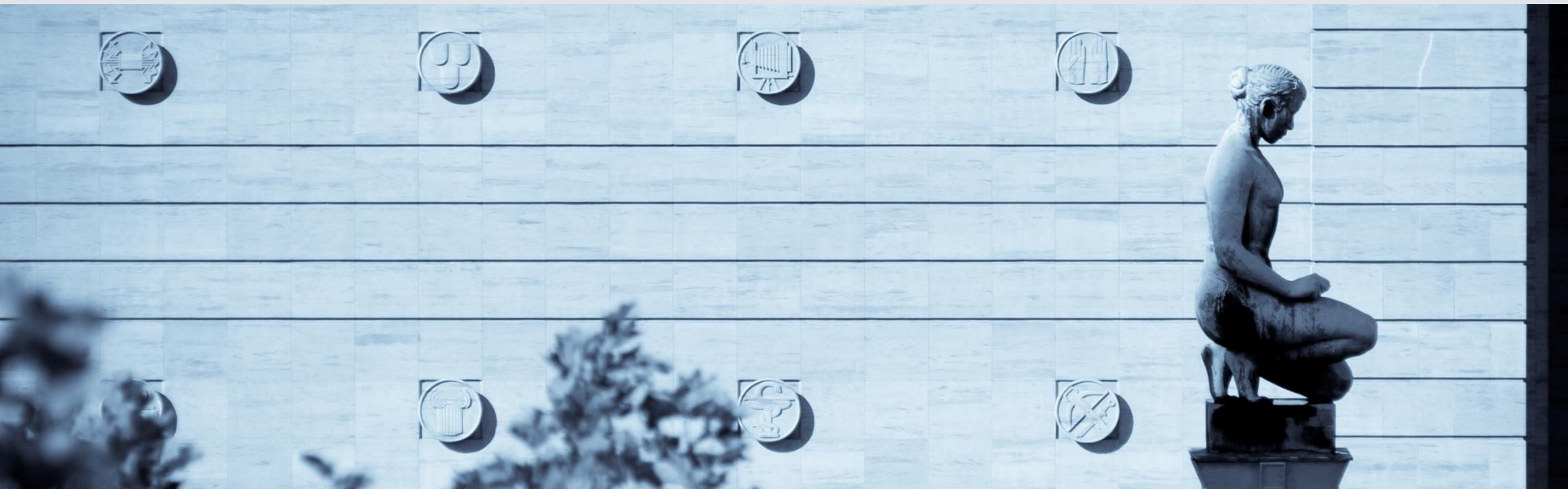


# LEGAL AND PRACTICAL ASPECTS LICENSING OF NON-BANK PSPs

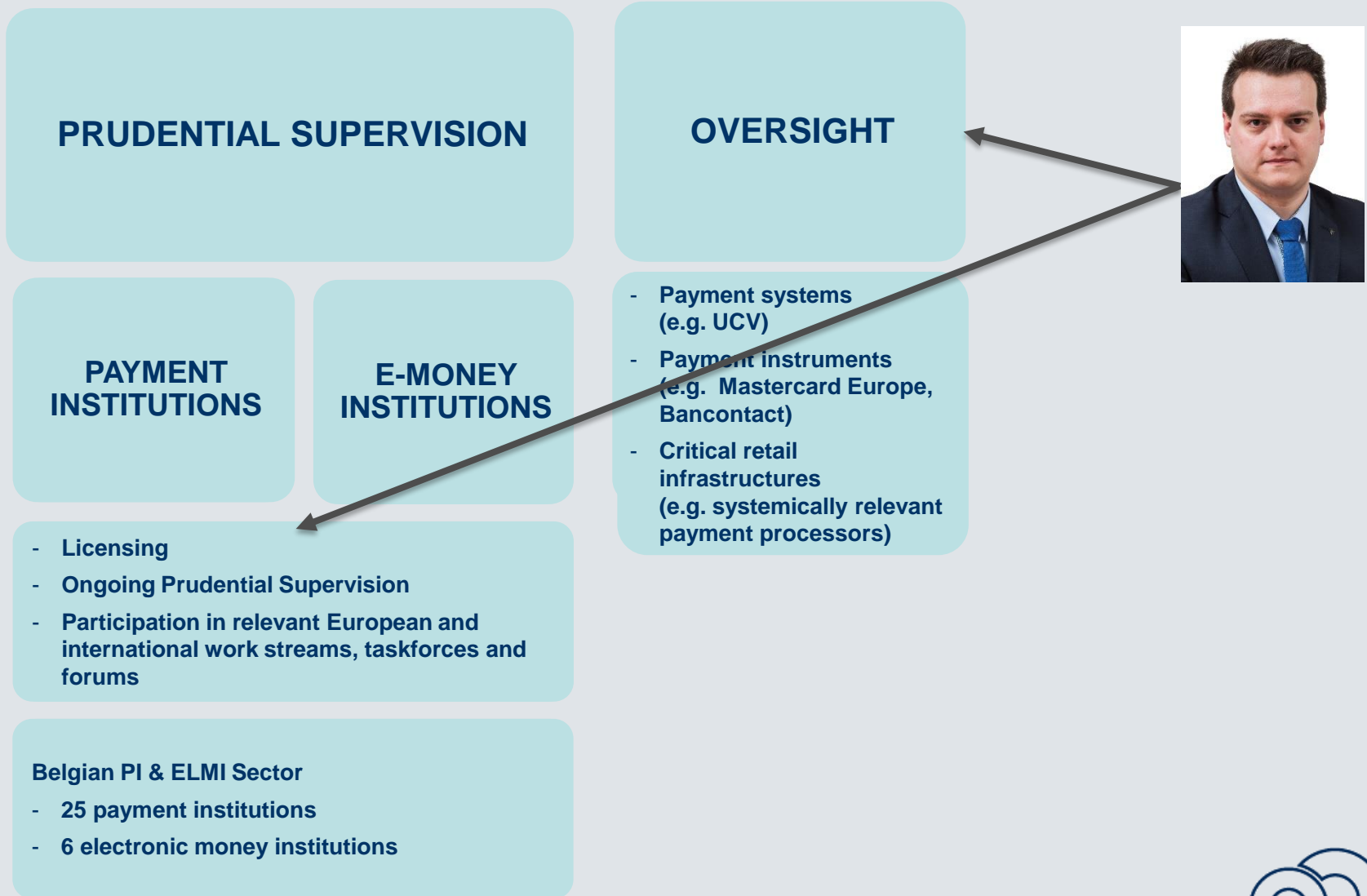
Ohrid, Republic of North Macedonia

Reinout TEMMERMAN

*Surveillance of financial market infrastructures, payment services and cyber risks*

