

## Circular

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### **Due diligence obligations regarding the repatriation of funds from abroad and taking into account of tax regularisation procedures when applying the Anti-Money Laundering Law**

#### Scope

- *credit institutions governed by Belgian law, including Belgian branches of institutions governed by the law of another country of the European Economic Area (EEA) or of a third country;*
- *stockbroking firms governed by Belgian law, including Belgian branches of firms governed by the law of another EEA country or of a third country;*
- *insurance companies governed by Belgian law that are authorised to pursue life insurance activities, including Belgian branches of companies governed by the law of another EEA country or of a third country;*

*insofar as these financial institutions are engaged in asset management activities or issue single premium life insurance policies, in the context of which they receive or have received significant amounts of repatriated funds.*

#### Summary/Objectives

*In order to promote equal treatment of all Belgian financial institutions that, because of their asset management activities or the issuance of single premium life insurance policies, are faced with the risk of laundering the proceeds of serious fiscal fraud, but also taking into account the tax regularisation procedures followed by their customers, and to ensure adequate management of these risks by these institutions, this Circular aims to clarify the Bank's expectations for proper compliance with the due diligence obligations imposed by the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, with regard to the funds held by these institutions for their customers following repatriations of funds from abroad.*

**1. OBJECTIVES AND SUMMARY OF THE CIRCULAR**

**2. INTRODUCTORY REMARKS**

(§§ 1 to 11)

**3. GUIDELINES FOR OBLIGED ENTITIES**

**A. Expectations regarding the detection and reporting of suspicious transactions and funds to CTIF-CFI**

A.1. Are financial institutions required to inform CTIF-CFI of every repatriation?

(§§ 12 to 17)

A.2. Is a financial institution allowed to accept repatriated funds if it believes there is a suspicion of money laundering and intends to report this to CTIF-CFI? Must every reporting to CTIF-CFI result in the termination of the business relationship with the customer?

(§§ 18 to 22)

A.3. What are the obligations of a financial institution that discovers a posteriori that funds it has previously accepted are suspected of being linked to money laundering? Is it allowed to execute a cash withdrawal by the customer or carry out an instruction to transfer the funds to another financial institution, particularly if their business relationship has been terminated?

(§§ 23 to 25)

A.4. Where funds are transferred to another financial institution following the termination of the business relationship with a first financial institution for reasons related to suspicions of money laundering, how can the new financial institution comply with its own due diligence obligations?

(§§ 26 to 28)

A.5. How should financial institutions deal with cases where they wish to strengthen KYC for existing customers but find that the customer is unable to provide the necessary documentation, even though there is no evidence that the funds are of illicit origin?

(§§ 29 to 30)

**B. Expectations regarding the verification of the origin of the funds - supporting documents**

B.1. General introductory remarks.

(§§ 31 to 36)

B.2. If the funds repatriated by the customer were acquired through donations (particularly manual and/or bank gifts), to what extent should potential fraud by the donor be taken into account? What measures are expected if, due to circumstances, the customer is unable to provide certain supporting documents?

(§§ 37 to 43)

B.3. If the customer's assets and/or the funds repatriated by the customer derive from an inheritance or a donation previously received by the donor, to what extent should potential fraud by the person who originally acquired the funds concerned be taken into account?

(§§ 44 to 45)

B.4. Should the repatriation of the proceeds of a donation, legacy or inheritance that the customer received in illo tempore on a foreign account and held there, be treated differently than a transfer executed from abroad by the donor or the estate of the deceased directly to the Belgian account of the donee, legatee or heir?

(§§ 46 to 49)

B.5. What documentation should be obtained with regard to the origin of the funds derived from the sale of real estate by the donor or the deceased?

(§ 50)

B.6. What documentation should be obtained with regard to the origin of the funds derived from the accumulation of substantial savings through deductions from the remunerations received?

