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BanqueNationaleBank DE BELGIQUE VAN BELGIË
Eurosystem

Communication

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Communication on the exercise of external functions by managers and persons responsible for independent control functions of regulated companies

Scope

- *credit institutions governed by Belgian law and branches established in Belgium of credit institutions governed by the law of a third country;*
- *stockbroking firms governed by Belgian law and branches established in Belgium of stockbroking firms governed by the law of a third country;*
- *insurance and reinsurance companies governed by Belgian law and branches established in Belgium of insurance and reinsurance companies governed by the law of a third country;*
- *custodian banks governed by Belgian law;*
- *institutions supporting a central securities depository governed by Belgian law and branches established in Belgium of such institutions governed by the law of a third country;*
- *(mixed) financial holding companies governed by Belgian law; and*
- *insurance holding companies governed by Belgian law.*

These institutions are hereinafter referred to as "financial institutions".

Summary

The prudential supervision laws provide that managers and persons responsible for independent control functions of financial institutions must devote the necessary time to the performance of their functions within these institutions, and thus regulate their right to exercise other functions outside these institutions. This communication recalls the principles and scope of the legal and regulatory provisions on external functions and clarifies the practical consequences thereof.

Legal references

- *for credit institutions governed by Belgian law and their branches abroad, branches established in Belgium of credit institutions governed by the law of a third country and (mixed) financial holding companies governed by Belgian law: Articles 60, §4, 61, §1, 62, 212 and 335 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;*
- *for stockbroking firms governed by Belgian law and their branches abroad, and branches established in Belgium of stockbroking firms governed by the law of a third country: Articles 60, §4, 61, §1, 62, 525, 573, 574 and 575 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;*

- *for insurance and reinsurance companies governed by Belgian law and their branches abroad, branches established in Belgium of insurance and reinsurance companies governed by the law of a third country and insurance holding companies governed by Belgian law: Articles 82, §1, 83, 443 and 470 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies; and*
- *for custodian banks governed by Belgian law, institutions supporting a central securities depository governed by Belgian law and branches established in Belgium of such institutions governed by the law of a third country: Article 15 of the Royal Decree of 26 September 2005 on the legal status of settlement institutions and institutions equivalent to settlement institutions.*

Structure

This communication is structured as follows:

Dear Madam,
Dear Sir,

The prudential supervision laws applicable to the financial institutions covered by this communication[1] provide that managers and persons responsible for independent control functions must devote the necessary time to the performance of their functions within these institutions, and thus regulate their right to exercise other functions outside these institutions.

The framework for external functions[2] is not new, but was recently reviewed following the entry into force of the Law of 27 June 2021[3], which in particular extended its scope ratione personae to the persons responsible for the independent control functions of the financial institutions covered by this communication.

Taking this development into account, the National Bank of Belgium (hereinafter "the Bank") has recently updated its regulation on external functions. The former Regulation of the Bank of 6 December 2011 has been repealed and replaced by the Regulation of 9 November 2021 on the exercise of external functions by managers and persons responsible for an independent control function of regulated companies (hereinafter "the Regulation of 9 November 2021")[4].

This communication therefore aims to recall the principles and scope of the legal and regulatory provisions on external functions and to clarify the practical consequences thereof.

1. Scope

1.1. Scope ratione personae

The legal framework for external functions applies to:

1. non-executive directors;
2. members of the management committee (whether directors or not);
3. persons responsible for independent control functions; and
4. senior managers (within the meaning of the Regulation of 9 November 2021; see below).

In the Regulation of 9 November 2021, a "senior manager" is defined as a person who takes part in the institution's senior management, i.e. (i) where a management committee has been established, a member of the management committee and any other person whose position is at the next lower hierarchical level, insofar as that person can exercise a direct and decisive influence on the management of all or part of the institution's activities, including the managers of foreign branches; or (ii) where no management committee has been established, persons who can exercise a direct and decisive influence on the management of all or part of the institution's activities. In view of this definition, the concrete delineation of the scope ratione personae of the provisions governing the exercise of external functions by senior managers must be specified on a case-by-case basis for each institution concerned, taking into account the institution's own rules and governance organisation. The Bank therefore recommends that each institution's management committee or, where no management committee has been established, its statutory governing body, establish by means of a formal decision, taking due account of the actual decision-making processes relating to the development of its activities, the list (of the names or functions) of the persons within the institution who, while not being directors, should be qualified as senior managers. This list should be updated either when changes are made to the decision-making processes or whenever there is a change in the composition of the senior management. The Bank will review this formal decision as part of its a posteriori supervision of the external functions.