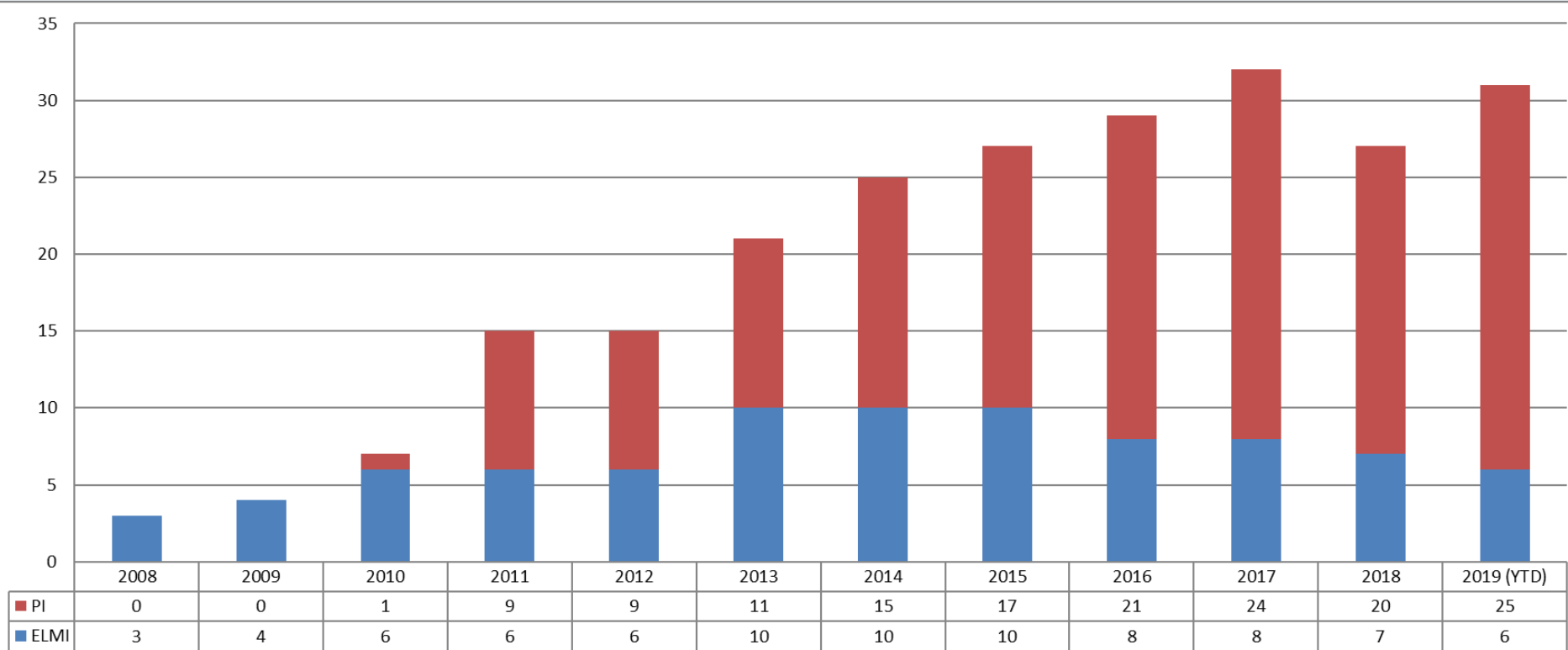


# WHAT DOES THE NATIONAL BANK OF BELGIUM DO IN RETAIL PAYMENTS?



# BELGIAN NON-BANK PSP SECTOR

## Evolution PI/ELMI since inception in 2007



# AGENDA

## 1. LEGAL ASPECTS OF LICENSING

## 2. PRACTICAL ASPECTS OF LICENSING

- LICENSING PROCEDURE
- INTERNAL PROCEDURE
- HURDLES FOR APPLICANTS



# TERMINOLOGY RECAP

- ▶ **Payment services:** list of 8 types of services enumerated in PSD2
- ▶ **PSP:** payment service providers = all institutions that may provide payment services, e.g. banks, PI and ELMI
- ▶ **PI:** payment institution = authorized to offer one or more payment services
- ▶ **EMI:** e-money institution = authorized to issue e-money
- ▶ **ASPSP:** account servicing payment service provider = provider of payment accounts, mostly banks but potentially also PI or ELMI
- ▶ **PISP:** payment initiation service provider, offering payment service 7
- ▶ **AISP:** account information service provider, offering payment service 8
- ▶ **CBPII:** card-based payment instrument issuing, offering a business model under payment service 5 (issuing)
- ▶ **TPP:** third party provider = collective name for authorized institutions providing payment initiation, account information and/or CBPII (includes banks!)
- ▶ **API / Dedicated interface:** Application Programming Interface or the IT application used to allow TPPs to connect to ASPSP's payment accounts



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# LEGAL ASPECTS: REQUIREMENTS

- ▶ EBA Guidelines on Authorisation are exhaustive and the basis for our process of application files
- ▶ At national level, we've set up forms to simplify the Guidelines for potential applicants:
  - **Guideline 15:** Fit & proper of shareholders with a qualifying holding in the share capital of the applicant → one form limiting range of information requested
  - **Guideline 16:** Fit & proper of management and control functions → based on Fit & Proper policy rolled out across financial institutions
  - **Guideline 18:** Professional indemnity insurance or comparable guarantee → set up Excel tool to calculate requirement in accordance with the dedicated EBA Guidelines
  - **Guideline 13:** Security Policy → IT auditors have set up “outsourcing risk assessment” templates and translations of Guideline in IT principles



