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Banking Regulation 2023

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Belgium: Law & Practice

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BELGIUM

Law and Practice

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1. Legislative Framework

1.1 Key Laws and Regulations

Belgian Regulatory Environment

Most of the laws and regulations governing the banking sector in Belgium are Regulations or Directives enacted by the European Union. There are, however, also some local rules specific to Belgium.

At the centre of the legislative spectrum is the Act of 25 April 2014 on the legal status and supervision of banks (the Banking Act), which implements the three pillars of EU Banking Union: the Single Supervisory Mechanism, the Single Resolution Mechanism and the common deposit guarantee scheme. The Banking Act implements into Belgian law, among others the Capital Requirements Directive (Directive 2019/878/EU, CRD V), the Bank Recovery and Resolution Directive (Directive 2019/879, BRRD2), the Capital Requirements Regulation (Regulation (EU) 2019/876, CRR2) and some requirements of the second Markets in Financial instruments Directive (Directive 2014/65/EU, MiFID II).

Other significant rules stem from:

- Book VI and Book VII of the Code of Economic Law (CEL) (Book VI concerns market practices and consumer protection while Book VII concerns consumer credit and mortgage credit);
- the Act of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the business of payment service provider and to the activity of issuing electronic money, and access to payment systems;
- the Act of 18 September 2017 on the prevention of money laundering and terrorism financing and the restriction on the use of cash;
- the Act of 18 December 2016 on regulating the recognition and definition of crowdfunding and containing various provisions relating to finance;
- the Act of 21 December 2013 on the financing of small and medium-sized enterprises; and
- the Act of 2 August 2002 on the supervision of the financial sector and the financial services.

The legislative framework is complemented by implementing Royal Decrees, circulars and guidance from the responsible supervisory authorities, these being the National Bank of Belgium (NBB) and the Financial Services and Markets Authority (FSMA). Please refer to **4. Supervision** for further discussion of these authorities and their powers and responsibilities. Said supervisory authorities have issued guidelines on, among other things, appropriate remuneration policy, online financial services, internal control, audits and compliance. Some of these guidelines are further discussed throughout this chapter.

Supervision of the Banking Sector

In Belgium, supervision is organised according to the so called “Twin Peaks model”. For over ten years, the NBB and the FSMA (formerly known as the CBFA) have functioned as complementary supervisory authorities, whereby the NBB is responsible for prudential supervision, whereas the FSMA supervises the proper functioning of the financial markets.

For the banking sector, however, the NBB is no longer the main prudential supervisor. Since the entry into force of the Single Supervisory Mechanism (the SSM), the prudential supervisory powers are allocated between the European Central

Bank (the ECB) and the NBB. In practice, the ECB supervises "significant" banks while the NBB is responsible for less significant institutions. Notwithstanding this distinction, it is the ECB that assesses (i) requests for licences, regardless of the requesting bank's size, and (ii) transfers or acquisitions of qualifying holdings in banks.

2. Authorisation

2.1 Licences and Application Process

Depending on the type of activities to be performed by the relevant banking institution, different types of licences can be solicited.

Banking Licence

A licence as a credit institution or a bank is a "super" licence which entitles the institution (i) to receive funds from the public which can be used to invest and grant loans (the "banking monopoly"); and (ii) to offer a large number of financial services beyond pure banking services, including investment services as defined in MiFID II (eg, consumer credit, mortgage credit, factoring, leasing, payment services, transactions in money market instruments or securities, asset management or advisory services, and custody and administration of securities issuance of e-money). Crypto-exchange services and custodian wallet services of crypto-assets require a separate license (see **Registration of virtual asset service providers** below).

Only an entity which at least (i) takes deposits or other repayable funds from the public, and (ii) grants credits for its own account may qualify as a bank.

The ECB is responsible for assessing the requests for authorisation and, if all requirements are fulfilled, grants the banking licence. The requirements concern, among other things:

- suitability and trustworthiness of the day-to-day policymakers, members of the supervisory board and persons of the senior management;
- sound conduct of business operations;
- the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
- the minimum number of persons of the supervisory board (or a similar board);
- the control structure;
- the operational structure;
- the consolidated supervision;
- the initial capital;
- the "own funds" requirements;
- the liquidity; and
- the approval of holders of a qualifying holding in the bank by the ECB ("declaration of non-objection").

The application for a banking licence must first be filed with the NBB. The NBB checks whether all licence requirements are met. In such a case, the NBB prepares a draft decision proposing that the ECB grant the licence. The ECB must make a decision on the licence application within six months after a complete file has been submitted and, in any case, within 12 months of the application. It is standard practice that entities intending to obtain a banking licence in Belgium contact the NBB prior to formally file the application in order to take into account any specific concerns identified by the NBB.

The application for a banking licence involves a one-off application cost, due regardless of whether the licence is granted or not. In addition, licensed banks must also contribute annually to the operating expenses of the NBB. Due amounts are updated regularly and determined by the Royal Decree of 17 July 2012 as amended by the Royal Decree of 5 July 2015. The allocation between individual banking institutions is determined by means of a cost-accounting application and based on objective criteria determined by Royal Decree. Systemically important financial institutions pay an additional contribution.

Banks must also contribute to the operating costs of the ECB. More details can be found in Regulation 1163/2014 of the ECB on supervisory fees. The contribution is higher for "significant" banks, directly supervised by the ECB (see **4.1 Corporate Governance Requirements**).

Other Types of Licence

If the scope of activities intended to be performed is more restricted, it is possible to apply for a more specific licence. Costs due to the NBB or to the FSMA in connection with the filing are regularly updated and depend on the type of licence.

Licence as payment institution or electronic money institution

It is possible to solicit a specific licence as a payment institution or as an electronic money institution if only payment services or e-money issuance will be performed in Belgium. It is essential to obtain such a licence before starting any activity. The conditions to obtain such licences are set out in Articles 9–23 (payment institutions) and in Articles 167–177 (electronic money institutions) of the Law of 11 March 2018 on the status and supervision of payment institutions and e-money institutions, access to the activity of a payment service provider and the activity of issuing electronic money, and access to payment systems. The NBB is the competent authority to grant these licences. The NBB shall decide on the application for authorisation within three months of the submission of a complete file and, at the latest, within twelve months of the application.

The rules governing the requirements and the procedure to obtain such licences stem from the Directive 2015/2366 of 25 November 2015 on payment services in the internal market (PSD2) and from the Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (EMD2).