1 In particular Articles 61, §1, 62, 335, 525, 573, 574 and 575 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms; (ii) Articles 82, §1, 83, 443 and 470 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies; and (iii) Article 15 of the Royal Decree of 26 September 2005 on the legal status of settlement institutions and institutions equivalent to settlement institutions.

2 As a reminder, the term "external function" refers to any function performed outside the institution, regardless of whether it is performed within or outside the group to which the institution belongs.

3 Law of 27 June 2021 on miscellaneous financial provisions.

4 This regulation was made public by Royal Decree of 8 February 2022, published in the Belgian Official Gazette of 25 February 2022.

The managers of branches in Belgium of institutions governed by the law of a third country (i.e. a country which is not a member of the European Economic Area) are subject to the provisions on external functions applicable to senior managers.

1.2. Scope ratione materiae

The framework for external functions concerns the mandates and functions of direction or management that the managers and persons responsible for independent control functions of financial institutions may exercise outside these institutions in:
- companies pursuing an industrial, commercial or financial activity;
- undertakings of another form governed by Belgian or foreign law pursuing an industrial, commercial or financial activity; or
- Belgian or foreign public institutions pursuing an industrial, commercial or financial activity.

Associations[5] and foundations fall outside the scope of the legal provisions.

2. Principles of the framework for external functions

The legal and regulatory provisions on external functions set out the **authorisation in principle** for managers and persons responsible for independent control functions of financial institutions to exercise, whether or not as representatives of the institution, mandates as directors or managers or to take part in the direction or management of a company or an undertaking of another form governed by Belgian or foreign law or of a Belgian or foreign public institution pursuing an industrial, commercial or financial activity, under the **conditions** and within the **limitations** provided for by and pursuant to the supervisory laws.

2.1. Limitations to the freedom to perform an external function

In accordance with the supervisory laws, the exercise of external functions is subject to qualitative limitations which apply to all financial institutions covered by this communication, and to quantitative limitations for significant credit institutions within the meaning of Article 3, 30° of the Law of 25 April 2014 and for (mixed) financial holding companies at the head of a group that includes a significant credit institution.

2.1.1. Qualitative limitations applicable to all financial institutions

Three sets of qualitative limitations apply to all financial institutions covered by this communication.

a) The corporate officers appointed on the recommendation of the institution must be members of the institution's management committee[6] or persons designated by the management committee

This limitation applies to the exercise of a directorship assigned on the recommendation of an institution by virtue of a holding it has in the capital of the company concerned. More broadly, however, it also covers the mandates of representatives of an institution that holds a directorship of another company – whether or not by virtue of a holding it has in that company - as well as cases where the institution, independently of any holding it has, is led for whatever reason to propose a representative for the exercise of a directorship in the third company. The person nominated need not necessarily be chosen from among the members of the institution's management committee (or senior management where no management committee has been established). Other persons, whether employees of the institution or not, may also be nominated. It is important, however, that the decision to nominate is taken by the institution's management committee. For the nomination of a non-executive director of the institution, account should be taken of the limitation described below, according to which such directors may only hold non-executive directorships in companies in which the institution has a holding.

5 Except mutual insurance associations.

6 Or, in the absence of a management committee, members of the senior management.

b) Non-executive directors of the institution may only be directors of a company in which the institution has a holding if they do not participate in the day-to-day management of that company

This limitation reflects the principle of non-interference by non-executive directors in the management of the institution by prohibiting them from exercising, directly or indirectly, a mandate involving participation in the day-to-day management of the company in which the institution has a (direct or indirect) holding. Conversely, executive managers of subsidiaries of an institution may not be assigned non-executive directorships in that institution.

This limitation does not apply to managers of branches established in Belgium of foreign credit institutions, stockbroking firms or insurance or reinsurance companies governed by the law of non-Member States of the European Economic Area, since they exercise an executive function within the branch.

c) Members of the management committee or, in the absence of such a committee, persons who take part in the senior management of the institution may only hold a mandate involving participation in the day-to-day management of other companies in the cases listed exhaustively by law

i. General rules

Members of the management committee or, in the absence of such a committee, persons who take part in the senior management of an institution are authorised, within the limitations and under the conditions laid down by the internal rules of the institution, to perform external functions not involving participation in day-to-day management in any company, whatever its activities.

