%.

§ 4. For the calculation of the weighted average referred to in Article 3, § 2, of this Annex, credit institutions shall apply the percentage referred to in § 1 from the date established by the Bank. Except for in exceptional circumstances that justify a shorter term, this date shall fall at the earliest twelve months after the date on which an increase was announced of the percentage in accordance with § 6.

§ 5. Where the Bank reduces the countercyclical buffer percentage, institutions can apply the new percentage forthwith. The Bank shall announce, for indicative purposes only, a period during which no increase is expected of this percentage.

§ 6. The Bank shall publish the countercyclical common equity tier 1 capital buffer percentage it sets for the quarter on its website, including the following information:

a) the percentage that applies;
b) the ratio of credit granted against the gross domestic product and the deviation from this ratio against the long-term trend thereof;
c) the justification for the percentage including the reference indicators the Bank has taken into account to set the percentage;
d) if the percentage goes up, the date from which the credit institutions are obliged to apply that percentage for the calculation of the weighted average of the countercyclical buffer percentages referred to in Article 3, § 1, second paragraph of this Annex;
e) where the date mentioned in point d) is less than twelve months after the date of the publication made pursuant to this paragraph, a reference to the exceptional circumstances that justify this;
f) if the percentage goes down, the justification for the period during which no increase is expected.

§ 7. The Bank shall take all reasonable measures to coordinate the decisions relating to the establishment of the countercyclical buffer percentage referred to in § 1 with the European authorities and the designated authorities of Member States.
The Bank shall communicate the countercyclical buffer percentage set every quarter as well as the information referred to in § 6 to the ESRB.

**Article 6.** Credit institutions shall calculate the weighted average of the countercyclical buffer percentages pursuant to Article 4, § 1, paragraph 2 of this Annex based on the countercyclical buffer percentages published by the Bank in accordance with Article 5, § 6 of this Annex and by the designated authorities of the different Member States or third countries on the territory of which the relevant exposures to credit risk can be found in accordance with Articles 7 to 10 of this Annex.

**Article 7.**

§ 1. A countercyclical buffer percentage set for the relevant exposures to credit risk on the territory of a Member State shall apply on the date established by the designated authority of that State.

§ 2. If a designated authority of a Member State sets a countercyclical buffer percentage higher than 2.5%, credit institutions shall use that percentage to calculate the weighted average of the countercyclical tier 1 capital buffer percentage, on the proviso that this percentage of more than 2.5% is recognized by the Bank.

§ 3. The Bank shall announce the recognition of a percentage of more than 2.5% on its website. This announcement shall include at least the following information:

a) the recognized percentage and the Member State concerned;
b) the date from which the credit institutions are obliged to apply that percentage for the calculation of the weighted average of the countercyclical buffer percentages referred to in Article 4, § 1, second paragraph of this Annex;
c) where the date mentioned in point b) is less than twelve months after the date of the announcement made by the Bank pursuant to this paragraph, a reference to the exceptional circumstances that justify this.

**Article 8.** If a designated authority of a Member State referred to in Article 5 of this Annex sets a countercyclical buffer percentage higher than 2.5%, and the Bank does not recognize it, credit institutions shall use a percentage of 2.5% to calculate the weighted average of the countercyclical tier 1 capital buffer percentage.

This obligation to use a percentage of 2.5% shall apply on the date set by the designated authority on which the percentage has not received the recognition referred to in paragraph 1.

**Article 9.** Where a designated authority of a Member State reduces the applicable countercyclical buffer percentage, this reduction shall apply immediately.

**Article 10.**

§ 1. The decision to set a countercyclical buffer percentage for a third country shall apply twelve months after the date on which the setting of the applicable percentage was announced by the designated authority of that country, even if this authority prescribes that credit institutions governed by that country must apply that change within a shorter period of time. A change to the countercyclical buffer percentage for a third country shall be deemed announced on the date on which it is published by the authority of that country.

§ 2. Where the percentage set by the designated authority of the third country amounts to more than 2.5%, Articles 7, §§ 2 and 3, and 8 of this Annex shall apply mutatis mutandis. The Bank can, however, set another rate with a percentage of more than 2.5% insofar as this is lower than the percentage published by the designated authority of that third country.