MiFID II licences

The provision in Belgium of investment services as defined in MiFID II requires an authorisation as a stockbroking firm or as a portfolio management and investment advice company.

Applying for a licence as a portfolio management and investment advice company is to be done in accordance with the provisions laid down in Title III of the Law of 25 October 2016 on the access to the activity of investment services and on the supervision of portfolio management and investment advice companies (the Investment Services Law). Portfolio management companies and investment advice companies are subject to the supervision of the FSMA and are required to obtain a licence before commencing their operations in Belgium. The FSMA shall decide on the authorisation within six months of the submission of a complete application.

Applying for a licence as a stockbroking firm is possible for all investment services, activities and ancillary services listed in the Investment Services Law. Stockbroking firms are supervised by both the NBB (prudential supervision) and the FSMA (conduct of business supervision). Authorisation is granted by the NBB, upon the advice of the FSMA. Stockbroking firms are governed by the Law of 20 July 2022 on the status and supervision of stockbroking firms which details the conditions and process to obtain a licence.

Consumer credit and mortgage credit providers

Consumer credit providers and/or mortgage credit providers providing their services in Belgium must obtain a prior authorisation from the FSMA before carrying out activities. Articles VII.160 et seq of the CEL list the conditions to be fulfilled.

In addition to being authorised by the FSMA, all consumer credit providers and mortgage credit providers must submit a model credit agreement for prior approval by the Federal Public Service (FPS) Economy, which examines whether the model agreement complies with all the provisions of general interest of Books VI and VII of the CEL, and their implementing decrees. Any changes to the model agreement must be approved by the FPS Economy before they can be implemented.

The FPS Economy shall rule on the submitted model credit agreements within a period of four months from the day on which all documents and data have been received, and at the latest within six months from the receipt of the application for approval. The FSMA makes its decision within two months of the receipt of a complete file and at the latest within six months of the submission of the application.

Registration of virtual asset service providers

Virtual assets service providers established in Belgium must be registered with the FSMA pursuant to the law of 21 February 2022 (the Virtual Asset Service Providers Law). No registration can be obtained by virtual assets service providers incorporated outside of the European Economic Area.

Virtual asset service providers must comply with the AML Law and with the conditions in terms of expertise and professional reliability, the absence of a professional ban and a shareholder base that guarantees sound and prudent management as set out in the Royal Decree of 8 February 2022 on the status and supervision of providers of exchange services of virtual currency and fiat currency and custodian wallets providers (the Virtual Currency Royal Decree).

Registration is subject to fees due to the FSMA as set out in the Royal Decree of 5 March 2022.

3. Control

3.1 Requirements for Acquiring or Increasing Control over a Bank

From a prudential perspective, it is essential that significant shareholders have certain qualities that ensure the sound and prudent management and continuity-oriented development of the credit institution.

The requirements in relation to the acquisition or increase of an interest in a bank are set out in the Banking Law. An NBB communication and an NBB circular of 14 September 2017 provide more detailed information to, respectively, entities that intend to acquire or to increase a qualifying holding and regulated financial undertakings receiving information with respect to future changes in their capital structure.

Shareholding Thresholds

Any natural or legal person, acting alone or in concert, who has decided to acquire or increase, directly or indirectly, a qualifying participation in a bank governed by Belgian law so that the proportion of voting rights or of shares held in the capital would reach or exceed the thresholds of 10%, 20%, 30% or 50%, or so that the bank would become its subsidiary, shall file a notification with the NBB prior to the contemplated acquisition.

The obligation to inform the NBB equally applies to any party who has decided to transfer or reduce their participation in a bank in such a way that the above thresholds are no longer met.

The NBB will inform the ECB of this notification because the ECB is competent to approve – or not to object to – a transfer of qualifying holdings in a bank. The ECB has, in principle, sixty working days from the date of the confirmation of receipt of the notification and all required documents to perform its assessment, unless an extension is granted, notably on account of a request for additional information. If the ECB does not oppose the proposed acquisition within the assessment period, it shall be deemed to have been approved.

In its Communication of 22 September 2017 addressed to persons intending to acquire, increase, reduce or transfer a qualifying holding in the capital of a financial institution and to persons owning a qualifying holding, the NBB provides more information about the formalities to be completed by the proposed acquirer or transferor and about the assessment of the notification by the supervisor. Additionally, the NBB has published on its website various standard forms, subject to the characteristics of the acquirer or relevant operation, which must be used in connection with the filing and include an overview of the information required for the assessment of qualified holding. It is market practice for the proposed acquirers or transferors to contact the NBB prior to the official notification of their decision to acquire, increase or transfer qualifying holdings in a Belgian financial institution.

There are per se no restrictions on private ownership or geographical restrictions on foreign ownership of Belgian banks but the appraisal of a potential acquirer located in a jurisdiction with lenient supervision, notably with regard to AML and CFT, will be more difficult.

Significant Shareholdings Reporting

Financial undertakings must notify the NBB annually of the identity of any parties holding a qualifying holding in their capital.

Mergers and Transfer of Banking Business

A merger between banks or between banks and other financial institutions, as well as any transfer between such entities of all or part of their business, must be approved by the competent supervisory authority (The NBB or the ECB). As from the notification of the proposed transaction, the supervisory authority has two months to object.

4. Supervision

4.1 Corporate Governance Requirements

The requirement for sound and adequate corporate organisation to ensure effective and prudent management of the credit institution is described in Article 21 of the Banking Law. Since October 2018, the NBB has published a regularly updated manual on the governance of credit institutions describing the main governance requirements. The NBB's governance manual was last updated in October 2022. In accordance with Article 21, Section 3, of the Banking Law, each credit institution must approve a governance memorandum describing its internal governance structure.

Division of Functions

The corporate governance of a credit institution is organised along the following lines.

- The general policy function is entrusted to the management body which comprise of executive and non-executive directors (the board).
- The management function is performed by the management committee, which is comprised of executive directors.
- The supervisory function is entrusted with the non-executive directors.

The Board of Directors and its Specialised Committees

The board of directors of the credit institution must comprise of a majority of non-executive directors and its chairman cannot be the chairman of the management committee. For more details, please see the European Banking Authority (EBA) guidelines dated 2 July 2021(EBA/GL/2021/05), which concern, among other things, the composition of the board.

