B. Regulatory and legal framework

1. Banks

1.1 Aspects relating to management of the COVID-19 crisis

1.1.1 Prudential measures during the COVID-19 crisis

The COVID-19 crisis also left its mark on the prudential regulatory framework of the banking sector. The previously announced modifications to that framework were suspended and specific COVID-19-related measures were adopted at global, European and national level. In that regard, the emphasis was on support for bank lending to the real economy, and on the control of credit risks. The many modifications to the regulatory framework and the prudential measures adopted in the context of the COVID-19 crisis are described in last year's Report (see section II.B.1.1. of the Annual Report 2020). A number of those modifications and measures remained in force in 2021 but were phased out during the year.

A number of specific prudential measures relating to COVID-19 were phased out in 2021

Lending to Belgian businesses and households

The maintenance of lending to the Belgian economy was vitally important during the COVID-19 crisis. The Bank therefore continued to keep a very close watch on what was happening, monitoring the loans granted by Belgian banks to Belgian households and firms at the level of both individual banks and individual economic sectors. For that purpose, lending in neighbouring countries and in the euro area provided the basis for comparison. The conclusions regarding loans to Belgian firms were notified monthly to the federal Parliament.

Recourse to the system of State guarantees and moratoria on loan repayments established during the pandemic was also monitored. In order to provide temporary support for businesses, self-employed workers and households, the federal government and the Belgian financial sector had concluded an agreement on the subject in 2020 with the support of the Bank. That agreement was based on two pillars : the grant of new State-guaranteed loans to firms and the option of deferring payment on existing loans to firms and households. The first of these pillars was maintained throughout 2021. Thus, banks and SMEs were still able to use a federal government guarantee scheme for loans with a maturity of between one and five years. Overall, little use was made of this scheme. That indicates first that the banks remained willing to continue lending to the real economy during the pandemic, even without that aid measure, and next that demand – particularly for new investment loans – was modest during that period. The second pillar of that agreement, namely the general deferral of payments on existing loans to firms and households, came to an end during 2021, after having been extended several times. This measure was very successful : it was used for 6 % of outstanding household mortgages and 13 % of outstanding business loans. This payment deferral therefore provided significant support for those businesses and households in getting through the crisis.

Finally, the European Central Bank (ECB) and the Bank kept a close eye on the management of credit institutions' credit risks. In that regard, they were primarily interested in non-performing loans, the creation of adequate provisions, classification

of loans according to their credit quality in accordance with the International Financial Reporting Standards (IFRS), etc. (see also section C.1.2.). In order to ensure a sustainable recovery following the shock caused by the pandemic, banks must not only continue lending to the economy and supporting viable borrowers facing temporary financial difficulties. It is also vital that they recognise crisis-induced losses promptly and in full, that they make proper provisions for future losses, and that they adopt proactive credit risk management practices.

The recommendations limiting profit distributions ended on 30 September

1.1.2 Dividend policy

At the start of the COVID-19 crisis, the prudential supervisory and regulatory authorities eased some aspects of the regulatory capital requirements in order to support lending and absorb the losses caused by the crisis. In order to avert inappropriate use of these available buffers, with effect from March 2020, the ECB, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board (ESRB) and the Bank adopted various micro- and macroprudential measures to limit the distribution of profits in the form of dividends, share buybacks or variable remuneration (see section II.B.1.3. of the Annual Report 2020).

While all forms of profit distribution were strongly discouraged in 2020, the ESRB's updated Recommendation of 15 December 2020 allowed scope for the limited resumption of dividend distributions from 2 January 2021 to 30 September 2021[1]. In accordance with the ensuing ECB Recommendation addressed to significant credit institutions[2], during that nine-month period, the Bank therefore recommended that Belgian less-significant credit institutions should not pay out amounts to their shareholders representing more than 15 % of their cumulative profits for the years 2019 and 2020, or more than 20 basis points in terms of the Tier 1 capital ratio, whichever is the smaller[3]. Similar restrictions were introduced for Belgian insurers (see section B.2.1.). A macroprudential Recommendation by the Bank extended these new recommendations to all Belgian banks and insurers, including subsidiaries of international groups[4].

As the outlook for the economy and the financial sector improved during the year and the measures supporting the economy were gradually withdrawn, it became possible after 30 September 2021 to remove these exceptional conservation measures aimed at strengthening the financial sector's resilience. In accordance with the decisions of the ECB and the ESRB not to adopt new Recommendations in this area, the Bank decided to let the micro- and macroprudential Recommendations expire on that date. However, the Bank does encourage financial institutions to remain cautious in their decisions on dividends, share buybacks and variable remuneration, and to base those decisions on a forward assessment of their capital needs[5].

1.1.3 The European Commission's strategy for non-performing loans

In December 2020, the European Commission published its strategy for preventing the future build-up of non-performing loans (NPL) in the EU in the aftermath of the COVID-19 crisis. That strategy follows on from the measures taken since 2017 by the European Commission, but also by the European Central Bank and the European Banking Authority (in particular, the measures on minimum provisions and the NPL reduction strategies). This strategy aims to ensure continuity of access to funding sources for households and businesses during the crisis.The proposed strategy is structured around four goals.

First, the Commission intends to develop secondary markets for trading impaired assets while guaranteeing debtor protection. That would enable credit

1 ESRB Recommendation of 15 December 2020 amending Recommendation ESRB/2020/7 on the restriction of distributions during the COVID-19 pandemic (ESRB/2020/15).

2 ECB Recommendation of 15 December 2020 (ECB/2020/62).

3 Circular NBB_2020_049 of 22 December 2020 on measures in the context of coronavirus – Expectations concerning the dividend policy and remuneration policy with effect from 2 January 2021.

4 Macroprudential Communication of the Bank dated 18 December 2020 on the restriction of profit distribution by Belgian financial institutions.

5 Press release by the Bank: "The National Bank calls for prudent dividend policy after 30 September", 28 September 2021.

institutions to effectively reduce the proportion of NPLs on their balance sheet and thus to concentrate on their role of granting loans.

In order to enhance transparency on these markets and improve the exchange of information between the various players, the Commission also proposes setting up a central data hub at European Union level. In that connection, the EBA conducted a consultation in May 2021 on the revision of the non-performing loan reporting tables.

Second, in order to enhance legal certainty and speed up debt recovery, the Commission proposes reforming the EU corporate insolvency and debt recovery legislation in order to ensure closer convergence between the various existing frameworks.

Third, the Commission proposes supporting the creation of national asset management companies. These companies should enable struggling credit institutions to remove NPLs from their balance sheet, the aim being for these institutions to be able to concentrate on lending. The Commission also intends to promote cooperation between these national asset management companies, particularly in regard to the exchange of good practices and the coordination of measures.

The Bank continues to favour the full and speedy implementation of the Basel III standards

Finally, the Commission draws attention to the option available to the authorities in accordance with the BRRD and the State aid framework to implement precautionary public support measures where needed in order to ensure the continued funding of the real economy.

1.2 Activities of the Basel Committee on Banking Supervision

After finalising the Basel III rules at the end of 2017, the Basel Committee on Banking Supervision (BCBS) announced a pause in the drafting of new regulations. The Committee turned its attention to implementing the latest elements of the Basel III framework (see section B.1.3. on the publication of a new banking package by the European Commission), assessing the operation of its regulatory framework in the context of COVID-19 and, more generally, analysing the current structural trends in the banking world, such as digitalisation, the impact of the low interest rate environment on business models, and the approach to climate-related financial risks.

In the course of this latest work, the Committee published analytical reports on the integration of climate-related financial risks in banks' risk management, and a consultative document setting out principles for the effective control and monitoring of these risks in internationally active banks (see section B.3.2.).

The Committee is currently also processing the responses to a consultative document on the prudential treatment of crypto-assets (see section D.1.3.). Although banks' exposure to them is limited at this stage, the steady advance of these assets and the associated services, and the innovations in this field, combined with the growing interest in them on the part of some banks, could heighten the risks to financial stability and to the banking system in the absence of clear prudential treatment.