§ 3. If no countercyclical buffer percentage was published by the designated authority of a third country, on the territory of which the relevant exposures to credit risk exist, the Bank can set that percentage.
§ 4. If it has reasonable grounds to determine that the percentage published by the designated authority of a third country is not sufficient to suitably protect the credit institution from risks of excessive credit growth in that country, the Bank can set a countercyclical buffer percentage that is higher than the percentage published by the authority of the third country concerned.

§ 5. For the application of § 2 to § 4, the Bank shall take into consideration the recommendations of the ESRB.

§ 6. Where the Bank issues an opinion on a countercyclical buffer percentage for a third country in accordance with §§ 2 to 4, it shall decide on the date from which the credit institutions are obliged to apply that percentage to the calculation of the weighted average of the countercyclical buffer percentages. This date shall fall at the earliest twelve months after the date on which the Bank has issued that opinion except under exceptional circumstances that justify a shorter term.

§ 7. Where a designated authority of a third country reduces the countercyclical buffer percentage, this reduction shall apply immediately.

§ 8. The Bank shall publish the following information on its website, for each of the countercyclical buffer percentages on which it has issued an opinion for third countries, in accordance with §§ 2 to 4:

a) the applicable percentage and the third country concerned;
b) if the Bank has amended the percentage initially set by the designated authority, the justification for that amendment;
c) the date from which the credit institutions are obliged to apply the percentage concerned for the calculation of the weighted average of the countercyclical buffer percentages referred to in Article 4, § 1, second paragraph of this Annex;
d) where the date mentioned in point c) is less than twelve months after the date of the announcement made by the Bank pursuant to this paragraph, a justification for the shortening of the term of entry into force of the percentage concerned.

Section II. — Buffer for systemically important [institutions]

Title amended by Article 36 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Article 11. For the application of this Section, the following shall apply:

a) ["G-SIFI": global systemically important financial institution as referred to in Article 12, paragraph 2 of this Annex;]

paragraph 1, a) replaced by Article 41 of the Law of 18 December 2015, Belgian Official Gazette, 29 December 2015

b) ["D-SIFI": domestic systemically important financial institution as referred to in Article 12, paragraph 1 of this Annex.]

paragraph 1, b) replaced by Article 41 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

Article 12. [Credit institutions, parent financial holding companies or parent mixed financial holding company governed by Belgian law, the failure of which would greatly influence Belgium, the market, the economy of one or more Member States or the global financial markets, are designated by the Bank as “D-SIFI” or “G-SIFI”.

A G-SIFI is a parent credit institution, a financial parent holding company, or a parent mixed financial holding company that may not be a subsidiary of an undertaking that falls
under a Member State which itself has the capacity of parent credit institution, financial
parent holding company, or parent mixed financial holding company.]

**Article replaced by Article 42 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015**

**Article 13.** § 1. The Bank shall stipulate, by means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the method used to determine whether [an institution] referred to in Article 12 of this Annex must be designated as a G-SIFI on the basis of the following criteria:

§ 1, paragraph 1 amended by Article 3 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

a) the scale of the institution concerned on a consolidated basis
b) the correlation between the global financial system and the [institution] or, where applicable, the group it is the parent company of;

§ 1, paragraph 1 amended by Article 3 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015
c) the option to replace the services or the financial infrastructure offered by the [institution] and its group;

§ 1, paragraph 1, c) amended by Article 3 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015
d) the complexity of the [institution] and of its group;

§ 1, paragraph 1, d) amended by Article 3 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015
e) the significance of the cross-border operations of the institution and its group.

All criteria shall create an equal weighting and shall be determined on the basis of the quantifiable indicators. The method used shall make it possible to obtain a global score for each G-SIFI and on this basis to place each G-SIFI into a subcategory. The subcategories of G-SIFIs and the thresholds shall be determined with due regard to Directive 2013/36/EU and to the technical standards of the European Banking Authority.

§ 2. The amount of the common equity tier 1 capital buffer for G-SIFIs depends on the subcategory to which the G-SIFI concerned belongs and shall lie between 1% and 3.5% of the total amount of its risk exposure, calculated in accordance with Article 92(3) of Regulation No 575/2013.

§ 3. The Bank can adjust the global score obtained pursuant to § 1, if it is of the opinion that it does not reflect the systemic importance of the undertaking concerned and

a) can include a G-SIFI, the global score of which is lower than the threshold of the lowest subcategory, in this subcategory or in a higher subcategory. In such a case, the Bank shall inform the European Banking Authority of its decision and the reasons thereof;

b) can move a G-SIFI from a lower subcategory to a higher subcategory.