In order to strengthen the effectiveness of the supervision and control, four specialised committees must be set up within the board: an audit committee, a risk committee, a remuneration committee and a nomination committee. These committees are responsible for preparing the decisions of the board. As stated in the EBA's guidelines, committees must be composed of at least three members. Only non-executive directors can be members of these committees, which reinforce the control function of the board. The majority of the members of the audit committee must be independent directors. The other committees must have at least one independent director.

In addition, to the committees imposed by the Banking Law and EBA Guidelines, practice shows that institutions also set up other committees, such as a compliance committee, a committee on combating money laundering and terrorist financing, a strategic committee, an investment committee and an ethics committee. In the case of committees related to the supervisory function of the statutory governing body, the NBB's governance manual recommended that these committees follow the rules on composition and functioning applicable to the mandatory committees insofar as possible.

Management Committee

Each credit institution, regardless of its legal form, must establish a management committee whose size depends on the complexity of the institution. All the executive members of the board are members of the management committee.

Members of the management committee and of the board of directors are individuals only. They must commit to allocate sufficient time to the performance of their functions within the credit institution; certain qualitative and quantitative restrictions therefore apply with respect to external offices or functions they may hold.

The credit institution must also have an adequate administrative and accounting organisation and internal control, including a control system that provides a reasonable degree of certainty about the reliability of the financial reporting process.

Internal Code of Conduct

The board must determine the strategic objectives and corporate values of the credit institution, as well as internal codes of conduct or formal rules specifying how business is to be conducted with integrity and with the involvement of the institution's stakeholders. The credit institution must establish a policy and procedures that allow complaints to be brought directly or indirectly (ombudsman, compliance, internal audit) to the attention of management. Whistle-blowers acting in good faith will be protected from direct or indirect disciplinary action or any decision of similar scope.

4.2 Registration and Oversight of Senior Management

The management body is the main responsible body for the orderly functioning of the bank. It is thus required that management continuously possesses sufficient knowledge, skills and experience to perform its duties. Every member of the management body must understand that body's structure and responsibilities, the different functions attached to it and the role of specialised advisory committees. It is therefore necessary and required by law that members of the management body receive ongoing training.

In accordance with Article 19 of the Banking Act, members of the management body, senior managers and persons entrusted with independent supervisory functions of credit institutions must at all times be fit and proper. The NBB establishes guidelines defining the criteria for fitness and propriety to be met. Moreover, the NBB's circular of the 16 November 2021 on the suitability of directors, members of the management committee, heads of independent control functions and senior managers of financial institutions transposes into the Belgian prudential framework the guidelines of the EBA of 2 July 2021 on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2021/06). The NBB's circular provides information on how the NBB conducts the assessment. The revised EBA guidelines clarify that the knowledge, experience and skill requirements of members of the management body and key function holders include identifying, managing and mitigating the risk of money laundering and terrorism financing. In addition, these guidelines also stress the importance of a gender-balanced composition of the management body.

In this context, the NBB recalls that "senior managers" refers to the group of persons, whether or not members of the management body, whose function within the institution implies that they exercise a direct and decisive influence on activities at the highest level.

Senior managers should have the knowledge, the experience and the skills appropriate to their function. Because each institution differs in its nature, size, complexity, risk profile and organisational structure, similar positions in different institutions do not necessarily require the same level of knowledge, experience and skills.

Senior managers should also behave professionally. This behaviour is assessed on a daily basis depending on the independence, the management of conflicts of interest and the time invested in the function.

In addition, whether a person is judged to be proper or not depends on their integrity and honesty. This is a characteristic that can be analysed specifically on the basis of a person's history and criminal record. The person's background makes it possible to verify whether it can be reasonably assumed that they will perform the task entrusted to them honestly, faithfully, independently, ethically and with integrity.

4.3 Remuneration Requirements

Rules on remuneration can be found in the Banking Law which implements the requirements of the CRD V and in the guidelines published by the FSMA and the NBB in accordance with the guidelines of the EBA. In its circular of 7 December 2021, the NBB further explains the EBA guidelines of 2 July 2021 on sound remuneration policies under Directive 2013/36/EU.

Objectives of the Remuneration Policy

The remuneration policy adopted by each credit institution must follow three objectives:

- credit institutions must have a remuneration policy that ensures sound and prudent risk management and must prevent excessive risk-taking;
- the remuneration policy must be in line with the business strategy, objectives, values and long-term interests of the bank and must include measures to avoid conflicts of interest; and
- the management body must adopt and review at least once a year the general principles of the remuneration policy.

Scope of the Remuneration Policy

Staff whose professional activities have a material impact on the bank's risk profile must be identified ("identified staff") and are subject to specific requirements on remuneration (such as the members of the management committee and the key function holders). Pursuant to the Royal Decree of 25 April 2014 approving the NBB's Regulation of 1 April 2014, staff members that are authorised to perform risky transactions and are employed in trade departments, are as such considered to be "identified staff". In the NBB's opinion, at least 1% of the total number of staff shall be identified staff.

The Banking Law provides that the remuneration policy must cover all types of remuneration, including variable remuneration, fixed basic salary and pension policy. The EBA specifies that role-based allowances that are discretionary, not predetermined, not transparent to staff or not permanent should be classified as variable remuneration.

These requirements should vary depending on the size and the internal organisation of the bank and the nature, scope and complexity of activities.

The "dos" and "don'ts" of the remuneration policy are discussed in detail in Annex II to the Banking Law. The key principle is that the remuneration policy must reflect a balance between the fixed and variable component of the remuneration, whereby the fixed part needs to be large enough to allow a flexible policy for the variable part. The variable part is further capped at a maximum of 50% of the fixed part, or EUR50,000 (or the fixed amount, if lower than EUR50,000). The variable component can, however, only be paid if the financial condition of the bank allows such payment. Article 9/1 of Annex II to the Banking Law introduces an exemption for credit institutions that (i) are not "large institutions" within the meaning of Regulation 575/2013/EU, and (ii) whose assets do not exceed EUR5 billion on average over a period of four years and for staff whose annual variable remuneration does not exceed EUR50,000, provided that this does not represent more than one third of their total annual remuneration.

With regard to golden parachutes, all compensation exceeding 12 months of remuneration must be approved by the general meeting of shareholders. This compensation should reflect the actual performance of the beneficiary over the long term and should not be granted in cases of misconduct or irregular behaviour.

During the COVID-19 crisis, the NBB issued communications regarding its expectations in respect of remuneration policy. The main advice was to set the variable portion of the remuneration at a conservative level.