Conversely, legal and regulatory provisions only allow them to perform external functions involving their participation in day-to-day management in other companies that pursue the activities listed exhaustively in these provisions. This list is essentially identical in all laws and regulations concerned, but with some noteworthy differences.

The Bank does not have the power to authorise deviations from the above limitations imposed by applicable legal and regulatory provisions.

ii. Members of the management committee or, in the absence of such a committee, persons who take part in the senior management of credit institutions, stockbroking firms, financial holding companies and banking-led mixed financial holding companies

Article 62, §6 of the Law of 25 April 2014 applies to external functions performed:

1° in a company referred to in Article 89(1) of Regulation No 575/2013[7] with which the institution has close links, namely:

a) a financial sector entity; and
b) an undertaking that is not a financial sector entity, carrying on activities which the competent authority considers to be any of the following:
    i) a direct extension of banking;
    ii) ancillary to banking;
    iii) leasing, factoring, the management of unit trusts, the management of data processing services or any other similar activity;

With regard to the notion of "close links", please refer to Article 3, 27° of the Law of 25 April 2014, which defines this term as:
a) a condition in which a link through a participation exists, or
b) a condition in which enterprises are affiliated enterprises, or
c) a link of the same nature as referred to in points a) and b) above between a natural person and a legal person.

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

2° in undertakings for collective investment in the form of a company within the meaning of the Law of 3 August 2012 on undertakings for collective investment which satisfy 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;

3° in a family estate company[8] in which the member of the management committee or senior manager concerned or related persons have a significant interest as part of the normal management of their assets.

iii. Members of the management committee or, in the absence of such a committee, persons who take part in the senior management of insurance and reinsurance companies, insurance holding companies and insurance-led mixed financial holding companies

Pursuant to article 83, §6 of the Law of 13 March 2016, members of the management committee or, in the absence of such a committee, persons who take part in the senior management of insurance and reinsurance companies, insurance holding companies and insurance-led mixed financial holding companies are authorised to perform external functions involving participation in day-to-day management in the same companies as those referred to in point ii. above[9], but also in a company whose activity is an extension of the insurance or reinsurance business.

As examples of such business, the above-mentioned law cites insurance or reinsurance intermediation or management of claims.

The assessment of whether or not a third company's activities are an extension of the insurance or reinsurance business, is primarily the responsibility of the competent bodies of the insurance or reinsurance company / insurance holding company / mixed financial holding company concerned, and is performed under the a posteriori supervision of the Bank. In this context, it should be emphasised that this assessment must take due account of the prudential objectives (in particular in terms of the suitability of the members of the management committee and senior managers) which underpin the framework for the exercise of external executive functions by persons who take part in the senior management of insurance or reinsurance companies. From this point of view, the assessment of whether a third company's activities are an extension of the insurance or reinsurance business, should be based on the activities actually carried out by the insurance and reinsurance company(ies) / insurance holding company(ies) / mixed financial holding company(ies) in which the senior management functions are exercised.

The law also provides that persons who take part in the senior management of a mutual benefit insurance society may also participate in the day-to-day management of a mutual health fund, a national union of mutual health funds or another mutual benefit society referred to in the Law of 6 August 1990 on mutual health funds and national unions of mutual health funds, which the members of this mutual benefit insurance society can join. The same logically applies to members of the management committee of a mutual benefit insurance society.

iv. Members of the management committee or, in the absence of such a committee, persons who take part in the senior management of custodian banks and institutions supporting a central securities depository

With respect to custodian banks and institutions supporting a central securities depository, the range of companies in whose day-to-day management the members of their management committee and, in the absence of a management committee, their senior managers are authorised to participate in, is defined more restrictively. Aside from the family estate companies referred to in point ii. above, this range only covers the companies referred to in Article 20, §2 of the Royal Decree of 26 September 2005, i.e. companies with which the custodian bank / supporting institution has close links, and:

- which carry out the activities of a central securities depository or of an institution equivalent to an institution supporting a central securities depository,
- the activities of which are within the scope of, a direct extension of, or ancillary or complementary to the services provided by central securities depositories and institutions supporting a central securities depository,

8 Family estate companies are companies whose activities are limited to the management of the family estate housed therein, to the exclusion of any other industrial, commercial or service activity.

9 For insurance companies, the notion of "close links" is defined in Article 15, 41° of the Law of 13 March 2016.

- which are credit institutions,
- which are stockbroking firms,
- the main purpose of which is to have a holding in such companies, or
- in which the Bank has authorised the acquisition of a holding.