§ 4. A G-SIFI shall comply with the common equity tier 1 capital buffer requirements for G-SIFIs on a consolidated basis.

**Article 14.** § 1. The Bank shall stipulate, by means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the method used to determine whether [an institution] referred to in Article 12 of this Annex must be designated as a D-SIFI on the basis of the following criteria:
§ 1, paragraph 1 amended by Article 43 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

a) its scale, where applicable on a consolidated basis;
b) its significance for the Belgian economy or for that of one or more Member States;
c) the significance of its cross-border operations;
d) its correlation or that of its group with the financial system.

The regulation shall take into account the guidelines established by the European Banking Authority relating to the criteria referred to in this paragraph.

§ 2. The Bank shall stipulate, by means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the method used to determine the amount of the common equity tier 1 capital buffer that an [institution] designated as a D-SIFI must hold. This amount may be no higher than 2% of the total amount of the risk exposure calculated in accordance with Article 92, § 3 of Regulation No 575/2013.

§ 2 amended by Article 44 of the Law of 18 December 2015 - Belgian Official Gazette, 29 December 2015

§ 3. If the Bank requires a buffer for D-SIFIs in accordance with the method referred to in § 2, it shall take the following principles into account:

a) the requirement of a buffer for D-SIFIs may not have disproportionately negative effects for the financial system, in whole or in part, in other Member States or in the European Union as a whole, as a result of which it forms or creates an obstacle to the functioning of the internal market;

b) the requirement of a buffer for D-SIFIs shall be reviewed at least once a year.

§ 4. The Bank shall communicate the decision to set or to amend the requirement for a common equity tier 1 capital buffer for D-SIFIs to the European Commission, the European Banking Authority, the ESRB and, where applicable, to the competent authorities of the Member States concerned one month before the date on which this requirement becomes obligatory. The communication shall include a detailed description of the following elements:

the reasons for which the D-SIFI buffer can be efficient and proportionate to mitigate the system risk engendered by this sort of undertaking;

b) the D-SIFI buffer percentage that the Bank plans to set;

c) an assessment of the possible positive or negative influence of the D-SIFI buffer on the internal market, based on the information the Bank possesses.

§ 5. A D-SIFI that is the subsidiary of a G-SIFI or a D-SIFI governed by a Member State that is itself subject to a common equity tier 1 capital buffer for D-SIFIs or G-SIFIs, is only obliged on an individual or subconsolidated level to comply with the highest of the following requirements

a) 1%; and

b) the common equity tier 1 capital buffer percentage for D-SIFIs or G-SIFIs that applies on a consolidated level for its parent undertaking governed by another Member State, insofar as that percentage is no higher than the percentage provided for in § 2. Where applicable, account shall be taken of the application of specific rules in the Member State by which the parent company is governed where an institution is at the same time subject to a requirement of a common equity tier 1 capital buffer for D-SIFIs or G-SIFIs and for systemic or macro-prudential risks.
Article 15. The Bank shall draw up the list of D-SIFIs and of G-SIFIs and shall include in the latter the subcategory under which each G-SIFI comes. The Bank shall publish these lists on its website. The lists and changes made thereto shall be forwarded to the ESRB, to the European Banking Authority and to the European Commission.

The Bank shall once a year test the systemic importance of the D-SIFIs and G-SIFIs as well as the inclusion of the G-SIFIs in their correspondent subcategories. The Bank shall communicate the result thereof to the institution concerned, to the ESRB, to the European Banking Authority and to the European Commission and update the lists referred to in paragraph 1 on its website.

Section III. — Common equity tier 1 capital buffer for systemic or macro-prudential risks

Article 16. § 1. By means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the Bank can require that a credit institution have a common equity tier 1 capital buffer to anticipate and mitigate the impact of long-term non-cyclical systemic or macro-prudential risks that do not fall under Regulation No 575/2013. Such systemic or macro-prudential risk consists in structural risks of disruption of the financial system that could have serious consequences for the stability of the financial system and the real economy in Belgium. The Regulation that the Bank establishes pursuant to this paragraph shall comply with §§ 2 to 5 and with the requirements provided for in Articles 17 to 22 of this Annex.