Finally, the Committee published new principles designed to strengthen the banks' operational resilience, to enable them to cope better with serious events such as pandemics, cyber-security incidents, technological failures or natural disasters, and to adapt and recover from them. Apart from these principles, the Committee updated a number of related principles concerning good management of operational risks on the part of banks. In view of their vital role in the global financial system, bolstering the banks' resilience in the face of operational shocks should make the financial system as a whole more resilient.

1.3 Integration of the definitive Basel III standards into European legislation

On 27 October 2021, the European Commission presented a new package of changes to the banking legislation, comprising a Directive amending the Capital Requirements Directive (CRD6)[1] and two Regulations, namely an updated version of the Capital

1 Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU, 27 October 2021.

Requirements Regulation (CRR 3[1]) and a Regulation on resolution-related subjects[2].

The main aim of this set of texts is to implement the final elements of the Basel III standards for European banks. The BCBS completed its reforms of the banking regulations at the end of 2017 by publishing measures for calculating the risk-weighted assets (RWA), which form the denominator of the risk-based capital ratio. During the financial crisis, there were frequent questions concerning the under-calibration, complexity and opacity of the calculation of the risk-weighted assets via internal models, and the unjustified variability in that regard. The Committee therefore decided to abolish the use of internal models for risks considered incapable of being modelled (e.g. operational risks and credit risks inherent in equity exposures) and to limit it for other risks. The last part of these restrictions was named the "output floor". It specifies that the total risk-weighted assets calculated via internal models must not be less than 72.5 % of the risk-weighted assets calculated by the standardised, more conservative approach. The Basel Committee plans to introduce these standards on 1 January 2023, with the output floor initially set at 50 %, and then to be raised gradually to reach 72.5 % in 2028.

Apart from the implementation of the Basel III standards, the new package of measures also concerns greater harmonisation of certain powers and supervision tools. Thus, the package includes proposals for the regulation of European branches of third-country banks, with closer cooperation and the exchange of information between the supervisory authorities concerned, harmonisation of the minimum capital and liquidity requirements, and the possibility of subjecting systemically important branches to stricter supervision, or asking the banks concerned to convert those branches into subsidiaries. If these proposals are adopted, they will permit more uniform supervision of such branches. These measures also further specify the requirements concerning expertise, availability and aptitude ("fit and proper") for the management and key personnel of credit institutions, strengthen the supervisory authorities' power to impose sanctions, give them a greater say in significant operations such as mergers or the acquisition of interests in commercial undertakings, and finally consolidate the independence of the supervisory authorities by banning them from trading in the financial instruments of institutions subject to their supervision or performing duties in such institutions.

One of the final parts of the new banking package consists in the more detailed drafting of the rules on the management and monitoring of environmental, social and governance – or ESG – risks. In particular, the supervisory authorities are required to integrate these risks into their supervision process and organise regular climate stress tests. Institutions must include these risks in their risk management and report on them to both the supervisory authority and the general public.

The Bank welcomes both the implementation of the Basel III standards for European banks and the aspects of this package mentioned above which are not related to own funds, but it regrets that the European Commission has opted to introduce standards which are not entirely in line with the BCBS stipulations. For instance, the transitional measures for the introduction of the output floor go much farther than those advocated by the BCBS and continue for longer. The proposal also maintains the pre-existing deviations from the current Basel rules, which make the requirements less strict for European banks. The Bank continues to favour the full, speedy implementation of the Basel III standards. In the long term, it is very much in the interests of the European economy to be able to rely (very) largely on a robust financial system in which the banks have adequate own funds. Deviating from the Basel III Agreement could have an adverse impact on confidence in both the European banking sector and the EU regulatory framework. That in turn is liable to have a detrimental effect on financial stability and on the economy. It is therefore important to implement international agreements in full and in a timely and consistent manner. With that in mind, the Bank joined more than 25 other European central banks and supervisory authorities in signing a letter to that effect, addressed to the European Commissioner for Financial Services.

1 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No. 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor, 27 October 2021.

2 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No. 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institution groups with a multiple point of entry resolution strategy and a methodology for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities, 27 October 2021.

In addition, the output floor is only imposed at consolidated level for international banking groups. In the past, the banking rules have always applied both at consolidated group level and to individual local banking subsidiaries. This would create a regrettable precedent for Member States such as Belgium which host banks from other EU Member States, in view of the currently incomplete state of the banking union.

1.4 Amendment of the Banking Law

The Law of 11 July 2021, which transposes the CRD5 Directive and anticipates the transposition of some of the Directive's provisions concerning the prudential supervision of investment firms (Investment Firms Directive – IFD), came into force on 23 July 2021[1].

1 Law of 11 July 2021 transposing Directive 2019/878 of the European Parliament and of the Council of 20 May 2019, Directive 2019/879 of the European Parliament and of the Council of 20 May 2019, Directive 2019/2034 of the European Parliament and of the Council of 27 November 2019, Directive 2019/2177 of the European Parliament and of the Council of 19 December 2019, and Directive 2021/338 of the European Parliament and of the Council of 16 February 2021, and containing miscellaneous provisions (Moniteur belge/Belgisch Staatsblad of 23 July 2021, Ed. 3, pp. 76062 ff.).

The main changes which this law makes to the Banking Law concern financial holding companies and mixed financial holding companies, third-country groups operating via regulated subsidiaries in the EU, the introduction of the Pillar 2 guidance (P2G) and the leverage risk. In regard to the macroprudential tools, the systemic risk buffer is now supplemented by the option of specifying one or more sectoral systemic risk buffers.

The Covered Bonds Directive aims to establish a minimum harmonised framework for the issuance of covered bonds

Changes were likewise made to the Banking Law concerning the definition of a strategic decision and the remuneration policy.

Finally, a proportional regime was also introduced. This specifies that submission of the report by the effective management on internal control by less significant institutions (LSIs) and the updating of the recovery plans of certain credit institutions can take place less frequently. From now on, LSIs will only have to submit a full internal control report by the effective management every two years. In the year in which a full report is not required, a brief summary note will be sent. The recovery plan will only need to be updated every two years by credit institutions subject to simplified obligations.

1.5 Transposition of the Covered Bonds Directive into Belgian law

By means of the Covered Bonds Directive[1], the European Union aims to establish a minimum harmonised framework for the issuance of such bonds. Covered bonds are debt securities covered by a pool of segregated loans. In the event of insolvency or resolution of the credit institution which issued the covered bonds, bond-holders have an exclusive or preferential right to those segregated loans and a general right of recourse against the credit institution.

Since the minimum harmonisation is based on best practices derived from existing legal frameworks of the Member States, the changes to be made to the Belgian legal framework are minor. In order to be able to offer investors a high degree of protection and to guarantee the quality of the debt instruments issued, the current level of requirements under Belgian law was maintained. Provisions which go beyond the Directive's minimum requirements are thus retained. Some changes were made in order to exercise some of the options set out in the Covered Bonds Directive. The main changes lie in the introduction of new requirements concerning extendable maturity structures and the publication of information for investors, and in various additional clarifications concerning (i) valuation methods, (ii) eligibility criteria for cover assets, (iii) use of derivative contracts, (iv) liquidity and coverage tests, and (v) conditions for including acquired cover assets in the cover pool. The Covered Bonds Directive is transposed into Belgian law[2] by a law and an as yet unpublished Royal Decree. These texts will enter into force on 8 July 2022.

Apart from the Covered Bonds Directive, Regulation (EU) 2019/2160[3] which essentially amends Article 129 of the CRR[4], was adopted. These amendments are primarily related to the identification of high-quality covered bonds eligible for a preferential risk weighting. This Regulation will also enter into force on 8 July 2022.

1 Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU

2 Law of 26 November 2021 amending the Law of 25 April 2014 on the status and supervision of credit institutions and investment firms for the purpose of transposing Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision, and amending the Law of 11 March 2018 on the status and supervision of payment institutions and electronic money institutions, the taking up and pursuit of the activities of a payment service provider and the activity of issuing electronic money, and access to payment systems.

