



Regulatory Newsflash

NBB New "Fit & Proper" Circular and "Handbook"

Introduction

On 2 October 2018, the National Bank of Belgium (NBB) published its [Circular 2018_25 on the suitability of directors, members of the management committee, responsible persons of independent control functions and senior managers of financial institutions](#). It applies to:

- credit institutions,
- stockbroking firms,
- payment institutions,
- electronic money institutions,
- settlement institutions and institutions assimilated to settlement institutions,
- (re)insurance undertakings,
- central securities depositories, their supporting institutions and central depository banks,
- (mixed) financial holding companies and insurance holding companies.

The purpose of the new "Fit & Proper" Circular is twofold. Firstly, it introduces a "Handbook" on fitness and propriety, replacing the previous Circular NBB_2013_02 of 17 June 2013.

The Handbook aims to codify all applicable policy documents relating to professional suitability. Secondly, the Circular transposes into the Belgian prudential framework the relevant (joint) guidelines from the European Banking Authority (EBA) and European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA).

Handbook on assessment of fitness and propriety

The new [Handbook on assessment of fitness and propriety](#) is intended to bring together all national and international policy documents relating to professional suitability and, where necessary, to clarify them.

For reasons of consistency and level playing field, a cross-sectoral approach to the suitability requirements has been pursued. Therefore, the Handbook is addressed to all financial institutions within the supervisory scope of the NBB. Nevertheless, the Handbook takes into account national and international sectoral requirements applicable to the various types of financial institutions and is hence composed of different chapters dedicated to the relevant financial institutions concerned.

Please note that the Handbook does not replace any of the underlying policy documents and that any policy documents that are not dealt with in the Handbook remain applicable. Likewise, the Handbook does not affect the competences of other supervisory authorities (e.g. the FSMA) as regard to professional suitability.

Joint ESMA and EBA Guidelines on the assessment of professional suitability

The Circular transposes into the Belgian prudential framework the [joint ESMA and EBA Guidelines EBA/GL/2017/12 on the assessment of the suitability of members of the management body and key function holders](#), which are to be applied as from 30 June 2018.

Institutions should apply and comply with these Guidelines as a complement to and clarification of the legal provisions on suitability requirements, unless expressly provided otherwise by the law. In this context, the NBB draws the attention to two singularities where the joint Guidelines differ from Belgian law:

- the calculation of the quantitative restrictions for directorships exercised within the same group; and
- the independence criteria.

Both of these requirements are explained in more detail in the Handbook under the headings 'independence and conflicts of interest' and 'amount of time invested'.

The joint Guidelines are explicitly addressed to credit institutions and investment firms. However, in consideration of the cross-sectoral approach, the NBB recommends that the other institutions should wherever possible apply, *mutatis mutandis*, the good practices laid down in the joint Guidelines, taking into account the specific proportionality variables mentioned in the Handbook.

EIOPA Guidelines on system of governance

The Circular also transposes into chapter 4 of the Handbook a series of requirements on fitness and propriety for managers and responsible persons of independent control functions in (re)insurance undertakings, as laid down in [Directive 2009/138/EU](#) (Solvency II), [Delegated Regulation 2015/35/EU](#) and Guidelines 11 to 14 of the EIOPA [Guidelines on system of governance](#). Note that these Guidelines were also partly included in the NBB's Communication NBB_2018_23 of 13 September 2018 / insurance and reinsurance – update of the overarching circular concerning the governance system ([NL/FR](#)).

This chapter 4 of the Handbook has also been supplemented with some elements which are either inspired by existing best practices at international level (i.e. the abovementioned joint Guidelines), or are specific to the insurance sector in Belgium (e.g. specific theoretical knowledge expected from the head of the actuarial function in actuarial mathematics).

Conclusion

With the new "Fit & Proper" Circular and Handbook, the NBB codifies and clarifies the applicable regulatory framework on fitness and propriety. This new Handbook is likely to prove a valuable new tool to guide financial institutions through the set of policy documents on professional suitability.

Contact

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