# LEGAL ASPECTS: REQUIREMENTS

Legal Requirement		Concrete requirement
<b>Guideline 2</b>	Identification Details	Self-delivery → verified against corporate databases
<b>Guideline 3</b>	Programme of Operations	Key requirement → should be very detailed: front & back-end payment and information flows
<b>Guideline 4</b>	Business Plan	Key requirement → should contain neutral, worst & best case scenarios
<b>Guideline 5</b>	Structural Organisation	Focused on outsourcing → self-assessment against Outsourcing Principles to be included and close link with governance of control/oversight/monitoring of outsourced tasks
<b>Guideline 6</b>	Evidence of initial capital	Entirely paid up capital → link with business plan



# LEGAL ASPECTS: REQUIREMENTS

Legal Requirement		Concrete requirement
<b>Guideline 7</b>	Safeguarding	Letter from banking institution confirming account is fully segregated
<b>Guideline 8</b>	Governance and internal control mechanisms	Management & Board organisation CPL/Risk/IA set-up & procedures/charters
<b>PSD2 'New' Requirements</b>		
<b>Guideline 9</b>	Procedure for handling security incidents	Draft procedure
<b>Guideline 10</b>	Procedure for sensitive data	Draft procedure
<b>Guideline 11</b>	Business continuity	Draft procedure
<b>Guideline 12</b>	Statistical data collection	Explain how this will be done in application file

# LEGAL ASPECTS: REQUIREMENTS

Legal Requirement		Concrete requirement
<b>Guideline 13</b>	Security policy document	Deep dive by IT auditor department
<b>Guideline 14</b>	AML/CTF requirements	Policies & link with governance requirements Deep dive by AML department
<b>Guideline 15/16</b>	Fit & proper requirements Shareholders and management	Dedicated forms to be completed
<b>Guideline 17</b>	Statutory auditor	Contract to be provided
<b>Guideline 18</b>	Professional Indemnity insurance	Calculation in line with Excel tool Contract or statement from insurer mentioning both services and coverage in line with PSD2 liability requirements



# LEGAL ASPECTS: DIFFICULTIES

## ▶ Qualification of services

- Payment services vs. electronic money issuing (?)
- Account Information Services (?)
- Money remittance (6) vs. execution of payment transactions (3)

## ▶ Desirability of licensing certain business models

- Commercial agent exclusion from PSD2: interpretation may diverge based on national law
- Limited network exemption: interpretation diverges between Member States
- Technical service provision (?)

## ▶ Recurring legal difficulties in Application files

- Defining '*central administration*' and '*Belgian control*' vs. massive outsourcing: wildly divergent national approaches resulting in seriously divergent licensing requirements
- Governance discussions with start-ups
- Prudential capital calculation