However, members of the management committee and senior managers of custodian banks and supporting institutions are not permitted to perform functions involving participation in the day-to-day management of other companies referred to in Article 89(1) of Regulation No 575/2013.

2.1.2. Quantitative limitations applicable to significant credit institutions within the meaning of Article 3, 30° of the Law of 25 April 2014

The quantitative limitations applicable to significant credit institutions within the meaning of Article 3, 30° of the Law of 25 April 2014 and to (mixed) financial holding companies at the head of a group that includes a significant credit institution, are specified in Article 62, §5, second sentence and §6, second sentence in conjunction with Article 62, §§7 and 9[10] of the Law of 25 April 2014.

a) Scope:

The quantitative limitations have a specific scope compared to that described in point 1 above:

- Scope ratione personae:

The quantitative limitations apply to
  - non-executive directors; and
  - members of the management committee and, in the absence of a management committee, of the senior management

of a significant credit institution within the meaning of Article 3, 30° of the Law of 25 April 2014, a (mixed) financial holding company at the head of a group that includes a significant credit institution, or a third-country branch[11].

- Scope ratione materiae:

The quantitative limitations apply to external directorships or managerships performed in a company[12], except where the mandate within the credit institution is exercised to represent a Member State.

b) Basic rules

In accordance with the Law of 25 April 2014, the following quantitative limitations apply:
- For non-executive directors:
  - three mandates not involving participation in day-to-day management, or
  - one mandate involving participation in day-to-day management and one mandate not involving participation in day-to-day management;
- For executive directors:
  - two mandates not involving participation in day-to-day management.

These rules can also be viewed in terms of two quantitative maximums: 1 executive and 2 non-executive mandates OR 4 non-executive mandates, including the mandate held within the credit institution.

[10] As well as Articles 212 and 335, 3° for (mixed) financial holding companies and third-country branches. With respect to (mixed) financial holding companies at the head of a group that includes a significant credit institution, Article 212 of the Law of 25 April 2014 contains references to Article 62, §5, first sentence and §§6 to 9 of that Law.

[11] If, within the same group, a director holds a mandate in both a significant institution within the meaning of Article 3, 30° of the Law of 25 April 2014 (credit institution or [mixed] financial holding company) and in a non-significant institution (credit institution or [mixed] financial holding company), it may be that the simultaneous exercise of multiple external mandates is not permitted from the first viewpoint because the quantitative limitations provided for by Article 62 of the Law of 25 April 2014 apply, but is allowed from the second viewpoint, as the quantitative limitations do not apply in that situation. In such a case, the stricter viewpoint prevails.

[12] As a reminder, this excludes associations and foundations.

However, these maximums do not constitute a right. In its capacity as prudential supervisor, the Bank may impose a lower number of mandates based on the principle of time commitment.

All mandates exercised within the same group count as one mandate. For the concrete interpretation of the concept of "group", please refer to point c) below.

By way of derogation, the supervisory authority (the Bank or the ECB) may authorise an additional non-executive mandate. It is the responsibility of the institution wishing to make use of this possibility to submit a documented file to the supervisory authority, which will analyse and assess the file in terms of the time that can be committed to the respective mandates.

c) Concept of "group" and privileged counting

For the purposes of applying the quantitative limitations on the combination of functions, the exercise of multiple mandates, whether or not involving participation in day-to-day management, within companies that are part of the group to which the credit institution belongs or of another group, is considered as a single mandate (Article 62, §9, first paragraph of the Law of 25 April 2014). The effect of this rule is referred to in this text as "privileged counting".

i) Definition of "group" – starting point and scope

Article 62, §9, second paragraph of the Law of 25 April 2014 defines the concept of "group" for the purposes of the various provisions of Article 62. A group is defined therein as "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".

It can be deduced from this definition that the term "group" can refer to both a vertical configuration (from the perspective of the parent company to its subsidiaries), and a horizontal configuration (in the case of a consortium).

In the case of a vertical configuration, the highest starting point of the group to which the credit institution itself belongs is the entity which constitutes the starting point of the prudential consolidated situation at EEA level. In this respect, please refer to the definitions set out in Article 164, §2, 3°, 4°, 6°, 7°, 9° and 10° of the Law of 25 April 2014.