3 Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) No. 575/2013 as regards exposures in the form of covered bonds.

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

1.6 Reporting

In order to monitor the solvency position and financial situation of financial institutions subject to their supervision, the supervisory authorities (the Bank, the ECB, the Single Resolution Board (SRB) and the EBA) regularly request information from those institutions. To that end, various reporting requirements are imposed at both European level (by the EBA, the ECB and the SRB) and at national level (by the Bank). In this connection, proportionality and the overall reporting burden borne by the institutions are always taken into account.

The authorities concerned are aware of the reporting burden and are taking measures to alleviate it to some extent in the future

However, the authorities concerned recognise that in recent years the reporting obligations have become much more numerous and complex and wish to address this. In this context, the CRR gave the EBA a number of mandates[1] to explore ways of alleviating the reporting burden and the associated costs for the institutions.

Cost-benefit analysis

Under the mandate given by the CRR, the EBA conducted a cost-benefit analysis which included examination of the costs that institutions incurred in complying with the (European) reporting requirements on reporting to the supervisory authorities. The analysis also assessed whether those costs were proportionate to the benefits for prudential supervision and made recommendations on how the costs could be reduced, especially for the smallest institutions[2]. The final cost-benefit report was published on 7 July 2021. It contains 25 recommendations aimed at making the European reporting framework more proportionate, continuing to promote coordination between the various supervisory authorities that draw up reporting obligations, and encouraging institutions to further automate their internal reporting processes[3]. The EBA considers that the combined effect of these recommendations could ease the burden on institutions in general, especially in the case of the smallest banks. The report's recommendations will be implemented gradually in the years ahead.

Feasibility report on the creation of an integrated reporting system

Apart from the cost-benefit analysis, the EBA was also asked to draft a feasibility report for the development of an integrated system for collecting statistical data, prudential data and resolution data, in cooperation with the authorities responsible for prudential supervision, deposit guarantee schemes, resolution and the European System of Central Banks (ESCB). Among other things, that feasibility study and integrated reporting framework should lead to the definition of processes for harmonising the existing and future reporting obligations, easing the financial and administrative burdens associated with reporting, and improving the efficiency of the overall reporting process. The final feasibility report was published[4] on 16 December 2021 and presents a long-term view of the organisation of reporting procedures and the way in which they can be streamlined and improved in the future, and of cooperation between the authorities concerned. The report identifies certain measures that might be feasible in the short term and aspects requiring more detailed research.

For some time the ESCB has been working, via its Integrated Reporting Framework (IReF), to integrate the various statistical reporting requirements which it has introduced under its mandate. This ESCB project gathered momentum over the past year as a result of the ECB's public cost-benefit analysis[5]. The findings of that ECB analysis will provide guidance for this project. The lessons to be drawn from this ESCB project could give considerable impetus to the next steps of the EBA's broader feasibility report, aimed at integrating not only statistical data but also prudential and resolution data.

The Bank has always actively supported the above-mentioned European initiatives and, within the limits of its mandate, has also taken measures

1 See Article 430 (8)(c) of Regulation (EU) No. 575/2013 (CRR).

2 "Smaller institutions" means institutions which conform to the definition of "small, non-complex institutions" in Article 4 (1), point 145, of Regulation (EU) No. 575/2013 (CRR).

3 EBA Study of the cost of compliance with supervisory reporting requirements report (EBA/REP/2021/15), 7 June 2021.

4 EBA's feasibility study on integrated reporting system provides a long-term vision for increasing efficiencies and reducing reporting costs (EBA/REP/2021/38), 16 December 2021.

5 ESCB long-term strategy for banks' data reporting, November 2020.

to alleviate to some extent the reporting burden imposed at national level. In revising "Scheme A" (Book 1 of the scheme for the periodic information which credit institutions have to submit concerning their financial situation), which it uses for prudential and statistical purposes, the Bank has attempted to alleviate the reporting burden by removing some of the obligations[1].

1.7 EBA guidelines and Bank Circular on loan origination and monitoring

In June 2020, the EBA published new guidelines on loan origination and monitoring (EBA/GL/2020/06). These guidelines form part of the final component of the EU's July 2017 action plan[2] in response to the problem of non-performing loans[3] (NPLs).

The new EBA rules on loan origination and monitoring aim to strengthen financial stability and the soundness of the European banking system

These new guidelines aim to improve the credit quality of new loans and the monitoring of existing loans in order to limit the future incidence of NPLs and thus to strengthen financial stability and the soundness of the European banking system. But they also aim to reflect supervision priorities and developments in supervision policy relating to lending, such as the development of socially responsible investment.

These guidelines should help institutions to improve their internal governance practices, arrangements, processes and systems in order to ensure that their loan origination and their credit risk management and monitoring comply with sound, prudent standards[4]. Institutions must abide by the regulations, particularly in regard to consumer protection, mortgage lending and measures to combat money-laundering, but they must also deal appropriately with the new emerging risks, such as those concerning technological innovations, while taking care to develop more socially responsible investment, e.g. by taking better account of environmental, social and governance (ESG) factors.

However, the EBA stresses that these guidelines should be implemented proportionately. For instance, in regard to loan origination, that proportionality can be applied according to the size, nature and complexity of the loan, while in regard to loan monitoring it may also be applied according to the type, size and risk profile of the borrower.

Circular NBB_2021_18 transposed these EBA guidelines in full. They came into force on 30 June 2021. However, in order to take account of the substantial operational adjustment efforts that institutions made during the COVID-19 pandemic, the Bank decided to grant them a 6-month tolerance margin for conforming to that Circular in practice.

In the case of new loan origination, institutions had to conform to the Circular by 31 December 2021. However, they have until 30 June 2022 to comply in the case of some old loans renegotiated[5] after the Circular came into force. Finally, in regard to the monitoring of existing loans, institutions have to comply with the Circular by no later than 30 June 2024.

The scope of these guidelines is very broad since – with a few specific exemptions – it covers all the institutions' credit risks on both a consolidated and a non-consolidated basis, throughout the lifecycle of those loans. Finally, certain sections of these guidelines also apply to non-bank lenders who come under the Financial Services and Markets Authority (FSMA) and the Federal Public Service (FPS) Economy.

For institutions subject to the Bank's supervision, these guidelines cover internal governance for loan origination and monitoring in accordance with Circular NBB_2018_28[6], lending procedures, loan pricing and the loan monitoring framework. They also cover the valuation and revaluation of movable and immovable property.

1 See on this subject the Bank's Circulars NBB_2021_001 of 12 January 2021 and NBB_2021_11 of 1 June 2021 on changes to Scheme A, Book 1.

2 See https://www.consilium.europa.eu/en/press/press-releases/2017/07/11/conclusions-non-performing-loans/.

3 These guidelines therefore supplement the EBA guidelines on non-performing exposures and restructured exposures (EBA/GL/2018/06 of 31 October 2018 transposed in Circular NBB_2019_21) and the guidelines on the publication of non-performing and forborne exposures (EBA/GL/2018/10 of 17 December 2018 transposed in Circular NBB_2019_11).

4 Based in particular on the EBA guidelines on internal governance (EBA/GL/2017/11 of 21 March 2018).

5 If the renegotiation follows specific approval and if its implementation entails the conclusion of a new loan agreement or an amendment to the existing agreement.

6 Transposing the EBA guidelines of 26 September 2017 on internal governance (EBA/GL/2017/11).

The guidelines thus specify that, when granting loans, institutions must in particular make sure that real estate is valued by internal or external valuers, in order to ensure reliable valuation of the collateral. For that purpose they can use advanced statistical models for residential mortgage loans if they comply with specifical conditions for the use of such models. Given the maturity of the Belgian housing market, however, the Bank expects [1] that in most cases the banks will use these statistical models to assess the value of residential property.