Mandatory Disclosures

Banks must publish their remuneration policy and provide the published information to the NBB. They must also provide to the NBB the number of staff members that earn EUR1 million or more per financial year, including their job responsibilities, the business area involved and the main elements of salary, bonus, long-term award and pension contribution. This information is forwarded by the NBB to the EBA.

Non-compliance with the remuneration requirements triggers the risk of administrative sanctions and criminal penalties.

5. AML/KYC

5.1 AML and CFT Requirements

The Belgian legislative framework is mainly composed of the Act of 18 September 2017, as amended by the Act of 20 July 2020 transposing the fifth Anti-Money Laundering Directive (AML Directive 2015/849). The NBB has a dedicated webpage which extensively discusses the legal regime and, where relevant, the NBB's position.

In summary, banks are subject to four main obligations, all of which are imposed using a risk-based approach.

First, banks must develop internal policies, controls and procedures. Internal control measures aim to identify the weaknesses of the institution's AML toolbox, so that appropriate and eliminating measures can be taken. Efficient internal organisation should meet two objectives: compliance with the supranational legislative and regulatory framework and mitigation of the risks that banks may face, taking into account their specific characteristics.

Secondly, banks must perform adequate and proportionate risk assessment in accordance with their nature and size. For example, this implies the screening of their customers or of the products, services and operations they offer.

Thirdly, banks must perform customer and operations due diligence. Entities must be able to verify their customers' identity in order to understand who their clients are and what the nature of their business is. Certain customers (eg, politically exposed persons) which present a higher risk, should be subjected to more strict and severe screening. Entities must have a client acceptance policy that is tailored to their regulated activities and to the AML risks they are exposed to. In addition, the ultimate beneficial owners must be identified in order to have a clear view of the ownership/control structure of the customer.

Finally, banks must analyse atypical transactions and meet certain reporting obligations. Financial behaviour that indicates an attempt to launder money or to finance terrorism should be detected and if necessary, reported to the Financial Intelligence Processing Unit (CTIF-CFI). A transaction should be reported every time a professional cannot exclude the possibility that a transaction of which they have knowledge is related to money laundering or terrorist financing. The slightest suspicion of the illicit origin or destination of the funds which the professional must handle is sufficient to trigger the obligation to report suspicions.

Pursuant to the Virtual Asset Service Provider Law of 21 February 2022, the personal scope of the anti-money laundering requirements has been extended to virtual asset service providers.

Non-compliance with Belgian AML rules triggers the risk of financial and criminal penalties.

6. Depositor Protection

6.1 Depositor Protection Regime

The Belgian protection scheme is backed by two institutions: the Guarantee Fund for Financial Services (the Guarantee Fund) and the Protection Fund for Deposits and Financial Instruments (the Protection Fund).

The Guarantee Fund

In general, any deposit held within a Belgian bank, as is the case for any other European Economic Area country, is protected up to a level of EUR100,000 per person per establishment through the Guarantee Fund.

The Guarantee Fund was created through the Royal Decree of 14 November 2008. It is currently managed by the Federal Public Service Finance.

The deposit guarantee is applicable to deposits held within (i) banks governed by Belgian law, and (ii) Belgian branches of banks governed by foreign law which do not offer a protection equal to that offered by the Guarantee Fund. Deposits held within Belgian branches of banks established in another EEA country are protected through the deposit guarantee scheme of that EEA country.

Deposits protected

The following types of deposits are protected, regardless of the applicable currency: (i) current accounts and nominative accounts, (ii) savings accounts, (iii) term accounts, (iv) nominative or dematerialised cash certificates registered in personal accounts, (v) bonds or securities issued or deposited before 2 July 2014, and (vi) deposits of funds held on behalf of investors pending allocation to the acquisition of financial instruments or pending restitution.

Excluded are, inter alia, deposits held by financial institutions (banks, insurance companies, etc) and by the State and public authorities, deposits that are watched from an anti-money laundering perspective, electronic money and money received in exchange for electronic money.

Beneficiaries

Any (natural or legal) person is protected, regardless of their nationality or domicile, including companies (no matter their status or size), associations, foundations or other group of any kind.

Cap

All balances (principal, interest and incidentals) of a person's accounts (without distinction of category and denomination of those accounts) with the same financial institution are added up, converted into euros and, if required, capped at EUR100,000.

The cap may not apply if one of the deposits benefits from temporary increased protection. This special regime is applicable to the following types of deposits:

- deposits that are directly linked to a transaction arising from a sale/purchase of a principal place of residence;

- deposits concerning certain life events of the depositor (retirement, death, invalidity or dismissal); and
- deposits held by a natural person which arise from a payment of insurance benefits or compensation to victims of criminal offences or miscarriages of justice, irrespective of the damage suffered.

The temporary increased protection lasts six months as from the day on which the amount was credited to the account or from the moment the deposits can legally be transferred. It is limited to EUR500,000 per depositor per establishment.

Indemnification

If a bank defaults or goes bankrupt, the Guarantee Fund will pay out within a period of 20 working days. From 2021, this period should be progressively reduced to a period of seven working days from 1 January 2024.

Funding

The Guarantee Fund is financed by regular and extraordinary contributions from its participants, the access rights for banks and investment firms (with the exception of asset management and investment advice firms), and the access rights applicable to the insurance companies participating at their request before 1 January 2011 and the access rights and, where applicable, the capital gains remuneration due by recognised co-operative societies, participating at their request.

The Protection Fund

The protection offered by the Protection Fund applies to financial instruments deposited by a client with their institution (ie, a bank, a stockbroking firm, asset management and investment advisory firms, as well as management companies of collective investment institutions that are also authorised to conduct individual portfolio management). Because owners of securities are already strongly protected by law (the owner remains the legitimate owner of their titles and has a right of direct claim on them), the risk of loss is limited. The maximum amount of protection is therefore capped at EUR20,000 per person per institution.

7. Bank Secrecy

7.1 Bank Secrecy Requirements

Under Belgian law, formal banking secrecy by law does not exist. Banks are instead subject to a general duty of confidentiality towards their clients, which is of a contractual nature.