§ 2. The amount of the common equity tier 1 capital buffer for systemic or macro-prudential risk established pursuant to § 1, shall amount at least to 1% of the total amount of risk exposure of the credit institutions, calculated in accordance with Article 92(3) of Regulation No 575/2013. This percentage may only be increased progressively in multiples of 0.5%.

§ 3. The Bank can decide that the requirement of a common equity tier 1 capital buffer for systemic or macro-prudential risk applies, on an individual or consolidated basis, to all credit institutions or to one or more target groups of credit institutions, grouped according to activity or risk profile.

§ 4. Where it approves the Regulation referred to in § 1, the Bank can limit the requirement for a common equity tier 1 capital buffer for systemic or macro-prudential risk to the coverage of risk exposures located in Belgium, in other Member States or in third countries, where the systemic or macro-prudential risk are limited to these exposures. The provisions of Article 96, §§ 4 to 6 and of Articles 17 to 22 of this Annex shall apply. In such a case, the total amount of the risk exposure of the credit institution as referred to in § 2 shall be limited to the risk exposures located on the territory or territories concerned.

§ 5. The Bank shall moreover take the following principles into account:

a) the common equity tier 1 capital buffer for systemic or macro-prudential risks may not have disproportionately negative effects for the financial system, in whole or in part, in other Member States or in the European Union as a whole, as a result of which it forms or creates an obstacle to the functioning of the internal market;

b) the percentage of the common equity tier 1 capital buffer for systemic or macro-prudential risks shall be reviewed at least once every two years.

Article 17. § 1. Before adjusting the requirement for a common equity tier 1 capital buffer for systemic or macro-prudential risk to a percentage that is less than or equal to 3%, the Bank shall communicate its draft regulation referred to in Article 16, § 1 of this Annex to
the European Commission, the European Banking Authority, and the ESRB. It shall also do the same vis-à-vis the designated authorities of the Member States of the third countries concerned.

The communication shall include a detailed description of the following:

a) the systemic or macro-prudential risk referred to in § 1 in Belgium;
b) the reasons why the scale of those systemic and macro-prudential risks constitute a threat to the stability of the national financial system;
c) the percentage of the common equity tier 1 capital buffer for systemic or macro-prudential risks that the Bank plans to set.
d) the reasons why the common equity tier 1 capital buffer for systemic or macro-prudential risks constitutes an efficient and proportionate measure to mitigate the risk;
e) an assessment of the possible positive or negative influence of the common equity tier 1 capital buffer for systemic or macro-prudential risks on the internal market, based on the information available to the Bank.
f) the reasons why none of the measures established by or pursuant to the present Law or by Regulation No 575/2013, with the exception of Articles 458 and 459 thereof, taken together or separately, would enable the macro-prudential or systemic risks identified to be tackled in an appropriate manner.

§ 2. The Bank can proceed to the publication referred to in Article 21 of this Annex one month after the communications referred to in § 1.

§ 3. Where the common equity tier 1 capital buffer requirement for systemic or macro-prudential risk is set by the Bank based on risk exposures located in another Member State, this requirement shall apply to the risk exposures as a whole in the other Member States.

Article 18. If the percentage referred to in Article 17, § 1 of this Annex is brought to between 3% and 5%, the Bank can only complete the establishment of the regulation referred to in Article 16, § 1 of this Annex after receiving the advice of the European Commission. The Bank shall, where applicable, detail its reasons for not following this advice in its regulation.

Article 19. Where the common equity tier 1 capital buffer percentage referred to in Article 17, § 1 of this Annex lies between 3% and 5% for systemic or macro-prudential risks and that buffer is imposed on a credit institution, the parent undertaking of which is governed by another Member State, the notification referred to in Article 17, § 1 of this Annex shall also be directed to the designated authorities of that State or the authorities tasked with the supervision of the parent company concerned.

In the event of a negative opinion from the European Commission and the ESRB, or if the authorities referred to in paragraph 1 have a difference of opinion, the Bank can submit the matter to the European Banking Authority to seek mediation from its part in accordance with Article 19 of Regulation 1093/2010. The decision of the Bank shall be suspended until the European Banking Authority has issued a decision.