Also, in order to ensure the proportionate implementation of these requirements, the guidelines mention that valuations can be conducted with due regard for the size, nature and complexity of the loan and the collateral, and the link between the loan and the collateral. Institutions will therefore have to ensure above all that they establish an internal policy determining the type of valuation to be used for each type of collateral.

Finally, the Bank expects that, over time, institutions will improve their loan origination and monitoring practices and their collateral valuation procedures. Among other things, it therefore expects them to develop a holistic approach in order to take greater account of ESG factors and the associated risks in their risk appetite policies, and in their credit risk policies, procedures and management.

1.8 Recording of interest rate risk hedging operations under Belgian bank accounting law

The way in which credit institutions record their interest rate risk hedging operations in the statutory accounts (solo) is governed by Article 36bis of the 1992 Royal Decree on accounting [2].

That provision was amended by the Royal Decree of 29 August 2021 [3] for two reasons. On the one hand, the aim was to enshrine in law the accounting practices previously developed on the basis of individual exemptions granted by the Bank (and prior to that by the ex-CBFA) in regard to macro-hedging operations used by institutions as part of the overall management of their interest rate risk exposure. The changes to that provision also aimed to resolve various practical application issues which have arisen in recent years, in particular in the event of hedging operations breaking down or being ineffective. On this specific point, the approach adopted should limit distortions in the statutory profit and loss account compared to the treatment of the same aspects in the consolidated accounts based on the IFRS international accounting standards (but without aligning the other accounting rules with the IFRS). The Decree also requires institutions to divulge more information on these operations in an annex to their statutory annual accounts.

The new regime in force allows institutions to apply a special method for recording macro-hedging operations subject to fulfilment of a set of conditions, particularly in regard to the institution's monitoring of its interest rate risk and the effectiveness of its hedging operations. Institutions wishing to use this approach must first request permission from the Bank on the basis of an application for which the details are described in a Bank Circular [4] dated 5 October 2021, accompanied by a special authorised auditor's report. This Circular likewise clarifies various points concerning the practical implementation of the new Article 36*bis*.

The said decree of 29 August 2021 also specifies that the exemptions previously granted by the Bank (and the ex-CBFA) remain valid until 31 December 2022. Authorisation is therefore required for continuing to apply the special accounting practice to macro-hedging operations beyond that date.

1 As clarified in its press release on questions and answers concerning the new mortgage rules and in Annex 5 (detailed FAQ) to Circular NBB_2021_18.

2 Royal Decree of 23 September 1992 on the annual accounts of credit institutions, investment firms and companies managing collective investment funds.

3 Royal Decree of 29 August 2021 amending the said Royal Decree of 23 September 1992,

4 Circular NBB_2021_20 of 5 October 2021 on rules for applying Article 36bis of the Royal Decree of 23 September 1992 on the annual accounts of credit institutions, investment firms and companies managing collective investment funds.

2. Insurance undertakings

2.1 Aspects relating to management of the COVID-19 crisis

Dividend distribution policy

In April 2020, amid the great uncertainty surrounding the COVID-19 crisis, the Bank set out its expectations concerning dividend payments, share buybacks, variable remuneration and profit sharing.

Following the publication on 15 December 2020 of the ESRB Recommendation[1] calling on the national authorities to take the necessary steps to permit dividend distribution or share buybacks solely under strict conditions, the Bank published its new policy on 26 January 2021 via Circular NBB_2021_05, in which the Bank insisted that all Belgian insurance and reinsurance undertakings and groups must suspend their discretionary dividend distributions and own share buybacks until at least 30 September 2021, unless they adopted a very cautious approach in implementing these distributions and fulfilled certain conditions concerning solvency and the amount of the distribution. This new policy, which is slightly less stringent than in 2020 in that it allowed some undertakings to distribute profits, was based essentially on three criteria: the first criterion, applicable without distinction to all undertakings, aimed to limit the amount of the distributions (compared to the two years preceding the COVID-9 pandemic); the other two criteria divided undertakings into three categories: those with a solvency ratio of less than 150 % were asked not to distribute any dividends; those with solvency ratio of over 200 % were able to distribute cautiously, and for undertakings with a solvency ratio between 150 % and 200 %, a distinction was made according to the amount to be distributed in relation to the eligible own funds under Solvency II. Limited distributions, i.e. amounting to less than 10 % of the eligible own funds, could be carried out, while larger distributions, i.e. above that 10 % threshold, had to be subject to convincing arguments discussed with the Bank concerning the prudence and sustainability of the distribution. This Circular also required (re)insurance undertakings and groups under its supervision to notify the Bank in advance of their intentions in regard to dividends.

The Bank calls on insurers to remain cautious in regard to dividends

On 23 September 2021, the ESRB decided to let its Recommendation on the restriction applicable to dividend distributions expire with effect from 30 September 2021. In accordance with that decision,

1 Recommendation of the European Systemic Risk Board of 15 December 2020 amending Recommendation ESRB/2020/7 on restriction of distributions by European financial institutions during the COVID-19 pandemic.

the Bank also decided to let Circular NBB_2021_05 of 26 January 2021 expire on that same date, while calling on undertakings subject to its supervision to remain cautious in their decisions on dividends, share buybacks and variable remuneration. From 1 October 2021, the Bank therefore resumed assessing the prudence of institutions' distribution policies via the ordinary supervision process.

Suspension of COVID-19 reporting

On 31 March 2020, for the purpose of quickly assessing the impact of the COVID-19 pandemic both at the level of the various insurance undertakings and on the sector as a whole, the Bank had introduced a new reporting in order to frequently collect updated key data. As the conditions on the financial markets had stabilised, that reporting was suspended after 31 March 2021 until further notice. An analysis of the impact of COVID-19 on the insurance sector, assessed up to 31 March 2021 on the basis of those reports, is available on the Bank's website[1].

Credit insurance support system

In both domestic and international trade, it is usual to underwrite credit insurance for the delivery of certain goods. That insurance offers protection against the insolvency or credit risk of the counterparty when the goods have been supplied but the invoice has not yet been paid. Credit insurance fosters confidence in trade and therefore stimulates economic growth. At times of crisis, however, the risks for credit insurers may increase. In order to control these risks, they are therefore tempted to reduce their credit lines. They may thus restrict or suspend the coverage of unpaid invoices with immediate effect. Obviously, in an already difficult economic context, that may create economic frictions and lower the volume of trade.

In order to avoid such a contraction of credit lines during the COVID-19 crisis, the government – assisted by the Bank – devised a reinsurance system to guarantee maintenance of the credit lines and thus to support the credit insurance sector. This support system was active from April 2020 to June 2021. It was structured so that the first loss was largely borne by the sector, which retained the necessary incentives to continue managing claims properly. In this way, the Belgian State never had to bear the entire loss.

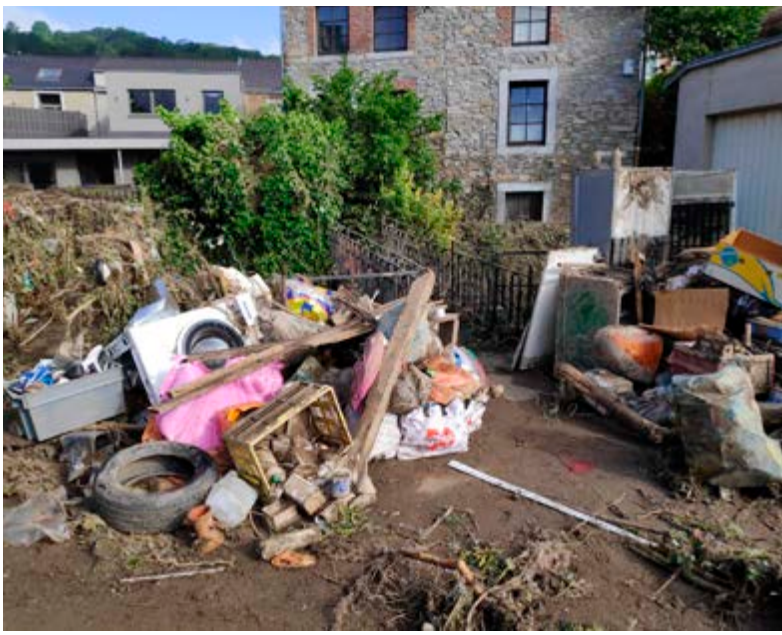
While the credit lines granted by the credit insurance sector totalled € 39.8 billion at the end of 2019, they had declined to € 30.9 billion at the start of the COVID-19 crisis, in March 2020. In April, when the system came into effect, that figure increased to € 39.4 billion. The support arrangements thus permitted the maintenance of domestic and foreign trade during the COVID-19 crisis.