The scope, in the case of a vertical configuration, is based on accounting consolidation. The above definition of "group" in turn comprises a series of notions that are defined in Article 3, 26° of the Law of 25 April 2014, namely the notions of "parent undertaking", "subsidiary" and "holding". This article also defines the notion of "control", which is necessary for the definitions of "parent undertaking" and "subsidiary". Finally, Article 3, 26° of the Law of 25 April 2014 also defines the notion of "affiliated enterprises", which is required for the definition of "consortium". Reference is also made to the general definitions in company law set out in the decrees implementing Article 106, §1 of the Law of 25 April 2014 (the Royal Decrees of 23 September 1992 on the annual accounts and consolidated accounts of credit institutions).

ii) Types of groups eligible for privileged counting

Unlike in the past[13], Article 62, §9, first paragraph of the Law of 25 April 2014 now covers all groups, i.e. the group to which the credit institution itself belongs as well as other groups.

iii) Privileged counting method

Where a single mandate involving participation in day-to-day management is exercised in a group, all mandates held in companies or entities belonging to the same group qualify as a single mandate involving participation in day-to-day management. In other words, if there is a combination of executive

[13] Article 62, §9, first paragraph was amended by the Law of 18 December 2015. Previously, its scope was limited to the group to which the credit institution belonged and to groups of which one company had a close link with the credit institution or its parent company.

and non-executive mandates, the executive mandate carries the most weight, as it requires more time commitment[14].

It may be that from a single point of view (i.e. viewed from within the same credit institution), a director invokes multiple privileged countings, for example based on the fact that the credit institution belongs to different groups that are distinct from each other. In this case, the different privileged countings have to be considered separately, and are therefore not considered as a single mandate.

iv) Application to financial holding companies

The governance provisions directly impacting the legal personality of the (mixed) financial holding company are set out in Article 212 of the Law of 25 April 2012. With regard to external functions, this Article 212 refers to "[Article] 62, §§1 to 4, §5, first sentence, and §§6 to 9, ...". Executive directors of financial holding companies, to whom the limitations on the simultaneous exercise of multiple mandates apply (as opposed to non-executive directors, to whom these limitations do not apply), are therefore also eligible for privileged counting when they hold multiple mandates within a group.

d) Family estate companies

Family estate companies whose purpose is limited to the purely normal management of family assets fall outside the scope of the quantitative limitations on simultaneous exercise of multiple mandates.

A distinction was previously made between civil law and commercial family estate companies, only the latter having to be taken into account in the calculation of the quantitative limitations. This distinction was abolished by the Law of 15 April 2018 and has therefore become obsolete: in order to assess whether a family estate company falls outside the scope of the quantitative limitations on the simultaneous exercise of multiple functions ("zero counting"), it is necessary to consult the articles of association of the family estate company concerned to verify whether its corporate purpose is the management of family assets. Only in that case is it excluded from the scope of these limitations.

Institutions should therefore request from their (prospective) directors all information necessary to be able to verify whether or not the family estate company concerned is eligible for exclusion from the above-mentioned scope.

e) Management companies

In accordance with the principle of transparency, a management company cannot be used to circumvent the counting of mandates for a natural person. For instance, one mandate exercised within a management company may not be used to cover multiple mandates for which the natural person acts as permanent representative of the management company.

For the purposes of the quantitative limitations of Article 62 of the Law of 25 April 2014, the Bank takes into account all mandates for which the natural person acts as permanent representative of a management company.

Conversely, the mandate in the management company itself does not have to be counted if the sole purpose of the management company is to exercise directorships, in order to avoid double counting of mandates.

f) The exception of one additional non-executive mandate

In individual cases, the supervisory authority may grant a derogation from the maximum number of mandates provided for in §§5 and 6 of Article 62 of the Law of 25 April 2014, by allowing the exercise of one additional mandate that does not involve participation in day-to-day management (Article 62, §7 of the Law of 25 April 2014).

The supervisory authority informs the EBA on a regular basis of the use it makes of this derogation power.

[14] The rules on privileged counting may still evolve in the future since, at the time of the preparation of this communication, they are part of the ongoing negotiations at European level in the context of the revision of the Capital Requirements Directive.

The supervisory authority will only allow such derogations in exceptional cases and only if the institution/person concerned is able to motivate the derogation by demonstrating that sufficient time can be devoted to the exercise of the mandate within the credit institution / (mixed) financial holding company / third-country branch.

2.2. Conditions for the exercise of external functions

In addition to the limitations described above, legal and regulatory provisions stipulate that each institution must specify the conditions under which external functions may be performed by means of **internal rules**.