Article 20. If the percentage referred to in Article 17, § 1 of this Annex is brought to between 3% and 5% and relates to risk exposures located in another Member State, the Bank can only complete the establishment of the regulation referred to in Article 16, § 1 of this Annex after the European Commission has established an implementing act permitting the Bank to take this measure. The same applies if the percentage referred to in Article 17, § 1 of this Annex is brought to more than 5%.

Article 21. The Bank shall publish the regulation referred to in Article 16, § 1 of this Annex on its website. This publication shall include the following information:
a) the common equity tier 1 capital buffer percentage for systemic or macro-prudential risks;
b) the justification for this percentage;
c) the date from which the credit institutions must apply this percentage;
d) the credit institutions for which the common equity tier 1 capital buffer for systemic or macro-prudential risks applies, except if the Bank is of the opinion that such a publication could disrupt the stability of the financial system;
e) the third countries for which the risk exposures located there are taken into consideration in the common equity tier 1 capital buffer for systemic or macro-prudential risks and/or all the Member States where such exposures are located in a Member State;
f) the advice of the European Commission and the reasons for which the Bank has not followed this advice, where applicable.

Article 22. § 1. Where the Bank introduces a requirement of a common equity tier 1 capital buffer for systemic or macro-prudential risks, in accordance with Article 16 to 21 of this Annex, it can ask the ESRB to issue a recommendation, in accordance with Article 16 of Regulation No 1092/2010, to one or more Member States that could recognize the buffer for systemic or macro-prudential risks relating to risk exposures located in Belgium of credit institutions governed by these States.

§ 2. By means of a regulation passed pursuant to Article 12bis § 2 of the Law of 22 February 1998, the Bank can recognize the buffer percentage for systemic or macro-prudential risks established by a designated authority of another Member State for the risk exposures located on the territory of that State. Such recognition confers an obligatory character on that percentage, with a view to creating a buffer for systemic or macro-prudential risk that applies to credit institutions that have such exposures.

The Bank shall notify the European Commission, the European Banking Authority, the ESRB and the designated authority of the Member State concerned of the recognition referred to in paragraph 1.

§ 3. When deciding whether or not to recognize the buffer percentage for systemic or macro-prudential risk pursuant to § 2, the Bank shall take into consideration the information that the designated authority of the Member State concerned has notified of in accordance with Directive 2013/36/EU.

ANNEX V

RESTRICTIONS TO DISTRIBUTIONS

Section I. — Calculation of the maximum distributable amount (MDA)

Article 1. § 1. Institutions shall calculate their maximum distributable amount (MDA) by multiplying the sum obtained in accordance with § 2 by the factor determined in accordance with § 3. The completion of each of the operations referred to in Article 101, after this calculation, shall reduce the MDA by the corresponding amount.

§ 2. The sum that must be multiplied in accordance with § 1 is made up of:

a) the interim profits that are not included, in accordance with Article 26, paragraph 2 of Regulation No 575/2013, in the common equity tier 1 capital that has been earned since the last decision to distribute profits since the completion of the last of the operations referred to in Article 101;

plus
b) the profit at the end of the financial year that is not included, in accordance with Article 26, paragraph 2 of Regulation No 575/2013, in the common equity tier 1 capital that has been earned since the last decision to distribute profits since the completion of the last of the operations referred to in Article 101; minus
c) the amounts that would be owed in taxes for the items referred to in points a) and b) of this paragraph.

§ 3. The factor shall be determined as follows:

a) the factor is zero where the amount of the common equity tier capital of the institution that is not used to comply with the own funds requirements imposed by Article 92, paragraph 1, under c) of Regulation No 575/2013, expressed as a percentage of the total amount of the risk exposure calculated in accordance with Article 92, paragraph 3, of that Regulation, is situated in the first quartile of the global requirement for a common equity tier 1 capital buffer;

b) the factor is 0.2 where the amount of the common equity tier 1 capital of the institution that is not used to comply with the own funds requirements imposed by Article 92, paragraph 1, under c) of Regulation No 575/2013, expressed as a percentage of the total amount of the risk exposure calculated in accordance with Article 92, paragraph 3, of that Regulation, is situated in the second quartile of the global requirement for a common equity tier 1 capital buffer;

c) the factor is 0.4 where the amount of the common equity tier 1 capital of the institution that is not used to comply with the own funds requirements imposed by Article 92, paragraph 1, under c) of Regulation No 575/2013, expressed as a percentage of the total amount of the risk exposure calculated in accordance with Article 92, paragraph 3, of that Regulation, is situated in the third quartile of the global requirement for a common equity tier 1 capital buffer;

d) the factor is 0.6 where the amount of the common equity tier 1 capital of the institution that is not used to comply with the own funds requirements imposed by Article 92, paragraph 1, under c) of Regulation No 575/2013, expressed as a percentage of the total amount of the risk exposure calculated in accordance with Article 92, paragraph 3, of that Regulation, is situated in the fourth quartile of the global requirement for a common equity tier 1 capital buffer;