2.2 July 2021 floods

The flooding that took place from 14 to 16 July 2021 caused a huge amount of damage, particularly to buildings and businesses, and had serious repercussions on many people's lives. Although not all the damage was insured, the insurance and reinsurance sector settled the bulk of the insured claims, primarily via the cover included under fire insurance for "ordinary risks" which also concern family homes, farm buildings, etc. as described in the legislation[2]. For these risks, fire insurance must include cover against flooding. In the past, this obligation has been imposed by law in order to protect policy-holders against natural disasters. Furthermore, in order to preserve the financial stability of the insurance sector as

1 See https://www.nbb.be/doc/cp/eng/2020/nbb_covid19reporting.pdf.

2 Article 5 of the Royal Decree of 24 December 1992 implementing the Law on terrestrial insurance contracts.



well, e.g. in the event of exceptional natural disasters, the legislation lays down specific mechanisms, such as limiting claims to a maximum amount of cover per insurer and per disaster, beyond which the regional disaster funds are mobilised. There is no mandatory insurance against natural disasters for other risks insured under fire insurance or other policies, such as motor insurance, but cover can be negotiated case by case with each policy-holder.

In view of the considerable impact of the July 2021 floods, the Regions and the insurance sector together devised specific protocols in order to compensate policy-holders as quickly as possible and to strike the right balance between the financing cost for the Regions and the financial stability of the insurance sector. The protocols make provision for exceptionally doubling the insurers' legal limit on cover, and state that insurers would be expected to prefinance sums in excess of that higher limit by means of a loan. The Walloon Region would be expected to repay these amounts to the insurance sector from 2024 onwards. The total damage caused by the flooding is currently estimated at € 2.1 billion. However, these estimates may be adjusted in line with how the handling of claims is going.

While these protocols were being negotiated, discussions also began in order to examine how the legislation on natural disasters can be adapted to take account of the lessons to be learnt from the recent flooding. The aim is to design a more robust legal framework which offers greater legal certainty in the event of exceptional natural disasters. The emphasis will be placed in particular on calibrating the limit on cover for insurers and future adjustments to it. In a context in which research has shown that climate change may lead to more frequent and more severe natural disasters, this could have an impact on insurers and reinsurers which will be influenced by the degree of government intervention. The balance between the financing cost for the Regions and the stability of the insurance sector (insurers and reinsurers, where appropriate) will thus need to be guaranteed in a sustainable way. The appropriate calibration of the limit on cover must also ensure that any increase in premium remains affordable for policy-holders. The financing of disaster funds will thus have a prominent place in these discussions, as it is important to ensure that the necessary funds are available in the event of another natural disaster.

2.3 Changes to the regulatory framework

Revision of the Solvency II Directive

Solvency II, the prudential supervision framework for European insurers and reinsurers, has applied since 1 January 2016. It covers a broad range of quantitative and qualitative requirements on the taking up and pursuit of the business of insurance and reinsurance. The Solvency II framework also includes arrangements for revision to permit adjustments to the regulations on the basis of past experience. EIOPA's mandate to submit a technical opinion to the European Commission by the end of 2020 on the revision of the long-term guarantee measures and the equity risk measures therefore originated directly from the Directive itself. Following a formal request for a technical opinion, that mandate was extended on 11 February 2019 to a range of additional components which make up the main part of the Directive.

EIOPA's opinion was sent to the European Commission and published on 17 December 2020. It comprises specific proposals for amending the regulatory framework, together with the findings of a holistic impact assessment conducted at European and national level. EIOPA also published a detailed communication reporting on a large-scale consultation with market players concerning the revision proposals, and the reasons for the final proposals based on a cost-benefit analysis of the various technical options considered.

On 22 September 2021, following the detailed analyses by EIOPA, the European Commission formulated a set of legislative proposals for revision of the Solvency II Directive. Those proposals are based mainly, but not entirely, on EIOPA's opinion. They aim to improve the main quantitative, qualitative and reporting requirements under that framework and are also intended to support the EU policy priorities, such as the financing of the post COVID-19 economic recovery, completion of the capital markets union, and channelling of the necessary funds under the European Green Deal.

The proposals adopted aim in the first instance to amend the Solvency II Directive. A proposal for a new Directive on the recovery and resolution of insurance and reinsurance undertakings was also published. Surprisingly, the proposals on the delegated Regulation supplementing the Directive were not

published at the same time. However, in an official Communication, the European Commission announced the likely main adjustments.

Key points among the main proposals in the EIOPA opinion include better access to the principle of proportionality for low-risk undertakings and the introduction of a recovery and resolution framework for insurance undertakings, via the proposal for a new Directive (see section E.1). The main quantitative changes proposed concern the adjustment of the technique for extrapolating the risk-free yield curve, for which long-term market data would be partly taken into account, refinement of the volatility adjustment permitting better allowance for firms' asset and liability management in the calibration of that adjustment, and the application of shocks to negative interest rates as part of the capital requirements for interest rate risk.

The European Commission formulated legislative proposals for the revision of the Solvency II Directive

The European Commission's proposal deviates considerably from EIOPA's opinion: in particular, it takes no account of firms' lapse and mortality risk in calculating their volatility adjustment, it does not apply a shock to the extrapolated section of the yield curve as part of the capital requirements for interest rate risk, it reduces the percentage used for the cost of capital in the risk margin, it introduces a transitional measure for the new risk-free yield curve, and it makes no provision for introducing certain macroprudential tools targeting systemic risks.

The reform package proposed by the European Commission will be analysed in more detail and discussed by working groups in the European Commission, the European Parliament and the EU Council. Those discussions will continue during 2022, in preparation for the next inter-institutional negotiations which, in the near future, should lead to a new, final agreement on the Solvency II supervision framework.

Amendment of the Insurance Supervision Law

The Law of 27 June 2021 on miscellaneous financial provisions amended the Insurance Supervision Law in two respects. First, various adjustments were needed following the entry into force of the new Code for Companies and Associations. In addition, Belgium had to transpose Directive 2019/2177[1].

I. Adjustments relating to the new Code for Companies and Associations

The first adjustments to the new Code for Companies and Associations involve the formal amendment of numerous references which the Insurance Supervision Law made to the old Company Code. Next, taking account of the prudential objectives of the Insurance Supervision Law, a number of amendments were made in relation to the new Code's provisions.

Thus, having regard to their obligations concerning own funds, the only legal forms that insurers can take are that of a cooperative society, public limited company, European Company or European Cooperative Society, or a mutual insurance association. Similarly, the possibilities for cooperative society shareholders to resign with repayment of their share in the capital were restricted.

In regard to the governance model, the dual structure specific to insurance undertakings was maintained. These undertakings still comprise a statutory management body (board of directors), responsible for strategy and supervision, and a management committee responsible for the actual management of the business. That committee is composed of at least three members, two of whom also have a seat on the board of directors.

Finally, this was the opportunity to cease requiring the presence of the chief risk officer on the management committee. EIOPA criticised that position via a peer review, owing to the implicit risks of a conflict of interests, notably because of the participation in the management committee's decision-making process which is, by definition, collegiate.

1 Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing.

