

Circular

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Reporting on inherent risks related to money laundering and the financing of terrorism to which financial institutions are exposed

Scope

- *all credit institutions, including EU and non-EU branches;*
- *all stockbroking firms, including EU and non-EU branches;*
- *all insurance companies authorised to conduct life insurance business, including EU and non-EU branches;*
- *all payment institutions and electronic money institutions, including EU and non-EU branches;*
- *all central contact points in Belgium of payment institutions and electronic money institutions authorised in other member states of the European Economic Area;*
- *all settlement institutions and institutions equivalent to settlement institutions, including EU and non-EU branches.*

Summary/Objectives

This questionnaire aims to provide the National Bank of Belgium with standardised information which will enable it to strengthen its risk-based approach in exercising its legal supervisory powers in the area of the prevention of money laundering and terrorist financing.

Structure

1. *Introduction*
2. *Background*
3. *Integration in periodic questionnaire*
4. *Deadline*
5. *Practical aspects*
6. *Methodology for answering the questionnaire*

Dear Sir,
Dear Madam,

Attached to this circular, you will find a questionnaire through which the National Bank of Belgium (hereinafter "the Bank") wishes to obtain standardised information on the inherent risks related to money laundering and terrorist financing (hereinafter ML/FT) which threaten your institution. The Bank expects your financial institution to respond to the questionnaire taking into account the following modalities.

1. Introduction

In 2013 the Bank for the first time sent a questionnaire on the prevention of money laundering and terrorist financing (hereinafter AML/FT) to the financial institutions¹. This questionnaire was primarily intended to check the conformity of the internal AML/FT procedures of the financial institutions with the Belgian AML/FT regulations.

In subsequent years, new questions and/or chapters were successively added to this periodic questionnaire².

In the questionnaire which was sent to the institutions last year, as an annex to Circular NBB_2016_42³, chapter 7, in which statistical information was for the first time requested in 2015, was however omitted. The said circular already announced that in 2017, the Bank would request the statistical information needed to strengthen its risk-based approach, via a separate reporting. This reporting is the subject of this circular.

2. Background: a risk-based AML/FT supervision of financial institutions

The "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation" (also known as the FATF Recommendations), which were adopted in February 2012, strongly emphasize the importance of the implementation of a risk-based approach. These international standards require the relevant supervisory authorities to have a supervisory model for the prevention of money laundering or terrorist financing which allows them to exercise their supervisory powers based on the risks to which the financial institutions under their supervision are exposed.

The requirement to have a risk-based supervisory model was recently also included in the European AML/FT regulations⁴ and will therefore, after the transposition of the Fourth AML/FT Directive 2015/849 of 20 May 2015 into Belgian law, form one of the cornerstones for the organisation of the AML/FT supervision of financial institutions.

¹ Circular NBB_2013_10 of 25 September 2013.

² Circulares NBB_2014_11 of 14 October 2014 and NBB_2015_26 of 7 October 2015.

³ Circular NBB_2016_42 of 26 October 2016.

⁴ Directive (EU) 2015/849 of 20 May 2015.

In light of these developments, the European Supervisory Authorities⁵ (hereinafter "the ESAs") published joint guidelines on a risk-based AML/FT supervision of financial institutions on 16 November 2016. These guidelines contain concrete recommendations for the development of a risk-based supervisory model by the national AML/FT supervisory authorities. In particular, these recommendations concern the following steps:

- Step 1: identifying the different ML/FT risk factors;
- Step 2: implementing a risk assessment for each of the financial institutions under supervision;
- Step 3: exercising the supervision itself; and
- Step 4: reviewing, adjusting and monitoring the risk-based supervisory model.

In order to allow the Bank to perform a risk assessment for each of the different financial institutions under its supervision (step 2 of the ESA guidelines) and enable it to determine supervisory priorities based on this assessment, it must possess, on the one hand, information on the inherent ML/FT risks to which the institutions are exposed and, on the other, information on the quality of the risk mitigating measures taken by the financial institutions. On the basis of both assessments, the residual ML/FT risk can then be determined for each institution.

Through the questionnaire annexed to this circular, the Bank will, in 2017, taking into account the international, European and national standards and guidelines on the matter, request specific information on the inherent ML/FT risks to which the financial institutions under its supervision are exposed. Combined with the information the Bank received earlier this year from the supervised financial institutions on the conformity of their internal procedures with the Belgian AML/FT regulations, this will enable the Bank to determine each institution's residual ML/FT risk, so that it can then deploy its supervisory resources in the most efficient manner for monitoring the institutions with the highest ML/FT risk.

Additionally, the Bank notes that the information it receives from financial institutions regarding, on the one hand, the inherent ML/FT risks to which they are exposed and, on the other, the quality of the risk mitigating measures taken by them is, in practice, supplemented by and assessed in light of other sources of information which the Bank can either access or gain access to. These sources include findings made as a result of on-site inspections, contacts between the supervisory authority and financial institutions, reports of and contacts with accredited auditors, information exchanged with the CTIF-CFI, the prudential supervisors and AML/FT supervisors from other member states and third countries, information provided by the judicial authorities, etc.