It is important to note, however, the existence of the Central Point of Contact (the CPC), which is a register of the bank account numbers and all types of contracts held at financial institutions in Belgium by Belgian and foreign natural or legal persons. Since 31 January 2022, every Belgian bank has been obliged to report to the CPC the balances of bank and current accounts and the total value per client of certain financial contracts such as securities accounts and branch 21, 23 or 26 life insurance contracts. The tax authorities may contact the CPC to obtain information on persons/entities subject to taxation if there are indications of tax fraud, or where taxes need to be recovered. The obligation to submit data to the CPC was created as a counterbalance to keeping banking secrecy. Banks, payment institutions, stockbroking firms, financial leasing undertakings and consumer and mortgage credit providers are all subject to this obligation to submit data to the CPC.

As the data submitted to the CPC is of a highly confidential nature, it was decided to entrust the organisation and operation thereof to the NBB, as an organisation independent of any public authority and neutral with regard to tax assessment.

A ruling of the Belgian Constitutional Court is expected on the compatibility of the relevant law with data privacy regulation.

8. Prudential Regime

8.1 Capital, Liquidity and Related Risk Control Requirements

Adherence to Basel III Standards

All Belgian banks must comply with capital requirements broadly aligned with Basel III. Basel III was implemented mainly through Regulation (EU) No 2019/876 (CRR2), which establishes the requirements to calculate and consistently observe minimum capital requirements. Directive 2019/879 (CRD V) determines minimum requirements for capital buffers. This regulatory framework must ensure stability and solvency and mitigate risks caused by financial institutions taking on excessive and unsustainable risks.

The Basel III standards are implemented into Belgian law by the Banking Law.

Initial Capital

Under the Banking Law, Belgian banks must hold initial capital fully paid up of at least EUR6.2 million before the NBB will propose to the ECB that a banking licence should be granted.

Capital Requirements – Pillar I

The CRR2 sets out the requirement for banks to maintain a minimum quantity of regulatory capital to cover unexpected losses and keep themselves solvent in a crisis and rules governing the quality of that capital. This is the so-called “own funds requirement” which is expressed as a percentage of risk-weighted assets (RWA).

As a general rule, a credit institution must have a liquidity and capital requirements policy that is appropriate to its activities. The riskier the assets, the more capital the credit institution has to set aside. It is the competence of the board of directors to adopt a policy that identifies the current and future liquidity and capital requirements of the credit institution. The policy must take into account the nature, volume and characteristics of the institution’s activities and the associated risks. The policy should be regularly assessed and updated when required by the board of directors.

The equity structure of credit institutions is currently divided into two tiers: Tier1 and Tier 2. Tier 1 is divided into (i) Core Equity Tier 1 (CET1) and (ii) Additional Tier 1 Capital. CET1 includes ordinary shares and reserves, and is the highest quality capital. While Tier 1 capital is considered to be going concern capital and is intended to allow an institution to conduct its activities and prevent insolvency, Tier 2 capital is considered to be gone concern capital and consists of hybrid instruments, undisclosed reserves and subordinated debt. Its purpose is to absorb losses and repay depositors and creditors if the institution fails.

The total amount of capital that banks are required to hold is least 8% of risk-weighted assets (RWAs). The CET1 should make up 4.5% of RWAs and Tier 1 Capital 6% of RWAs.

Capital Buffers

CRD V provides the following four buffers which trigger some protective measure in case of breach.

(a) The capital conservation buffer requires banks to hold CET1 equal to a further 2.5% of RWAs, in addition to the regular CET1 4.5% of RWAs; restrictions on distributions where the capital conservation buffer is not maintained.
(b) A counter-cyclical buffer based on total risk-weighted exposures of a bank and the counter-cyclical buffer rates applicable to those exposures in the jurisdiction where they are located.
(c) The counter-cyclical capital buffer is defined by the NBB as a macroprudential instrument designed to mitigate cyclical systemic risk and counter procyclicality in lending; its rate is determined by the Royal Decree of 25 November 2015 approving the NBB's regulation of 24 November 2015 determining the rate of the countercyclical Tier 1 capital conservation buffer. On 1 January 2021, the NBB set the countercyclical capital buffer at 0%. This decision is reassessed quarterly.
(d) A buffer applicable to other systemically important institutions (O-SIIs). Eight banks regulated by the NBB and the ECB are designated as O-SIIs on which a capital surcharge ranging from 0.75% to 1.5% is imposed (NBB's 2020 assessment).

The NBB had decided to impose an increase in the risk weights of targeted residential real estate exposures, in order to increase the banking sector's resilience and to discourage banks from taking excessive risks in the Belgian residential real estate market. The measure was replaced by a macroprudential measure, in force since 1 May 2022, which requires the constitution of a specific CET1-capital buffer, known as the (sectoral) systemic risk buffer.

Pillar II Capital

The NBB has the power to apply additional capital requirements to Belgian banks on a case-by-case basis.

Liquidity Ratios

The CRD V/CRR2 framework provides for two liquidity ratios.

- The short-term liquidity coverage ratio (LCR) aims to ensure, on the basis of a stress test under gravely stressed conditions, that financial institutions have sufficient liquid reserves to cope with outflows for a period of 30 days; the LCR has been fully in force in Belgium (minimum requirement of 100%) since January 2018.
- The net stable funding ratio (NSFR) requires a bank to have sufficient long-term funding to finance illiquid assets.

9. Insolvency, Recovery and Resolution

9.1 Legal and Regulatory Framework

To avoid banks getting into financial difficulties or facing bankruptcy ("failing banks"), a framework for recovery and resolution was set up at EU level (the Bank Recovery and Resolution Directive (Directive 2014/59/EU) (the BRRD2)). The BRRD2 is implemented into Belgian law via the Banking Act and several Royal Decrees, which amongst other things set up a Belgian Resolution College.

The BRRD2 provides authorities with tools to intervene at an early stage and in a swift manner in relation to a failing institution, to ensure the continuity of critical functions and minimise the impact of the institution's failure on the economy and financial system. The mechanisms resulting from this regime apply to all banks and can be divided into three phases.

Prevention: The Recovery Plan

Each bank must establish and regularly update a recovery plan. The purpose of the recovery plan is to define different economic and financial crisis scenarios. By mapping out a recovery plan, a bank, in the event of a significant deterioration in its financial situation, should be able to restore its viability and financial position rapidly, without negative effects on the financial system. The plan must be submitted to the supervisory authority within six months from the date of its authorisation. It must cover the Belgian bank and its (Belgian and/or foreign) subsidiaries.

The recovery plan must also include qualitative and quantitative indicators which may signal that a bank's financial position is deteriorating or is at risk of deteriorating. These indicators contain a graduated scale of thresholds that indicate the proportion of the institution's encumbered assets with an indication of the corrective measures to be considered if each threshold is exceeded. The NBB issued a communication on 21 March 2018 containing guidelines for the recovery plans of Belgian banks and their parent undertakings.