II. Adjustments relating to transposition of Directive 2019/2177

There are four main components to the transposition of Directive 2019/2177. The first concerns the volatility adjustment, which aims to avoid procyclical investment behaviour. The amendment to Article 131 of the Insurance Supervision Law permits more frequent recourse to activation of the country component in the volatility adjustment mechanism. The second amendment now requires the prudential supervisory authorities to notify EIOPA of all requests for approval of an internal model for calculating the capital requirements.

In 2021, the European Commission published legislative proposals to strengthen the fight against money- laundering in Europe

The third series of amendments concern cross-border activities and introduce new information requirements. These new requirements are aimed at improving reciprocal information between the authorities of the home Member States and the host Member States on the activities that undertakings conduct outside their home Member State, particularly from the point of view of policy-holder protection. It is also possible for EIOPA to set up collaboration platforms to enhance the exchange of information in the same circumstances.

Finally, the fourth change concerns the procedure for approval of centralised risk management in insurance and reinsurance groups.

3. Cross-sectoral aspects

As a prudential supervisory authority, the Bank has jurisdiction over a range of spheres which cover several sectors and were therefore not discussed in previous sections of this Report. The aspects examined in this section include the Bank's initiatives concerning the prevention of money-laundering and terrorist financing, and regulatory and prudential developments relating to the risks associated with climate change.

3.1 Prevention of money-laundering and terrorist financing

European Union

The European legal and regulatory framework

On 20 July 2021, in line with its May 2020 action plan for strengthening measures to combat money-laundering and terrorist financing (AML/CFT) in Europe, the European Commission published a set of ambitious legislative proposals for that purpose[1]. That set of proposals includes four separate, but closely linked, texts.

A first proposal for an EU Regulation on prevention of the use of the financial system for the purpose of money-laundering or terrorist financing (ML/FT) aims to define – with a view to full harmonisation at European level – the obligations with which the entities covered by this Regulation will have to comply regarding, in particular, internal organisation, vigilance and notification of suspicious transactions. When this Regulation enters into force, those obligations will take the place of the ones currently set out by national legislation on the subject in all Member States and, in Belgium, in particular, by the Law of 18 September 2017 on the prevention of money-laundering and the financing of terrorism, and limits on the use of cash.

A second proposal for an EU Regulation establishes a European AML/CFT Authority. This new European authority will be responsible for supporting the national financial intelligence units (FIUs) of the Member States with a view to enhancing their efficiency and cooperation. It will also take on the central role of the European system for supervising all entities subject to the AML/CFT rules ("obliged entities"), with the involvement of the national supervisory authorities. This second role will first include drafting the technical regulatory standards and guidelines which will be necessary to supplement the European legislative texts and to permit their effective implementation. In that regard, the AML/CFT powers currently exercised by the EBA will be transferred to this new European

1 See https://ec.europa.eu/info/publications/210720-anti-money-laundering-countering-financing-terrorism_en.

authority. The authority will also be responsible for direct exercise of the power of supervision over effective compliance with the AML/CFT obligations in the case of obliged entities whose characteristics are such that the effectiveness of that supervision is better guaranteed if it is conducted at European level. For that purpose, the authority will rely on the cooperation of the national authorities. In regard to obliged entities which are not selected to come under the direct supervisory powers of this European authority, however, it will also ensure the convergence of the national authorities' supervisory practices by exercising surveillance over their supervision activities. At first, the European authority's top priority will be to focus on the supervision of obliged entities in the financial sector, but the plan in the longer term is to reinforce its powers in regard to non-financial obliged entities, such as auditors, accountants, solicitors, lawyers, real estate professionals, traders in high-value goods (particularly diamonds), art dealers, gambling firms, etc.

A third proposal for a Regulation aims to revise the EU Regulation on funds transfers [1], essentially in order to extend its application to the transfer of cryptographic assets by providers of services relating to those assets.

Finally, taking account of the above, a new anti-money-laundering Directive will replace the current directive on the subject [2] and will define the arrangements that Member States must set up or maintain at national level for the prevention of ML/FT, particularly the rules to be respected in defining the duties, powers and operating arrangements of their FIUs and their national supervisory authorities in regard to AML/CFT.

The EU Council began examining these proposals as soon as they were published. The aim is to create the European authority in 2023. It is to begin operating on 1 November 2024, and at first will focus mainly on drafting the technical regulatory standards and guidelines necessary for the full application of the new European legal framework. It is to begin exercising its direct supervision powers in 2026.

Work of the EBA

The Standing Committee set up within the EBA to deal with issues concerning its AML/CFT powers (the AML Standing Committee) continued its work during the seven meetings chaired by a representative of the Bank which it held in 2021 with a view to adopting a large number of documents required to complete the European legal and regulatory framework on the subject, or in response to requests by the European Commission, the Council or the European Parliament. In some cases, the EBA undertook the drafting of such documents on its own initiative when that seemed necessary to promote convergence of the application of the AML/CFT rules. While most of those documents specifically relate to AML/CFT, others – drawn up in consultation with other EBA standing committees – aim to organise, clarify and facilitate cooperation between the national AML/CFT supervisory authorities and the prudential regulators, including the ECB acting under the SSM. The main documents are mentioned below.

Thus, on 1 March 2021, the EBA published its updated guidelines on the risk factors that credit institutions and financial institutions should take into account in their risk-based approach [3], followed on 3 March by its updated opinion on the money-laundering and terrorist financing risks concerning the European Union's financial sector [4]. Similarly, on 16 December 2021, the EBA adopted and published an updated, more detailed version of its guidelines on risk-based supervision [5].

In November 2021, the EBA also adopted its draft technical regulatory standards creating the central database for collecting data on significant weaknesses in the AML/CFT systems of the financial institutions identified by the national supervisory authorities and facilitating the exchange of information between those authorities or with other competent authorities, particularly prudential regulators, whenever necessary [6]. The draft technical regulatory standards were passed to the European Commission for their adoption,

1 Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No. 1781/2006.

2 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

3 See https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-e-money/revised-guidelines-on-ml-tf-risk-factors.

4 See https://www.eba.europa.eu/eba-highlights-key-money-laundering-and-terrorist-financing-risks-across-eu.

5 See https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-countering-financing-terrorism/guidelines-risk-based-supervision-revised

6 See https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-countering-financing-terrorism/regulatory-technical-standards-central-database-amlcft-eu.

publication in the Official Journal of the European Union, and entry into force.

On 5 January 2022, it also adopted and published an opinion based on a detailed report concerning de-risking [1].

In addition, the EBA developed guidelines on cooperation between the prudential supervisors, the AML/CFT supervisors and financial intelligence units in accordance with Article 117 (6) of the CRD. Those guidelines were adopted and published on 16 December 2021 [2].

Finally, the action taken by the EBA in response to the major incidents concerning AML/CFT which affected the European banking sector a few years ago, consisting in assessing the effectiveness of supervision over AML/CFT by each of the national authorities (peer review), continued in 2021 despite the disruption and delays caused by the public health crisis. In particular, in the summer of 2021, the EBA began assessing the supervision exercised by the Bank (see below).

The Bank's action on AML/CFT

In 2021, the Bank was closely involved in the European AML/CFT developments mentioned above.

Thus, in the Belgian delegation in the Council, the Bank makes a substantial, active contribution to the discussions on the legislative proposals of the European Commission mentioned above and the work of refining these legal texts, crucial for the future of AML/CFT and its supervision both in Belgium and throughout the European Union.

The Bank also actively supported the EBA's work described above, not only in chairing the AML Standing Committee but also in taking part in producing numerous draft technical regulatory standards, guidelines and opinions already mentioned in regard to AML/CFT.

1 See https://www.eba.europa.eu/eba-alerts-detrimental-impact-unwarranted-de-risking-and-ineffective-management-money-laundering-and.

2 See https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-countering-financing-terrorism/guidelines-cooperation-and-information-exchange-between-prudential-supervisors-amlcft-supervisors.

Similarly, the Bank takes part in the ongoing work of drafting the EBA guidelines on more specific aspects of the AML/CFT arrangements, such as the procedures for entering into remote business relationships with customers, in particular via the use of new technologies[1], and the AML/CFT compliance officer function in financial institutions[2].

