



Benelux Roundup

e-Newsletter



E-newsletter Benelux Roundup

Number 2, 16 October 2009

This newsletter is sent by NautaDutilh

- [Business Continuity in Belgium: Transfer of Business](#)
- New Communications from the Belgian Banking, Finance and Insurance Commission
- [The Use of Netherlands Cooperatives in Tax-Driven Restructurings](#)
- [Corporate Governance Developments in the Netherlands](#)
- [Dutch Government Publishes Discussion Paper on New Tax Rules](#)
- [Implementation of the Cross-Border Merger Directive and Changes to Luxembourg Companies Act](#)
- [Luxembourg on OECD "white list"](#)
- [Draft European Directive on Managers of Private Equity Funds, Hedge Funds and other Investment Funds](#)
- [Position of Reputed Brands in the European Union Strengthened](#)
- [How it works...funding a Dutch company](#)



New Communications from the Belgian Banking, Finance and Insurance Commission

By: Benoît Feron and Anne Tilleux
Originally published on June 10, 2009

New communication from the Belgian Banking, Finance and Insurance Commission regarding audit committees in groups of regulated financial institutions

General rule

Pursuant to the Act of December 17, 2008, published in the *Belgian State Gazette* on December 29, 2008 (the "**Act**"), companies listed on a regulated market in Belgium (Euronext Brussels) and regulated financial institutions (*i.e.*, credit institutions, insurance companies, investment companies and collective investment undertakings) have been required to set up an audit committee since January 8, 2009.

The rules with respect to the tasks and responsibilities of the audit committee are applicable as from the first financial year after publication of the Act in the *Belgian State Gazette* (*i.e.* in most cases, the financial year starting on January 1, 2009).

Exclusions and exemptions

For listed companies and regulated financial institutions that meet at least two of the following three criteria, the establishment of an audit committee is not mandatory:

- less than 250 employees on average during the financial year;
- balance sheet total not exceeding EUR 43,000,000; and
- net annual turnover not exceeding EUR 50,000,000.

In addition, pursuant to the Act, the Banking, Finance and Insurance Commission (*Commission Bancaire, Financière et des Assurances/Commissie voor het Bank-, Financie- en Assurantiewezen*) ("CBFA") may, in certain circumstances, exempt from the requirement to establish an audit committee

regulated financial institutions that are subsidiaries of other regulated financial institutions. The CBFA must ensure the publication of its exemption policy.

CBFA Communication 2009_22 of May 25, 2009

On May 25, 2009, the CBFA issued a communication regarding its exemption policy with respect to the creation and composition of audit committees in groups of regulated financial institutions.

Exemptions are available for subsidiaries and sub-subsidiaries of regulated financial institutions if an audit committee exists at the group level which meets the Belgian or equivalent EU statutory requirements.

Exemptions may be granted with respect to the (i) creation and (ii) composition of an audit committee further to a duly justified and documented request filed with the CBFA.

Establishment of an audit committee

Exemptions from the audit-committee requirement are the exception rather than the rule. Financial institutions must prove that, in light of their managerial, organisational and risk structure and the structure of the group, the establishment of an audit committee at the level of the institution would not substantially create added value in terms of corporate governance. The CBFA will review various criteria, described in the communication, before granting an exemption.

Composition of the audit committee

The CBFA may, depending on the circumstances, allow the audit committee to be composed of a majority of non-executive directors (rather than solely of non-executive directors) provided the other committee members are "not linked" with the institution concerned (*i.e.*, not executive directors, employees, etc. of the institution), do not perform any supervisory activities with respect to the institution and have appropriate knowledge of and experience in auditing and/or accountancy. In addition, the same independent directors may sit on the audit committee at the level of both the institution and the group, provided there is no significant business relationship between the various undertakings of the group.

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[Top](#)