Specifically required by the Banking Law (although not required by the BRRD2), is the presence of "asset encumbrance indicators" in the recovery plan. Such indicators must ensure that, in case of failure, the quantity of assets at least covers the preferential deposits. The legal basis for this requirement is the NBB Regulation of 1 April 2014 on encumbered assets in the context of recovery plans and a NBB Communication of 18 July 2016 concerning recovery plans and the obligations in respect of encumbered assets.

Less significant banks (which are not of systemic importance) may qualify for "simplified recovery plan obligations".

Early (Recovery) Intervention

The competent supervisory authority has the necessary crisis intervention powers, which it can use when a bank finds itself in a difficult financial situation in order to prevent that bank from deteriorating irremediably. Such powers include suspension of the bank's payment and delivery obligations, suspension of contract termination rights and a moratorium on a bank's creditors' enforcement's rights.

Early intervention measures must be taken when a bank is likely to breach prudential requirements or the mandatory licensing and operating conditions, due to a rapid deterioration in its financial condition, including deteriorating liquidity, increased leverage, non-performing loans or concentration of exposures.

At first instance, the bank will be given a deadline within which it must improve its situation. As long as the situation has not been remedied, the supervisor may impose certain measures, such as imposing stricter capital requirements, restricting or prohibiting all dividend payments or interest payments to shareholders. At all times, the supervisor can impose the obligation for the bank to (partially) implement its recovery plan.

If the recovery measures imposed have not been complied with within the specified period, or are not (subsequently) complied with, the supervisor can impose additional exceptional measures such as dismissing the management, requiring the bank to transfer part of its business, or even withdrawing the banking licence.

The Resolution Plan and Procedure

Finally, each EU-based banking group must have a resolution plan in order to improve resolvability. The resolution plan sets out the resolution measures that the authority may take in the event of the triggering of a resolution procedure. The plan is drafted by the Belgian Resolution College with assistance of the relevant bank. The resolution tools set out in the Banking Law are the sale of business tool, the bridge institution tool, the asset separation tool and the bail-in tool. The Belgian Resolution College is also able to suspend the payment and delivery obligations of the bank.

The basic principle in the resolution procedure is that the costs should be borne by the banks' shareholders and creditors (excluding protected depositors), and not the taxpayers (the so called "bail-in" principle instead of "bail-out"). As a protection, another key principle is the "no-creditor-worse-off" principle, which means that no owner or creditor should be compensated to a lesser extent than they would have been under normal insolvency proceedings.

The Belgian Resolution College can only apply a resolution tool with respect to a bank only when it assesses that each of the following conditions is met:

- the bank is in default or is likely to be in default;
- given the timing and other relevant circumstances, it is not reasonably foreseeable that any other private or prudential measure in respect of the bank will prevent its failing within a reasonable period of time; and
- a resolution measure is necessary in the public interest.

Pursuant to the Banking Law, a bank shall be considered in default in one or more of the following situations:

- the bank is in breach of the requirements for continued authorisation, or there are objective indications that it will be in breach in the near future, to such an extent that the withdrawal of authorisation by the supervisor is justified, in particular because the bank has suffered or may suffer losses that significantly affect its own funds;
- the net assets of the bank are negative, or there are objective indications that this will be the case in the near future;
- the bank is unable to pay its debts as they fall due, or there are objective indications that this will be the case in the near future; or
- the bank requires exceptional government support.

Protection for Depositors

The bank recovery and resolution regime also provide certain protections for depositors. In this respect, the Banking Law has implemented the EU depositor protection scheme up to EUR100,000 (see **6.1 Depositor Protection Regime**). The Guarantee Fund will be responsible for the repayment of covered deposits in the event of the bank's insolvency.

Additionally, the Banking Law grants a general privilege to the Guarantee Fund on all movable assets of the bank in default up to the amount of payments made by the Guarantee Fund following the bank's resolution. This privilege is trumped by some other general privileges, as well as by secured creditors.

Depositors that are individuals or SMEs also benefit from a general privilege on the movable assets of the bank for the part of their claim exceeding the cap covered by the Deposit Guarantee Scheme. This privilege ranks immediately after the privilege of the Guarantee Fund.

10. Horizon Scanning

10.1 Regulatory Developments

Looking at what is on the horizon for the banking sector, the developments discussed below should be noted.

Banking Package 2021: Basel III, Sustainability, and Stronger Supervision

On 27 October 2021, the European Commission adopted a review of EU banking rules. This aims to ensure that EU banks become more resilient to potential future economic shocks, while contributing to Europe's recovery from the COVID-19 pandemic and the transition to climate neutrality. This package is divided into three parts.

Implementing Basel III

This package implements the international Basel III agreement, while taking into account the specificities of the EU banking sector. The proposal aims to ensure that the "internal models" used by banks to calculate their capital requirements do not underestimate risks, thereby ensuring that the capital needed to cover these risks is sufficient. This will make it easier to compare risk-based capital ratios between banks. This will help to restore confidence in these ratios and in the soundness of the sector in general. Moreover, the proposal aims to enhance resilience, without leading to a significant increase in capital requirements. It limits the overall impact on capital requirements to what is necessary and reduces compliance costs, especially for smaller banks, without relaxing prudential standards.

Sustainability

Strengthening the resilience of the banking sector to environmental, social and governance (ESG) risks is a key area of the Commission's Sustainable Finance Strategy. Improving the way banks measure and manage these risks is essential for the EU, as is ensures that markets can monitor what banks are doing. Prudential regulation has a crucial role to play in this respect. To contribute to the green transition, this new set of rules will require banks to systematically identify, disclose and manage ESG risks as part of their risk management. This includes regular climate stress testing by both supervisors and banks. Supervisors will need to assess ESG risks as part of regular supervisory reviews. All banks will also have to disclose the degree to which they are exposed to ESG risks. To avoid undue administrative burdens for smaller banks, disclosure rules will be proportionate.