# AGENDA

## 1. LEGAL ASPECTS OF LICENSING

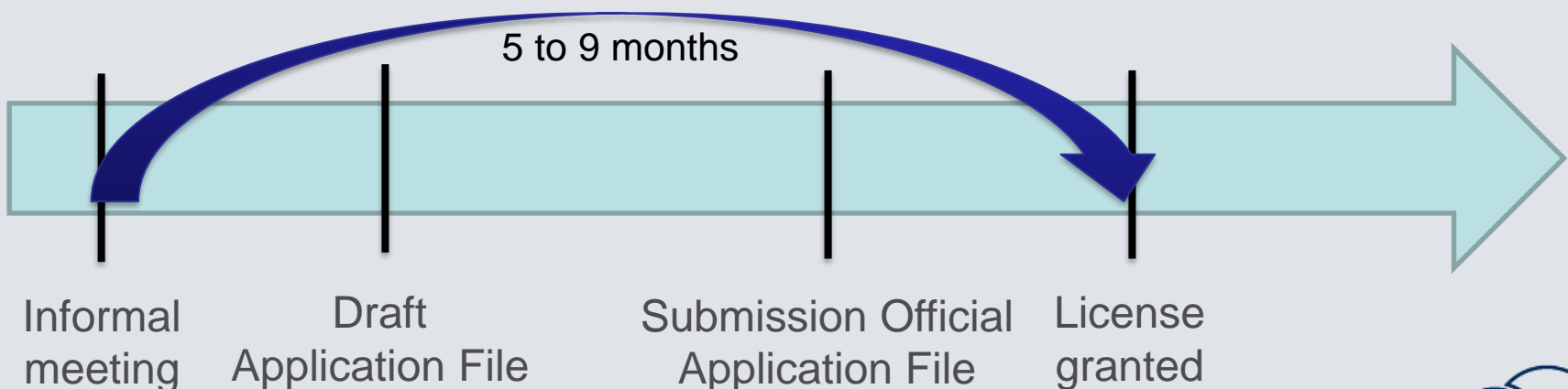
## 2. PRACTICAL ASPECTS OF LICENSING

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# LICENSING PROCEDURE

- ▶ Application file should be based on EBA Guidelines on Authorisation and contain the following:
  - Overview document responding to each requirement chronologically
  - Reference in overview document to annexes describing procedures & processes in more detail. List of annexes
  - Fit & Proper assessments form for shareholders & individuals
  - Form for EU passport (if so desired by applicant)
- ▶ Practical process when seeking a Belgian license as PI/ELMI



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# INTERNAL PROCEDURE

- ▶ **4-eyes principle:** applications reviewed by two file 'managers': one institutional & one financial analyst
- ▶ **Internal review** by hierarchy: team & department managers
- ▶ **Presentation** of each application file to full Board of Directors
  - summary of application file in a Note presented to the Board
  - oral presentation to the Board
  - recommendations and immediate follow-up included in licensing letter
  - appearance on national register (website) and letter = license
  - authorisation number = corporate registration number
- ▶ Applicant keeps the **two file 'managers'** as future SPOCs in charge of later questions post-licensing
- ▶ **Support staff** for recurring administrative aspects (fit & proper)





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# OVER(?)COMING HURDLES FOR APPLICANTS



# 1. Knowledge of technicalities/law varies

## NBB Early Regulatory Guidance

- FinTech SPOC: [fintech@nbb.be](mailto:fintech@nbb.be)
- Any firm with concrete project/idea requiring license in Belgium

# 2. Business model qualification uncertainty

# 3. Payment account definition

- ECJ ruled certain savings accounts are not payment accounts
- AISP business case limited to current accounts is hard to imagine

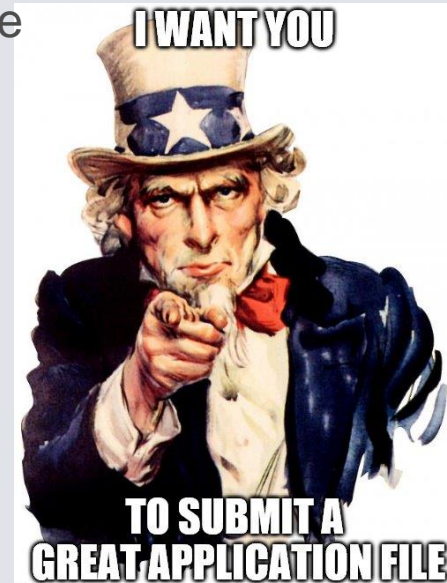
# 4. PSD2

- Lack of single standard for APIs EU-wide
- Uncertainty for new and existing business models ahead of 14 September 2019 deadline: SCA and CSC



# DO's & DON'Ts PROVIDED TO APPLICANTS

- ▶ *Business (qualification services)*: explain in detail the precise information flows behind your payment business: front-end & back-end. Use schematics & be detailed
- ▶ 'Central Belgian administration': no PO-boxes & avoidance of regulatory shopping
- ▶ No 'kamikaze' style license applications
- ▶ 'Do your Homework': seek regulatory guidance and ask questions before submitting application file
- ▶ 'Be detailed': be consistent & explain all assumptions underlying market analyses, business plan & figures
- ▶ Do not submit a file with gaps in it → 3 months timing starts after complete file!
- ▶ Follow administrative requirements regarding fit & proper assessments (templates, etc.)



- **Do Not Overestimate the time the NBB needs to assess your file**
- **Do Not Underestimate the time YOU need to comply with our remarks**



# THANK YOU



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