2.2.1. Adoption of internal rules

The supervisory laws provide that the internal rules must meet a threefold objective:
- maintain the availability of the institution's senior managers,
- prevent the occurrence of conflicts of interest and of risks related to the exercise of external functions, including insider trading, and
- ensure adequate disclosure of external functions.

The Regulation of 9 November 2021 lays down the minimum rules to be adopted in order to achieve each of the three above objectives. For more information, please refer to the points below on availability, conflicts of interest and disclosure.

As regards the procedures for the adoption of internal rules, Article 2 of the Regulation provides that internal rules must be adopted by the institution's statutory governing body, as they relate to the general policy of the institution. The competent body remains free to choose the form of the internal rules, which may for instance be included in a code of conduct or in another document (such as the fitness policy). This body will periodically ensure that the rules it has adopted are still appropriate to the institution's situation. This periodicity should be specified in the internal rules.

The Regulation of 9 November 2021 also sets out the obligation to establish an appropriate monitoring procedure, as well as a system of sanctions for any infringements of the internal rules.

2.2.2. Authorisation on the basis of a dossier

As the situations of the institutions concerned vary considerably, Article 3 of the Regulation of 9 November 2021 requires each institution's management committee or, where appropriate, governing body to assess in concreto the impact of the external functions performed by its managers and the persons responsible for its independent control functions on compliance with the applicable internal rules on conflicts of interest, and on their availability to fully perform their functions within the institution, taking into account the limitations set out above.

This authorisation requirement does not apply to external functions for which the person concerned is appointed on the recommendation of the institution. It is presumed that these functions are an extension of the functions performed by the person concerned within the institution.

To perform any other external function, authorisation must be granted by:
- the management committee: for senior managers or persons responsible for independent control functions (if there is no management committee, by the statutory governing body);
- the statutory governing body: for non-executive directors or when the external function is performed in a listed company. In that case, the statutory governing body must decide on the proposal of the management committee or, in the absence of a management committee, of the senior managers.

The body competent to grant such authorisation takes its decision on the basis of a dossier containing information that enables it to assess the impact of the proposed external function on the situation of the person concerned with regard to the applicable internal rules on conflicts of interest and on the availability of the person concerned to carry out their function within the institution.

More specifically, the dossier must include at least the following information:
1) the conflicts of interest that the exercise of the external functions could create with regard to the function of the person concerned within the institution;
2) the number of days per month that the person concerned will devote to each of their functions, whether they are external functions or any other function carried out in particular under an employment contract; and

3) how the institution can verify that this time was actually devoted to it.

In the light of this information, the competent body must assess whether the external functions are not such as to impair the availability necessary for the sound and prudent management of the institution and for the prevention of conflicts of interest. In the event that the performance of the proposed external functions would result in such impairment, the competent body must oppose their exercise.

The body which granted the authorisation must be informed in advance of any significant change[15] in the information contained in the above-mentioned dossier. Such a change may lead this body to review its analysis and, where appropriate, if the exercise of the external function can no longer be authorised under the internal rules, to withdraw its authorisation.

2.2.3. Rules on availability

The internal rules should include rules that preserve the availability of directors, senior managers and persons responsible for independent control functions to perform their functions within the institution.

For significant credit institutions within the meaning of Article 3, 30° of the Law of 25 April 2014 and (mixed) financial holding companies, the internal rules should refer at least to the quantitative limitations provided for in the Law of 25 April 2014, distinguishing between the non-executive directors and the members of the management committee or, in the absence of such a committee, the senior managers.

With regard to other financial institutions, the Bank recommends that the internal rules be based on the information set out in the Bank's "fit & proper" manual for assessing time commitment / availability.

2.2.4. Rules on conflicts of interest

In view of the potential for conflicts of interest, and hence for the institution's liability, the internal rules should impose at least the following two requirements for the exercise of an external function by a director, a senior manager or a person responsible for an independent control function in a company with which the institution does not have close links.

First, the institution may only provide a service to a company in which a director, senior manager or person responsible for an independent control function of the institution performs an external function under normal market conditions. The institution must therefore ensure that its internal control procedures are adapted to ensure compliance with this requirement.

Secondly, the internal rules should stipulate that the director, senior manager or, where applicable, person responsible for independent control functions should refrain from intervening, either within the institution or within the company in which the external function is exercised, in the deliberations, voting and advice relating to a relationship between the institution and that company, or from influencing in any way and at any stage or level of decision-making, any discussion relating to an existing or future relationship between the institution and that company, in particular by participating in meetings or giving advice relating thereto.