Stronger supervision

This package provides stronger tools for EU bank supervisors. It establishes a clear, robust and balanced set of "fit and proper" rules, under which supervisors assess whether senior managers have the skills and knowledge required to run a bank. Supervisors will also be given better tools to supervise fintech groups, including bank subsidiaries. This improved toolkit will ensure sound and prudent management of EU banks. The different rules also address the issue of establishing branches of third-country banks in the EU. At this stage, such branches are mainly subject to national legislation, which is harmonised only to a very limited extent. The package harmonises EU rules in this area, which will enable supervisors to better manage the risks associated with these entities, which have increased their activity in the EU significantly in recent years. In addition, the package also includes proposals for the harmonisation of notification and assessment procedures for certain transactions across the EU, including (i) acquisitions and disposals of qualifying holdings, (ii) significant transfers of assets and liabilities, and (iii) mergers and divisions, each by or of entities subject to the CRDIV/CRR2 framework.

FinTech: The Markets in Crypto-Assets Regulation (MiCA)

On 24 September 2020, the European Commission adopted a Digital Package. This Package aims to create a competitive EU financial sector that gives consumers access to innovative financial products, while ensuring consumer protection and financial stability.

As part of the EU's Digital Finance Strategy, the Digital Package includes a new regulation on crypto-assets that has been developed to harmonise the EU framework for the issuance and trading of various types of crypto-assets.

Following the European's Council approval, the Economic and Monetary Affairs Committee of the European Parliament gave its approval to MiCA on 10 October 2022.

It is expected that MiCA will be ratified and published in the Official Journal in Q1 2023 (entry into force 20 days later) with most of its provisions due to apply 12–18 months from its entry into force. It will be directly applicable in all EU member states establishing a harmonised pan-EU regulatory framework for crypto-asset issuers and crypto-asset service providers as well as certain types of crypto-assets in general.

MiCA's main objective are:

- providing legal certainty through clear definitions;
- providing for consumer and investors protection alongside the financial stability of crypto-asset businesses; and
- encouraging innovation and fair competition in the EU crypto-asset markets and avoiding regulatory arbitrage between member states.

An authorisation in one member state will be valid for the entire EU, in accordance with a "passporting" mechanism familiar from other pieces of EU markets legislation.

The MiCA Regulation creates a new licensing regime and an EU passport available for crypto-assets service providers (CASP). Only legal persons that have a registered office in an EU member state and have obtained an authorisation from the relevant national competent authority as a CASP will be permitted to provide the following crypto-assets services in the EU:

- portfolio management of crypto-assets;
- custody and administration of crypto-assets;
- operation of a trading platform for crypto-assets;
- exchange of crypto-assets for funds or other crypto-assets;
- reception, transmission and execution of orders for crypto-assets;
- placing of crypto-assets;
- providing transfer services for crypto-assets; and
- providing investment advice on crypto-assets.

The MiCA Regulation introduces substantial conduct of business and consumer protection requirements, including capital requirements, custody of assets, a mandatory complaints procedure available to investors and investor rights against the issuer. Issuers of large asset-backed crypto-assets would be subject to more stringent capital requirements, liquidity management and interoperability. EBA and the European Securities and Markets Authority (ESMA) have been entrusted with developing draft technical standards to be adopted throughout the EU to complement the MICA Regulation. An updated framework of AML requirements is also expected.

Anti-money Laundering and Countering Terrorism Financing (AML/CTF)
On 20 July 2021, the European Commission presented a package of legislative proposals to strengthen the EU's AML/CFT rules. These proposals aim to improve the detection of suspicious transactions and activities, and to close loopholes used by criminals to launder illicit proceeds or finance terrorist activities through the financial system.

The package is composed of four legislative proposals.

- A Regulation establishing a new EU AML/CFT Authority (AMLA) – among various tasks described by the European Commission, the Authority will be the direct supervisory authority for a limited number of the riskiest cross-border financial sector obliged entities, such as banks; the Authority will have the powers to adopt binding decisions, administrative measures, and pecuniary sanctions.
- A Regulation on AML/CTF, containing directly applicable rules, notably in the areas of customer due diligence and beneficial ownership.
- A sixth Directive on AML/CFT (AMLD6), replacing the existing Directive 2015/849/EU (the fourth AML directive as amended by the fifth AML directive), containing provisions that will be transposed into national law, such as rules on national supervisors and financial intelligence units in member states.
- A revision of the 2015 Regulation on Transfers of Funds to trace transfers of crypto-assets (Regulation 2015/847/EU); among other things, the Commission has proposed an EU-wide limit of EUR10,000 on large cash payments.

The package will be discussed by the European Parliament and Council. The Commission is hopeful for a speedy legislative process. The AML authority is expected to be operational in 2024.

Belgian Federal Screening Mechanism for Foreign Investments
The Foreign Direct Investment Screening Regulation (2019/452) of 19 March 2019 established an EU-wide framework in which the European Commission and the member states can co-ordinate their actions on foreign investments.

Belgium does not yet have a screening mechanism for foreign direct investments at the federal level. A limited foreign investment control regime is in place only in the Flemish region, which allows the Flemish government to annul or declare void any foreign acquisition that would threaten the strategic interests or the independence of the Flemish region or Flemish community.

On 1 June 2022, the governments of the Belgian federated entities reached a co-operation agreement implementing a screening mechanism of general application for foreign direct investments into Belgium ("Co-operation Agreement"). The general regime will consist of a "one-stop-shop", whereby a newly founded Inter-federal Screening Committee (ISC) will perform the review of future Foreign Direct Investment notifications. Recently the Council of State has rendered its advice on the text of the Co-operation Agreement. Adoption of the final text is expected by the end 2022.

The new legislation will introduce an ex ante screening mechanism in Belgium for foreign investors from non-EU countries intending to acquire a minimum of 25% of the voting rights in a Belgian entities active in certain strategic domains. These targeted domains provisionally include, amongst others, critical infrastructure, both physical and virtual, including infrastructure for energy, transport, water, health, communications, media, data processing or storage, aerospace and defence, and electoral or financial infrastructure.

Amongst other requirements, transactions meeting the above threshold must be notified prior to their implementation to the ISC. The notification is mandatory and suspensory.

ECB Guide on Qualifying Holding Procedures

On 28 September 2022, the ECB launched a public consultation on the draft guide on qualifying holding procedures ("Draft Guide") which will end on 9 November 2022.

Since 2014, the ECB has been given exclusive competence to assess acquisitions and increases of qualifying holdings in all banks established in the member states participating in the Single Supervisory Mechanism. This competence is typically exercised in close co-operation with the national competent authorities of the member state of the target bank. This Draft Guide aims to clarify the supervisory approach that has been developed by these actors in recent years by issuing a user-friendly handbook which covers the following topics:

- the scope of the persons required to undergo an assessment;
- how the assessment criteria are applied;
- further guidance on some of the key documentation required in the assessment;
- information on complex acquisition structures;
- application of proportionality; and
- procedural aspects.