3. Integration of the questionnaire on inherent ML/FT risks in the next periodic AML/FT questionnaire

As briefly mentioned above, the questionnaire which is the subject of this circular replaces and complements the former chapter 7 of the periodic AML/FT questionnaire. This approach was chosen because it was impossible – for technical IT reasons – for the Bank to integrate the questionnaire on inherent ML/FT risks in the periodic questionnaire which financial institutions had to submit to the Bank through OneGate in January/February 2017.

However, starting from next year, the Bank intends to reintegrate the information now requested through the questionnaire which is the subject of this circular in the periodic AML/FT questionnaire so that, as from 2018, all AML/FT reportings to the Bank will – in principle – be bundled in one single reporting to be submitted through OneGate.

⁵ I.e. the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).

In this context, the Bank also notes that the former chapters 1 to 6 of the periodic questionnaire, through which the Bank has been checking the conformity of the internal procedures with the Belgian AML/FT regulations since 2013, will also be thoroughly reviewed in the next periodic questionnaire. This will partially shift the focus of this reporting from solely checking the conformity of the internal procedures with the applicable regulations to checking the quality of the risk mitigating measures in general. Of course, the conformity of the internal procedures with the Belgian AML/FT regulations remains an essential and crucial element to which the Bank will continue to pay due attention in the future.

4. Deadline

The answers to the questionnaire which is the subject of this circular must be submitted in the usual manner through eCorporate by **Friday 30 June 2017** at the latest.

Institutions that do not have access to eCorporate, particularly foreign payment institutions and electronic money institutions that operate in Belgium by way of the free provision of services and have a physical presence here in the form of agents and/or distributors representing them, should deliver the completed questionnaire by post or by e-mail to the Bank.

- By post: National Bank of Belgium
Prudential Policy and Financial Stability service
AML/CFT Supervision
Boulevard de Berlaimont 14
1000 Brussels
- By e-mail: Supervision.ta.aml@nbb.be

5. Practical aspects

The Bank opted to draw up a separate questionnaire for each category of supervised institutions which – to the extent possible – takes into account the specific activities performed in the different sectors. As a result, a total of four different questionnaires were drawn up for the following categories of institutions: (i) credit institutions, (ii) stockbroking firms, (iii) life insurance companies and (iv) payment institutions and electronic money institutions

All questionnaires are available in Dutch, French and English.

Unlike the periodic questionnaire on money laundering, the different questionnaires will not be sent to you in paper form. You are therefore required to download yourself the correct questionnaire from the Bank's website. Of course, the authorisation granted to your institution by the Bank is of vital importance in this regard. Settlement institutions and institutions equivalent to settlement institutions should answer the questionnaire intended for credit institutions.

The questionnaires can be found in Word format on the Bank's website by following these instructions:

1. Go to www.nbb.be
2. Go to:

- | | |
|---|--|
| a) Credit institutions | Prudential supervision → Areas of responsibility → Credit institutions → Circulars and communications → Money laundering → Click on this circular |
| b) Life insurance companies | Prudential supervision → Areas of responsibility → Insurance or reinsurance undertakings → Laws, regulations, administrative rules and guidance → Circulars and communications → Money laundering → Click on this circular |
| c) Stockbroking firms | Prudential supervision → Areas of responsibility → Stockbroking firms → Circulars and communications → Money laundering → Click on this circular |
| d) Payment institutions and electronic money institutions | Prudential supervision → Areas of responsibility → Payment institutions and electronic money institutions → Circulars and communications → Click on this circular |

For any questions regarding these questionnaires, please contact the Bank's AML/FT supervisory team using the following e-mail address: supervision.ta.aml@nbb.be.

6. Methodology for answering the questionnaire

a) Fields to be completed

All answer boxes to be completed by your institution have been highlighted in green in the questionnaire. This means that the Bank, in principle, expects an answer from your institution in each green box.

However, not all chapters of the questionnaire have to be answered by all institutions. This is the case, in particular, for the questionnaire intended for payment institutions and electronic money institutions. Given the diversity of the activities performed by these institutions, it is specified in several chapters which institutions are expected to answer the questions. For instance, questions regarding money remittance need only be answered by institutions that have a PI6 authorisation.

If certain chapters need only be completed by institutions performing a specific activity, this is indicated in the questionnaire itself.

b) Answering the questions

The different questionnaires may contain two different types of questions.

For the first type, your institution should give an answer that has been predefined by the Bank. In such a case, your institution only has to choose the answer applicable to it by clicking the corresponding checkbox.

For the second type of questions, which are questions for which there are no predefined answers (which is the case when statistical information is requested), your institution should **always use one of the following answer options:**

- First possibility: your institution has the requested information, in which case you need only enter the correct answer.

If you enter a number, you should always write it in full. For example, if your institution has one million four hundred thousand seventy customers, you should formulate your institution's answer as follows: **'1,400,070'**.