For more information on the concept of conflicts of interest and the different types of conflicts of interest possible (personal, professional, financial and political), please refer to the section on independence of mind in the Bank's "fit & proper" manual and to the sectoral governance manuals.

2.2.5. Special rules for listed companies

Where an external function is performed in a listed company in Belgium or abroad, the Regulation of 9 November 2021 provides for a number of measures to protect the institution from being held liable for any market abuse committed in relation to the securities of the listed company concerned.

The first measure concerns transactions in the listed company's financial instruments where an external function is performed by a director, senior manager or person responsible for an independent control function. Thus, insofar as the institution's authorisation allows, the internal rules must supplement the institution's internal control procedures by requiring that all transactions carried out directly or indirectly by

[15] Examples of significant changes include: a change of functions such as from non-executive director to chairman of the statutory governing body, a significant change in the corporate purpose or legal form of the entity where the external function is performed, etc.

the above-mentioned persons, be carried out through the accounts held by the director, senior manager or person responsible for the independent control function within the institution. If the institution's authorisation does not allow it to centralise the said transactions in such a way, the internal rules should at least require that the institution be notified in advance.

In order to protect against liability for any market abuse, the second measure requires that the internal rules provide for the establishment of systems or procedures:

(i) to clearly identify the periods during which transactions in securities issued by the listed company where the external function is performed may or may not be carried out by the institution itself in the context of the first measure mentioned above or of the institution's investment portfolio. By defining these periods, the persons concerned will be able to know whether they can carry out a transaction without arousing suspicion that could jeopardise the reputation and integrity of the institution. This applies in particular to periods preceding foreseeable events (e.g. the announcement of periodic results) that may cause fluctuations in the value of a listed company's securities.

(ii) to have the transactions carried out by the persons concerned by the first measure and by the institution within the framework of its investment portfolio assessed by a person designated for this purpose, in the light of the legislation on market abuse and, where appropriate, of the institution's additional instructions. This assessment may be carried out either ex ante - on the basis of a request from the person wishing to carry out a transaction - in the light of the periods predefined by the institution, or on its own initiative, ex post, after the transaction has been carried out.

2.2.6. Disclosure of external functions

The Regulation of 9 November 2021 provides for the disclosure of the external functions performed by the directors and senior managers of the institution, regardless of whether these functions are performed inside or outside the institution's group. This does not apply to the persons responsible for independent control functions.

The internal rules may provide for disclosure:
- in the annual report, or
- on the institution's website (with a mention in the above-mentioned annual report of how external functions are disclosed).

If this information is made available on the institution's website, the Regulation requires the information to be updated regularly and at the latest within 2 months following a change in the list of external functions concerned.

Where several institutions belonging to the same group choose to use this disclosure method, they may agree to link their websites so that the information to be disclosed is centralised in one place within the group. However, the use of such a technical method of online disclosure is without prejudice to each institution's responsibility to ensure the accuracy and completeness of the information disclosed concerning the external functions performed by its managers, and, a fortiori, to their responsibility to verify the compliance of these external functions with the applicable legal provisions and internal rules. In any event, each institution is assumed to have all the necessary information concerning the external functions of its own managers in order to verify such compliance.

The following information must be disclosed:
a) the names and positions of the institution's directors and senior managers who hold an external function;
b) the name of the company / undertaking of another form / public institution where an external function is performed, the location of its registered office, the field of its activities and, where applicable, the regulated market on which financial instruments issued by it are listed or traded;
c) the function performed by the relevant director or senior manager within the company / undertaking of another form / public institution;
d) the existence and size of any capital link of 5% or more held by the institution in the company / undertaking of another form / public institution.

3. Reporting to the Bank

3.1. Internal rules

Article 2, first paragraph of the Regulation provides that the rules adopted by the institution's statutory governing body must be reported to the Bank. If the internal rules are amended, the updated version must be submitted to the Bank.

This reporting must be made via the IT platform provided by the Bank.

It should be recalled that the Bank does not have a priori supervisory powers over internal rules, and that its prior approval is therefore not required for the adoption of such internal rules and subsequent amendments thereto.

3.2. Notification to the Bank of external functions performed by managers

Pursuant to the relevant legal and regulatory provisions, institutions are required to notify the Bank without delay of the external functions performed by the persons covered by this communication (with the exception of the persons responsible for independent control functions and the senior managers "N-1").