The Draft Guide complements the Guide on the supervisory approach to consolidation in the banking sector, dated 2020.

Belgian Implementation of the Whistle-Blower Directive

A Belgian draft law implementing the Whistle-Blower Directive 2019/1937 is currently pending before the Federal Parliament. Protection will concern persons who report breaches of EU law and Belgian law by legal entities in the private sector including financial services.

Whistle-blowers would benefit from this protection provided that at the time of reporting:

- they had reasonable grounds to believe that the information reported was true;
- the information was within the scope of the law; and
- they made a report either internally or externally or made a public disclosure.

The Belgian draft law goes further than the Whistle-Blower Directive in that:

- tax and social security fraud will also be included in the scope;

- anonymous reporting is permitted in companies with more than 250 employees;
- the optional condition of the Whistle-Blower Directive according to which the whistleblower's motives must be positive, disinterested and in good faith in order to benefit from the protection has not been retained; and
- no exception is included for professionals covered by professional secrecy.

11. ESG

11.1 ESG Requirements

Non-financial Reporting Directive (NFRD) – Proposal to Be Replaced by Corporate Sustainability Reporting Directive CSRD

Since 2017, large, listed companies, banks and insurance companies ("public interest entities") with more than 500 employees have had to comply with reporting requirements on non-financial topics under the EU Non-financial Reporting Directive (2014/95/EU). This non-financial information includes reports on the policies they implement in relation to social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on company boards (in terms of age, gender, educational and professional background). These disclosure obligations have been implemented in the Belgian Companies and Associations Code.

Currently, the EU is working on a proposal for a Corporate Sustainability Reporting Directive (the CSRD), to replace the rules introduced by the NFRD and to extend the scope of application to smaller companies. For large banks already subject to the NFRD, the first report which needs to comply with the new legislation is currently scheduled for 1 January 2025 (reporting for the financial year 2024). For smaller banks, later deadlines would apply.

Sustainable Finance Disclosure Regulation

As of March 2021, the EU Sustainable Finance Disclosures Regulation (2019/2088) (the SFDR) entered into application. The SFDR applies to, amongst others, financial market participants (such as banks, insurers, asset managers and investment firms) operating within the EU. Non-EU entities are affected indirectly through EU subsidiaries and provision of services in the EU.

This regulation aims to prevent "greenwashing" and enabling comparisons for sustainable investment decisions. To achieve this goal, the SFDR imposes several new disclosure obligations, at the legal entity, as well as at the financial product, level.

On an entity level, banks must, among other things, disclose:

- their policies on the integration of sustainability risks in their investment decision-making processes, and in their investment advice;
- their remuneration policies including a reference on how that policy is consistent with the integration of sustainability risks; and
- how they manage principle adverse sustainability impacts.

In relation to financial products, the SFDR requires entities to classify the products or advice they offer into one of the three following categories:

- products without an ESG scope (Article 6 products),
- products promoting environmental or social characteristics (Article 8 – or light-green – products); or

- products with sustainable investment objectives (Article 9 – or dark-green – products).

Depending on the type of product, the SFDR imposes other additional disclosure requirements that should provide investors with more information on why and how a certain product fits in a particular category and allow investors to compare products.

To further specify the content, methodologies and presentation of information to be provided by financial market participants pursuant to various provisions of the SFDR, the EU supervising authorities have created Regulatory Technical Standards (RTS) including, amongst other templates, for the different disclosure requirements. These RTS will enter into application as of 1 January 2023.

The Belgian Financial Services and Market Authority has published a communication (FSMA_2021_06) to clarify its expectations regarding the application of the SFDR.

Taxonomy Regulation

As of 1 January 2022, the Taxonomy Regulation (2020/852) entered into application and applies to financial institutions. The Taxonomy Regulation introduces a classification system, establishing a list of environmentally sustainable economic activities.

In addition to the classification, the Taxonomy Regulation extends the existing disclosure obligations under the NFRD and SFDR. As a result, financial institutions that are required to publish non-financial information pursuant to the NFRD will have to disclosure how and to what extent their activities are associated with environmentally sustainable economic activities (so-called taxonomy-alignment) from 1 January 2024 (for previous calendar year data). The KPIs applicable to credit institutions are set out in detail in Annexes V, VI and XI of the Delegated Act (EU) 2021/2178 of 6 July 2021. In the meanwhile, financial entities only need to report their taxonomy eligibility for the previous calendar year as of January 2022.

MiFID II ESG Amendments

Pursuant to the Markets in Financial Instruments (MiFID) II ESG amendments (Delegated Regulations 2021/1253 and 2021/1269), new obligations apply to banks and investment firms that manufacture and/or distribute MiFID products.

Firstly, the MiFID II ESG amendments aim to integrate clients' sustainability preferences into investment advice via, amongst others, the requirement to also include the client's suitability preferences in the "suitability test" – next to the existing obligation to require information about the client's investment objectives and risk tolerances.

Secondly, the MiFID II ESG amendments aim to integrate sustainability factors into product governance. Among other things providers of financial products need to consider the sustainability-related objectives of clients when identifying a target market for the financial product.

Next on the horizon

CRR2

On 24 January 2022, the EBA presented its final draft for the implementation of technical standards (ITS) on ESG risk disclosure requirements for large credit institutions whose securities are traded on a regulated market in any member state. These requirements are part of the single comprehensive Pillar 3 disclosure framework under the Capital Requirements Regulation (CRR 2) and will be incorporated into the implementing regulation (EU) 2021/637. Although it has been established that institutions must disclose information from 28 June 2022, disclosure will be annual in the first year and semi-annual thereafter. This means that the first disclosure will take place in 2023 for the disclosure reference date of 31 December 2022 (or the relevant year-end disclosures for financial years not ending in December).

CSDD (proposal of Directive)

On 23 February 2022, the Commission adopted a proposal for a Directive on Corporate Sustainability Due Diligence. The aim of this Directive is to foster sustainable and responsible corporate behaviour and to anchor human rights and environmental considerations in companies' operations and corporate governance. The new rules will ensure that businesses address the adverse impacts of their actions, including in their value chains inside and outside Europe. At this stage, the proposal still needs to be approved by the European Parliament and the Council.

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