- Second possibility: the question does not apply to your institution. In that case, you should enter 'Not applicable' in the answer box.
- Third possibility: the question does apply to your institution, but your institution does not have the requested information. If that is the case, you should enter 'Not available' in the answer box.
- Only in **extraordinary** circumstances, if none of the three previous answers give an accurate picture of the situation in your institution, should you provide a different answer in the answer box.

Financial institutions are requested to adhere strictly to the instructions above. If the questionnaire is not completed in the manner described above, the Bank may refuse the answer form and your institution will be required to submit a new and correctly completed form.

c) Comment boxes

As in the periodic AML/FT questionnaire, the Bank in this questionnaire provides for the possibility for financial institutions to explain or clarify their answers in a comment box.

For this questionnaire, the comments are not strictly limited to 150 characters. Nevertheless, the financial institutions are asked to keep their notes and/or comments as succinct as possible. The use of telegram style is advised, and under no circumstances may the comments exceed reasonable limits. Should this be the case, the Bank will refuse the answer form submitted and your institution will be required to submit a new and correctly completed form.

Additionally, it should be noted that this questionnaire also requires your institution to include a comment if it enters 'Not applicable' as an answer. This comment should allow the Bank to understand why the question is not relevant to your institution.

d) What if your institution cannot provide a requested statistic with absolute certainty and can only make a reasonable estimate?

As indicated above, the questionnaires are intended to provide the Bank with information that should allow it to make an estimate of the inherent ML/FT risks to which financial institutions are exposed.

If a financial institution cannot provide the requested information with full certainty, but only by approximation, or if only an – adequate – estimate of the requested information can be provided (e.g. in the form of estimated percentages), the financial institution is requested to nevertheless provide this approximate information or adequate estimate in the notes or comment boxes, so that the Bank can take these approximations or estimates into account in its analysis.

In such cases, your institution should enter 'Not available' in the answer box but is allowed to provide a well-founded estimate of the requested information in the notes/comments.

Example: All supervised institutions are asked to provide the number of 'high-risk' customers. Certain institutions currently do not yet assign risk ratings to their customers, and therefore do not yet have the requested statistic. However, some of these institutions do allow their customers to fill in additional AML/FT questionnaires if they have identified a high risk with regard to a customer, and are able to provide the number of customers that have completed such an additional AML/FT questionnaire.

The Bank therefore emphasizes that financial institutions may fully use the comment boxes to explain and clarify their answers, thereby informing the Bank – to the extent possible – of either the presence or absence of certain ML/FT risks.

e) Assessment of the institutions' answers by the Bank – objectives

As has already been comprehensively described in this circular, the Bank will use your institution's answers to gain a better understanding of the inherent ML/FT risks of your institution. In this context, your institution's answers will be analysed taking into account the activities performed by your institution, its size and complexity, the products and services offered by it, etc.

If your institution does not have all the requested information, e.g. because your institution does not (yet) keep statistical information on certain aspects covered in the questionnaire, the Bank will not consider the unavailability of this information an impediment to the submission of the questionnaire (since your institution may, in such a case, enter the standard 'Not available' answer (see point 6.b) above). However, the Bank will incorporate the absence of the requested information – taking into account, among other things, the weight and importance of the missing information – in the assessment of the residual ML/FT risk, and therefore also in the organisation and planning of the supervision to be conducted by the Bank.

f) Responsibility for the accuracy of the answers

The answers to the questionnaire are submitted to the Bank under the ultimate responsibility of the senior management of the answering financial institution.

However, it should be noted that the person responsible assigned within each financial institution in accordance with Article 18 of the Law of 11 January 1993 is, pursuant to the same legal provision, not only primarily tasked with analysing atypical transactions in order to determine whether these transactions should be considered suspicious and notified to the Financial Intelligence Processing Unit (CTIF-CFI), but also with implementing the policies and procedures referred to in Articles 16 and 17 of the Law, particularly the internal control measures and procedures which are necessary to ensure compliance with the Law and which are covered in the questionnaire. Article 35, § 3, first paragraph of the CBFA Regulation of 23 February 2010 also states that this person responsible should ensure, in general, that the institution fulfils all its obligations with regard to the prevention of money laundering and terrorist financing and, more in particular, that the institution establishes an adequate administrative organisation and internal control measures as required pursuant to Article 16 of the Law. This person responsible should also be authorised to propose, on his/her own initiative, all necessary or useful measures to the senior management of the institution, including the freeing of the necessary resources.

The Bank therefore expects the senior management of the financial institution to decide which answers are provided to the questionnaire, on the proposal of the person responsible for the prevention of money laundering and terrorist financing.

In the context of specific control actions or on-site inspections, the Bank will not fail to verify the accuracy and quality of the answers provided by the institutions.

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Yours faithfully,

Jan Smets
Governor

Annexes (5) – available only via www.nbb.be:

- *Questionnaire credit institutions;*
- *Questionnaire life insurance companies;*
- *Questionnaire stockbroking firms;*
- *Questionnaire payment institutions and electronic money institutions;*
- *List of high-risk countries, EU sanction countries and off-shore countries (annex 1 to the above-mentioned questionnaires).*