The upper and lower thresholds of each quartile of the combined requirement for a common equity tier 1 capital buffer shall be calculated as follows:

lower threshold of the quartile =
Global capital buffer requirement X (Qn - 1)

4

upper threshold of the quartile =

Global capital buffer requirement X Qn

4

"Qn" is the figure for the quartile in question, from 1 to 4.
Section II. — Information referred to in Article 101, second paragraph, that must be provided to the supervisory authority

Article 2.

The information referred to in Article 101, second paragraph that must be provided to the supervisory authority is the following:

a) the amount of own funds subdivided as follows:
   i) common equity tier 1 capital,
   ii) additional tier 1 capital,
   iii) tier 2 capital;

b) the interim profit and the profit at the end of the financial year;

c) the MDA, calculated in accordance with the methods laid down in Article 1 of this Annex;

d) the distributions the credit institution intends to make, split into the following categories:
   i) distribution of dividends;
   ii) share buyback;
   iii) payments relating to additional tier 1 capital components;
   iv) payment of a variable remuneration or distributions under a discretionary pension, with a distinction made between those that are the result of entering into a new payment obligation and those that are the result of a payment obligation that was entered into at the time that the credit institution complied with the global requirement of a common equity tier 1 capital buffer.

Section III. — Items included in the distributions relating to one of the common equity tier 1 capital components

Article 3. For the application of Section V of Chapter V the distributions relating to one of the common equity tier 1 capital components include:

a) the distribution of dividends in cash;

b) the allocation or payment of variable remuneration in the form of shares or of other instruments detailed in Article 26, paragraph 1, under a) of Regulation No 573/2013, fully or partially paid up;

c) the repayment or buy-back by an institution of its own shares or of other instruments detailed in Article 26, paragraph 1, under a) of Regulation No 573/2013;

d) the repayment of amounts paid out to the holders of instruments detailed in Article 26, paragraph 1, under a) of Regulation No 573/2013;

e) the distribution of items as referred to under b) to e) of Article 26, paragraph 1 of Regulation 573/2013.

Section IV. — Content of the capital conservation plan
Article 4. The capital conservation plan shall include:

a) an estimate of income and outgoings and a projected balance sheet;
b) measures aimed at increasing the own fund ratios of the institution;
c) a plan and schedule for increasing the own funds to comply with the global requirement for a common equity tier 1 capital buffer;
d) all other information that the supervisory authority deems necessary to complete the assessment referred to in Article 105.

ANNEX VI
SOLVENCY AT A FINANCIAL CONGLOMERATE LEVEL

Article 1. Regulated undertakings must have own funds at a financial conglomerate level that are at least equal to the solvency requirements calculated at group level. The own funds and solvency requirements are calculated using one of the methods referred to in Article 2 of this Annex, pursuant to the principles referred to in Article 3 of this Annex.

The supervisory authority as coordinator shall determine the method to be applied. It may permit a combination of these methods. It shall previously consult the other relevant competent authorities and the financial conglomerate concerned on the method to be applied.

Article 2. Methods of calculation:

§ 1. Method 1: method on the basis of the consolidated accounts

The own funds and solvency requirements at a group level are calculated based on the consolidated position of the group, using the consolidated financial statements or interim consolidated financial statements. The consolidated position of the group is the position of the consolidated whole that forms a consolidated undertaking with the other undertakings included in the consolidation. Without prejudice to the provisions of Article 3, § 1 of this Annex, the consolidated position shall be determined mutatis mutandis to the sectoral legislation on sectoral group supervision.

The own funds components at a group level are those that are recognized as own funds components in the relevant sectoral legislation of the undertakings included in the consolidated position.