Another point to mention is that, as part of the peer review, the EBA embarked on a detailed assessment of the Bank's internal organisation for the supervision of AML/CFT, its supervision methods and action taken in this field and the results obtained. The final conclusions of that assessment are not yet known. They will identify the strengths of the supervision system applied by the Bank, but also the aspects where improvements will be recommended. Once these conclusions are notified to the Bank, it will draw up an action plan in response to the EBA's observations.

The peer review conducted by the EBA will identify the strengths and the scope for improvement in AML/CFT supervision in Belgium

At Belgian level, in June 2020, the Bank took part in the creation of a public-private platform (the AML Platform) linking stakeholders in the financial sector and the public sector. Its members are professional associations in the financial sector, the Financial Intelligence Processing Unit (CTIF-CFI), the FSMA, the Bank and FPS Finance – Treasury – which provides the secretariat. The purpose of the AML Platform is to enhance the effectiveness of the measures to combat money-laundering, terrorist financing and the proliferation of weapons of mass destruction (AML/CFT) in Belgium via exchanges and consultation between the participants. The AML Platform, which meets at least once a quarter, takes its decisions by consensus. In accordance with the protocol signed by the participants, this platform is expected to facilitate and encourage the exchange of information between the participants. In particular, it will permit the provision of feedback on the application of the statutory AML/CFT obligations, notably those relating to the detection and notification of suspicious transactions. With due regard for the legal powers of the participating authorities, it will be able to propose guidelines for improving the operation of the AML/CFT systems.

On the subject of its organisation, the Bank continued its efforts to optimise its internal organisation, notably by refining and formalising its internal policies and procedures surrounding the implementation of effective risk-based supervision permitting the appropriate allocation of human and technical resources.

As regards the guidelines and recommendations that the Bank addresses to financial institutions, it took care to update the information which it publishes on its website concerning AML/CFT so that it continues to be a source of the most complete and up-to-date information possible for financial institutions concerning their legal and regulatory obligations.

The Bank also continued and finalised its discussions with representatives of the financial sector on the interpretation and practical application of the legal and regulatory obligations concerning AML/CFT in the context of private banking, and in particular in regard to the repatriation of funds from abroad. That work led to a Circular distributed to financial institutions and published on the Bank's website, stating that – with due regard for the clarifications supplied – the Bank expects financial institutions to ensure, via an internal audit assignment, that they have taken adequate measures to check the origin of the funds which they currently hold on behalf of their customers, taking account of the rules in force when those funds were received, and if necessary to take adequate measures to remedy any weaknesses identified in that respect.

Within the limits of its powers, the Bank also endeavoured to respond to the concerns raised by de-risking, which involves generic decisions by financial institutions not to establish, or to end, business relationships with categories of customers deemed to present high risks of money-laundering or terrorist financing. Those decisions are taken without any individual assessment of the risks associated with each of the customers concerned, taking account of their specific characteristics and the rules surrounding these business relationships which could reduce the level of risks involved. The Bank notes that, while decisions not to establish, or to end, a business relationship may conform to the AML

1 See https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-countering-financing-terrorism/guidelines-use-remote-customer-onboarding-solutions.

2 See https://www.eba.europa.eu/regulation-and-policy/anti-money-laundering-and-countering-financing-terrorism/guidelines-role-amlcft-compliance-officers.

Law's requirements, the de-risking of entire categories of customers without due consideration of individual customers' risk profiles is a sign of ineffective management of the money-laundering/terrorist financing risk and may have a significant impact, notably in denying access to banking services for the categories of persons concerned. In rejecting these customers, such de-risking decisions could cause the persons concerned to turn to unsupervised parallel financial networks so that these de-risking decisions may facilitate rather than prevent the laundering of funds from illicit sources. In that context, the Bank renewed the dialogue on this subject with the associations representing financial institutions. It aims to publicise its expectations and recommendations on the subject as soon as possible in order to help to minimise the adverse effects of de-risking for society in general. Thus, the NBB is specifying and implementing the EBA opinion on de-risking dated 5 January 2022 (see above), which is addressed to the national authorities and calls on them to take appropriate steps to end this phenomenon which has potentially undesirable social repercussions.

As regards the operational supervision of ML/TF, apart from continuing its work of systematising its risk-based supervision for all financial institutions under its authority, in 2021, the Bank invested particularly substantial resources in the effective, practical implementation of the joint guidelines of the European supervisory authorities (ESA) dated 16 December 2019 on cooperation and the exchange of information for the purposes of Directive (EU) 2015/849 between the competent authorities responsible for the supervision of credit institutions and financial institutions[1]. Those guidelines imply the creation of AML/CFT supervision colleges for every financial institution having branches or subsidiaries in at least two EU Member States other than the Member State where its head office is located. The purpose of these colleges is to increase and systematise the exchange of information and cooperation between the various national supervisory authorities concerned.

Apart from the resolution of interpretation issues concerning these joint guidelines, their implementation entailed mapping all the financial institutions subject to the Banks' supervisory powers in order to identify those institutions for which the Bank has to act as the lead supervisor, after which these colleges had to be actually set up. That also involves identifying all the other national authorities which have to be considered permanent members of the college, and the other Belgian, European and third-country authorities which it seems useful to invite to the college as observers. The effective operation of these colleges in a proper legal framework presupposes the preparation of written agreements on cooperation and the exchange of information, signed by the permanent members, and documents setting out the individual participation conditions which observers are to be asked to sign, taking account in particular of the need to respect the legal professional secrecy obligations which the various college participants must respect. On that basis, by the end of 2020, as the lead supervisor the Bank was able to arrange the first meetings of the colleges supervising the AML/CFT of 8 Belgian financial institutions, and it will continue its efforts in that regard in 2022. Over the same period, it also took part as a permanent member in inviting supervisory authorities of other Member States to the first meetings of the colleges supervising the AML/CFT of 30 financial institutions which also have establishments in Belgium and are subject to the authority of those lead supervisors.

Despite the significant efforts entailed in applying this cooperation arrangement between competent authorities, the Bank considers that it will permit greater account to be taken of the cross-border dimensions of financial institutions' activities, leading to the more effective and coordinated exercise of the supervisory powers of the various authorities concerned in regard to institutions conducting cross-border activities.

3.2 Developments in regulatory and prudential policy concerning risks relating to climate change

The risks relating to climate change are undoubtedly high on the agenda of supervisory authorities and central banks: climate change, the associated physical risks and the risks relating to transition to a more sustainable, low- carbon economy[2] may in fact have significant repercussions on the economy and on the stability of the financial system. That is why the prudential authorities are examining how to incorporate

1 See https://www.nbb.be/doc/cp/eng/aml/20191216_esa_joint_guidelines_cooperation_and_information_exchange_on_amlcft.pdf.

2 See the Bank's Financial Stability Report 2019 for more details on the various types of risk posed by climate change.

climate-related risks in the prudential regulations, and the supervisory authorities are making sure that financial institutions analyse, monitor and manage those risks. There are numerous initiatives in that regard at international, European and Belgian level.

International level

The Network for Greening the Financial System (NGFS) remains a key source of inspiration for regulators and supervisors. This is a body organising international cooperation between central banks and supervisory authorities with the aim of exchanging knowledge and experience on risks relating to climate change and the environment and on sustainable finance. The continuing development of methods and techniques for detecting, quantifying and reducing climate-related risks in the financial system is essential. In that regard the NGFS tries to ascertain more accurately the needs for specific data for analysing these risks and examines how to incorporate them in micro- and macro-prudential regulation and supervision. Finally, it also examines how central banks can contribute to the greening of the financial system. The NGFS has already published numerous reports on this subject. In 2021, for instance, it published a report on the importance of closing data gaps for improving the identification of risks relating to climate change[1] and a follow-up report for the supervisory authorities setting out guidelines for incorporating climate risks in their work[2]. The NGFS also continued drafting various scenarios on the subject of risks relating to climate change[3], which form a key source of inspiration for scenario analyses conducted at international level on the subject of these risks. They thus formed the basis for top-down scenario analyses conducted by the International Association of Insurance Supervisors (IAIS), EIOPA, the EBA and the ECB. The ECB's bottom-up test will also be based partly on the NGFS scenarios. The NFGS likewise published a report on the stress test exercises conducted and planned by the supervisory authorities[4].