3.2.1. Appropriate organisation

To comply with this requirement, institutions must have an appropriate organisation in place to ensure that they have all the necessary information on the external functions performed by their directors, senior managers and persons responsible for independent control functions. To this end, it is recommended that institutions inform these persons individually of the applicable legal and regulatory provisions and the internal rules adopted by the institution pursuant to these provisions, and that they draw their attention specifically to the need for prospective directors / senior managers/ persons responsible for independent control functions to immediately disclose all external functions performed by them to the institution and, subsequently, to inform the institution in advance of any significant change in previously disclosed and authorised external functions.

3.2.2. Notification to the Bank

For new managers, external functions should be notified via the fit & proper form "New appointment". For existing managers, new external mandates should be notified via the form "New elements" (see Chapter 5 of the fit & proper manual).

In addition to the notification via the above-mentioned fit & proper forms, institutions should also continuously update the eManex platform. This platform aims to provide an overview of all external functions performed by the managers and persons responsible for independent control functions of a financial institution.

Information should be uploaded to the eManex platform in relation to:
- the exact identification of the relevant manager / person responsible for an independent control function and this person's position within the institution;
- the exact identification of the companies, undertakings or institutions in which the relevant manager / person responsible for an independent control function performs external functions;
- the characteristics of the external functions this person performs in these companies, undertakings or institutions;
- the procedure for authorisation by the institution's bodies, where applicable;
- the method of disclosure used, where such disclosure is required.

The concrete and detailed operating procedures of this system for reporting the required information are set out in the technical protocol and the eManex manual available on the Bank's website[16].

[16] Each institution must designate one of its managers to be responsible for the implementation of the organisation required to comply with the applicable legal and regulatory provisions, under whose authority the required information will be notified to the Bank. In particular, this person will be responsible for ensuring the completeness, accuracy and up-to-dateness of the information communicated to the Bank in this respect. The Bank recommends groups comprising multiple institutions covered by this communication to appoint a coordinator from among the responsible managers designated by each entity. In addition to the responsibilities held by the

4. Supervision

4.1. By the institution

The Bank draws the attention of institutions to their responsibility of ensuring that their managers and persons responsible for the independent control functions comply with the legal and regulatory provisions described above.

In accordance with Article 7, first paragraph of the Regulation of 9 November 2021, each financial institution's statutory governing body must set up a supervisory procedure enabling it to ensure compliance with the internal rules.

Article 7, second paragraph of the Regulation of 9 November 2021 stipulates that this procedure must also provide for an annual verification, on a fixed date, of the completeness and up-to-dateness of the information reported to the Bank via eManex.

In this respect, the Bank recommends that this annual verification be conducted at the same time as the periodic reassessment of the individual and collective suitability of the members of the statutory governing body and the persons responsible for the independent control functions. However, the institution may consider another time to be more appropriate. The Bank also requires financial institutions to inform the prudential supervision team of the completion of this annual verification.

In addition, the internal rules must also provide for an adequate system of sanctions for infringements of the provisions contained therein.

4.2. By the supervisory authority

On the basis of the information provided to it, the Bank (or the ECB for institutions under its direct supervision) carries out an ex-post control of compliance with legal and regulatory provisions and, in particular, of the reported internal functions' legality.

In addition, during on-site inspections, the Bank (or the ECB for institutions under its direct supervision) may verify the adequacy of the administrative organisation and internal control implemented by the institutions to comply with the legal and regulatory provisions described above.

5. Application of this communication

This communication repeals and replaces, for all financial institutions included in its scope, Circular PPB-2006-13-CPB-CPA on the exercise of external functions by the managers of regulated companies and, specifically for significant credit institutions within the meaning of Article 3, 30° of the Law of 25 April 2014 and (mixed) financial holding companies, the External Guideline for the application of Article 62 of the Belgian Banking Law. It is applicable with immediate effect.

An electronic copy of this communication will be forwarded to the accredited statutory auditor(s) of the financial institutions concerned.

Yours faithfully,

Pierre Wunsch
Governor

coordinator within the institution(s) of which this person is a manager, the coordinator must also be responsible for ensuring the overall consistency of the internal rules adopted by the various institutions within the group, as well as the accuracy, completeness and consistency of the information which is available to the various institutions in the group concerning the external functions performed by their managers, and on which they rely in order to verify, each for its own part, the compliance of these external functions with the applicable legal provisions and internal rules, and to make the required disclosures.