The solvency requirement at a group level is equal to the sum of solvency requirements relating to every distinct financial sector represented within the group. The solvency requirements relating to every distinct financial sector shall be calculated in accordance with the relevant sectoral legislation. For unregulated undertakings in the financial sector not included in the aforementioned calculations of sectoral solvency requirements, a theoretical solvency requirement shall be calculated.

§ 2. Method 2: method based on deduction and aggregation

The own funds and solvency requirements are calculated using the financial statements or interim financial statements of each of the undertakings in the group.

The own funds at a group level are equal to the sum of the own funds of each of the regulated and unregulated undertakings in the financial conglomerate belonging to the financial sector. The group own funds components are those that are recognized as own funds components in the relevant sectoral legislation of the undertakings concerned.
The solvency requirements at a group level are equal to the sum of the solvency requirements of each of the regulated and unregulated undertakings in the financial conglomerate belonging to the financial sector—calculated in accordance with the relevant sectoral legislation—and the book value of all participations in undertakings of the group. For unregulated undertakings belonging to the financial sector not included in the aforementioned calculations of sectoral solvency requirements, a theoretical solvency requirement shall be calculated.

Without prejudice to the provisions of Article 3, § 2 of this Annex relating to own funds shortfalls in subsidiaries, account shall be taken, in the application of this method, of the proportionate part that the parent undertaking or the company with a participation holds in another undertaking in the financial conglomerate. A proportionate part shall be understood to mean the part of the issued capital that is held directly or indirectly by this undertaking.

**Article 3.** Principles common to the two methods

§ 1. The solvency requirements for undertakings belonging to the bank and investment sector shall be understood to mean the solvency requirements in accordance with

- Part Three, Title I, Chapter 1 of Regulation No 575/2013;
- Articles 94, 96, 98, 149 and 150 of the present Law;
- Articles 458 and 459 of Regulation No 575/2013; and
- If necessary, by means of regulations passed in application of Article 12bis § 2 of the Law of 22 February 1998, implementing the previous points.

The solvency requirements for undertakings belonging to the insurance sector means the solvency margin laid down by [Articles 151 and 358 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.]


§ 2. Own funds shortfalls in subsidiaries (in the case of unregulated undertakings the theoretical shortfall shall be calculated using the theoretical solvency requirements) shall be taken into account for the entire amount.

By derogation thereof, the supervisory authority can, as the coordinator, permit that the proportionate part of the shortfall be taken into account if it is clearly demonstrated that the responsibility of the parent undertaking in the group is proportionately limited to the part of the capital that it owns in the undertaking by virtue of the responsibility that the other shareholders bear in relation to their contribution in the capital and their sufficient solvency.

If there are no capital ties between entities in a financial conglomerate, the supervisory authority, after consultation with the other relevant competent authorities, shall determine which proportional part will have to be taken into account to calculate the group’s own funds. The supervisory authority shall bear in mind the liability and risk to which the existing relationship between these undertakings gives rise.

§ 3. In calculating the own funds at the financial conglomerate level, each artificial creation of own funds within a financial conglomerate, as well as the multiple use of elements eligible for the calculation of own funds (“multiple gearing”) and the inappropriate transformation of the nature of resources, shall be eliminated. The relevant principles of the sectoral legislation shall be applied mutatis mutandis.
§ 4. The solvency requirements of the undertakings belonging to a particular financial sector in a financial conglomerate must be covered by own funds components as defined in the relevant sectoral legislation. Additional solvency requirements at the financial conglomerate level must be covered by own funds components recognized in all the sectoral laws (“cross-sector own funds”). If the sectoral legislation subjects the eligibility of capital instruments to restrictions, these restrictions shall apply mutatis mutandis to the calculation of the own funds at the financial conglomerate level.

In taking into account own funds components at a financial conglomerate level, the supervisory authority shall bear in mind any restrictions in the availability and transferability thereof between the different undertakings in the group, in light of the objectives of the supplementary conglomerate supervision in general, and the solvency provisions in particular.

The theoretical solvency requirement for an unregulated undertaking in the financial sector is the solvency requirement to which such an undertaking should comply pursuant to the relevant sectoral legislation if it were a regulated undertaking of that specific financial sector. The solvency requirements of the mixed financial holding company shall be calculated in accordance with the sectoral legislation for the most important financial sector in the group.

We promulgate this Law and order that it be sealed with the State seal and published in the Belgian Official Gazette.