The prudential authorities incorporate climate-related risks in prudential regulation and supervision

In 2021, the BCBS published two reports examining how climate-related risks are transmitted to the financial system[5] and how to measure them[6]. In November 2021, the Committee also published a consultative document containing some general principles regarding how these risks can be incorporated in Pillar 2 (assessment of firm-specific risks) of the Basel III framework[7]. Finalisation of the principles relating to the management and control of these risks will continue in 2022. The Committee is also examining whether Pillar 1 (minimum capital requirements) could be adapted to take better account of climate-related risks. However, it is important that these capital requirements are always based on the risks. Lower requirements therefore cannot be applied unless there is proof that the exposures concerned are less risky, while tougher requirements must be imposed for exposures highly sensitive to climate risks.

Work continued on the introduction of climate reporting under Pillar 3 (disclosure obligations) in order to ensure that banks throughout the world take uniform account of their climate-related risks. One of the major challenges facing the supervisory authorities is the lack of good quality, uniform, internationally comparable data for assessing these risks. That is why the BCBS supports the establishment of an International Sustainability Standards Board by the IFRS Foundation, which should permit a consistent and internationally comparable system of reporting on these risks.

Turning to the insurance sector, in May 2021, the IAIS – in addition to the activities of the NGFS – published a report[8] containing guidelines for the incorporation of climate-related risks in the supervision of the insurance sector. The report also describes some good practices by way of illustration. In September 2021, a second report was published on the impact of climate change on the investment and assets of insurance

1 NGFS progress_report_on_bridging_data_gaps, 26 May 2021.
2 NGFS progress_report_on_the_guide_for_supervisors, 26 October 2021.
3 NGFS Climate Scenarios for central banks and supervisors, 24 June 2021.
4 NGFS, Scenarios in Action, A progress report on global supervisory and central banks scenario exercises, 19 October 2021.
5 BCBS, Climate-related risk drivers and their transmission channels, 14 April 2021.
6 BCBS, Climate-related financial risks – measurement methodologies, 14 April 2021.
7 BCBS, Consultative Document – Principles for the effective management and supervision of climate-related financial risks, 16 November 2021.
8 IAIS, Application_Paper_on_the_Supervision_of_Climate-related_Risks_in_the_Insurance_Sector, 25 May 2021.

undertakings[1]. It is estimated that climate change will affect at least 48 % of European insurers' investment. This report also contains several scenarios for assessing the future implications of climate change. Although the losses revealed by the scenarios analysed are substantial, the insurance sector as a whole seems capable of absorbing them.

European legislation

In order to support the transition to a sustainable economy in accordance with the Paris Agreement on Climate, the European Commission launched various initiatives under its Sustainable Finance Action Plan. The aim is to stimulate investment in sustainable economic activities. Thus, the Commission drew up a taxonomy for classifying activities as sustainable or non-sustainable. It also devised various regulatory initiatives on data disclosure. The proposal for a Corporate Sustainability Reporting Directive (CSRD), to replace the Non-Financial Reporting Directive (NFRD), implies that large and/or listed companies and financial institutions will be required to report on the environmental and social implications of their business activities. In accordance with the Taxonomy Regulation[2], these companies must state the extent to which their activities can be considered sustainable pursuant to that taxonomy. A first Delegated Regulation which includes definitions of the activities which may be considered sustainable according to the climate goals was published in July 2021[3]. In addition, a series of regulatory technical standards were developed upon the proposal of the three European supervisory authorities (the EBA, EIOPA and the European Securities and Markets Authority or ESMA) in connection with the Sustainable Finance Disclosure Regulation (SFDR)[4] and the Taxonomy Regulation, which determine the information that financial market players must publish on the sustainability of their financial products. This legislation is an ambitious but crucial step aimed at protecting investors against greenwashing and enhancing financial market transparency. The requirements concerning environmental, social and governance risks (ESG risks) were also extended in the European Commission's recent CRD6/CRR3 proposal (see section B.1.3). ESG risks encompass a broader range of risks than just the ones relating to climate change. All environmental, social and governance issues which have a negative external impact on the financial performance or solvency of an undertaking, country or individual are called ESG factors. The ESG risks are therefore current or future financial risks

1 IAIS, Global Insurance Market Report, Special topic edition, The impact of climate change on the financial stability of the insurance sector, 30 September 2021.

2 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

3 Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation, 6 July 2021.

4 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

which arise from these ESG factors and which financial institutions may face in their exposures.

For the banking sector, the EBA has taken numerous initiatives in order to incorporate ESG risks in the prudential framework. For instance, it drew up technical implementing standards on the integration of these risks in Pillar 3[1]. It also published a report on the inclusion of ESG risks in risk management and prudential supervision, which will pave the way to a series of directives on that subject[2]. In addition, the EBA continues to examine the possibility of adapting Pillar 1 (minimum capital requirements) in order to take account of exposures to ESG risks. An interim report was due to be published on this subject at the beginning of 2022. The final report is expected at the end of 2023. In addition, the EBA conducted a sensitivity analysis on banks' exposures to climate-related risks[3]. On the basis of that analysis, banks are being urged to close their data gaps and speed up their reporting on ESG risks.

The ECB published a report analysing how banks include climate-related risks in their risk management.

For the insurance sector, EIOPA conducted a study on how to include ESG risks in Solvency II. It expects the supervisory authorities to supply qualitative and quantitative data in the climate risk analysis that they conduct as part of their ORSA (own risk assessment)[4]. The European Union commssioned EIOPA to examine how natural disasters can be incorporated into supervisory practices, and EIOPA published a report on that subject in July 2021[5]. EIOPA was also asked to analyse the scope for taking account of a green supporting factor or a brown penalising factor by mid-2023.

At the end of 2021, the ECB published a report[6] on the inclusion of climate risks in banks' risk management. The report contains the results of an analysis of the extent to which banks meet the expectations set out by the ECB in its guide to the management and disclosure of risks relating to climate and the environment[7]. That report describes various good practices, but it also mentions that specific, more ambitious measures are necessary to deal with current and future risks relating to climate change. In 2022, the ECB will conduct a bottom-up stress test concerning climate-related risks.

Initiatives by the Bank

At the end of 2020[8], the Bank published a Circular detailing its expectations concerning the collection and incorporation into risk management of data on the energy efficiency or real estate exposures. Those data must also be notified to the Bank for new mortgage loans.

In addition, the Bank is a member of numerous European and international working groups on ESG and climate-related risks, in which it helps to develop the regulatory initiatives and analysis exercises described above. The Bank also decided to consolidate its leadership at European level in this sphere by chairing the EIOPA working group on sustainable finance.

1 EBA, EBA draft ITS on Pillar 3 disclosures on ESG risks, 24 January 2022.

2 EBA, Report on management and supervision of ESG risks for credit institutions and investment firms, 15 October 2021.

3 EBA, Mapping climate risk : Main findings from the EU-wide pilot exercise, 21 May 2021.

4 EIOPA, Opinion on the supervision of the use of climate change risk scenarios in ORSA, 19 April 2021 and Consultation on Application guidance on running climate change materiality assessment and using climate change scenarios in the ORSA, 10 December 2021.

5 EIOPA, Methodological paper on potential inclusion of climate change in the Nat Cat standard formula, 8 July 2021.

6 ECB, The state of climate and environmental risk management in the banking sector, 22 November 2021.

7 ECB Guide on climate-related and environmental risks – Prudential expectations regarding risk management and disclosure, November 2020.

8 Circular NBB_2020_45 – Collection and reporting of data on the energy efficiency of real estate exposures, 1 December 2020.