(§ 51)

- B.7. Are financial institutions required to report to CTIF-CFI if the heirs or donees have no knowledge of the origin of the capital to be repatriated but cannot be suspected of being the perpetrators, co-perpetrators or accomplices to any criminal activity from which this capital may be derived?  
(§ 52)

**C. Examination of the legitimacy of repatriated funds from a tax point of view**

- C.1. How should financial institutions deal with repatriation cases where customers demonstrate that they have complied with all their fiscal obligations but the initial origin of the funds can no longer be clearly documented?  
(§§ 53 to 54)
- C.2. What documents must a financial institution have if a regularisation procedure has been initiated, before it is allowed to accept the funds? At what point in the regularisation procedure can the financial institution accept the funds?  
(§§ 55 to 58)
- C.3. Should financial institutions, as part of the periodic review of their business relationships with their customers, systematically reassess the legitimacy, from a tax point of view, of the funds held by them at that time which have previously been repatriated and accepted, taking into account the tax regularisation standards applicable at the time of repatriation?
- a) Analysis of the legitimacy from a tax point of view of the funds upon their receipt by the financial institution  
(§§ 59 to 66)
  - b) Application of the Law of 21 July 2016 ("DLU/EBA quater")  
(§§ 67 to 68)
- C.4. To what extent should the standards for proving the origin of assets set by the Contact Point for Regularisations ("Point de contact-régularisations" in French, "Contactpunt regularisaties" in Dutch) be taken into account for the purposes of the Anti-Money Laundering Law?  
(§ 69)
- C.5. What about customers who have regularised their foreign income from the capital, but not the capital itself: what proof does the financial institution need of the origin of the capital (e.g. if it was the previous generation that expatriated the funds)?  
(§§ 70 to 74)
- C.6. Should the Belgian financial institution check whether indirect taxes have been paid? In particular, what should it do if it appears that a (potential) customer who transfers funds from abroad has not paid any TSEO (tax on stock exchange operations) and/or any TSA (tax on securities accounts)?  
(§§ 75 to 76)
- C.7. Can a distinction be made between the limitation period for an offence involving the acquisition of a capital and the limitation period for an offence involving the laundering of income if the income has been regularised? For example, in the case of misappropriation of corporate assets in the 1990s of which the income has been regularised?  
(§§ 77 to 79)
- C.8. If a financial institution has come to the conclusion that the assets have a legitimate origin, does it also have to actively examine whether there is simple fiscal fraud and substantiate this (e.g. does a Belgian resident have to prove that he paid tax on stock exchange operations for transactions from a Dutch securities account)?  
(§ 80)

**D. Various questions**

- D.1. What are the NBB's expectations in terms of governance and internal organisation for the management of repatriation files?  
(§§ 81 to 86)
- D.2. What internal procedures should a financial institution have for managing repatriation files?  
(§§ 87 to 88)
- D.3. May a financial institution apply a relative or absolute threshold below which repatriation should be examined with less rigour? If so, what amount is acceptable?  
(§§ 89 to 90)

- D.4. Are there other criteria or best practices that should be taken into account in the risk assessment?  
(§ 91)

Dear Sir,  
Dear Madam,

## **1. OBJECTIVES AND SUMMARY OF THE CIRCULAR**

The purpose of this Circular is to provide clarifications and assurances to financial institutions regarding the expectations of the National Bank of Belgium (hereinafter “the Bank”) in relation to the due diligence required pursuant to the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash (hereinafter “the Law” or “the Anti-Money Laundering Law”) in respect of repatriations of funds from abroad received by these institutions in the context of their asset management activities or the issuance of single premium life insurance policies. This Circular does not provide an interpretation of fiscal or criminal law, but is limited to the application of the Anti-Money Laundering Law.

The aim is also to create a level playing field in the sector.

In addition, it is intended to increase the predictability of the Bank's further actions with regard to financial institutions that have followed the required procedure, without organising a new systematic control of the origin of all funds held in the context of the aforementioned activities. Sufficient assurance may in fact be obtained by having the internal audit conduct a thorough examination of the internal due diligence procedures and practices regarding the repatriations of funds in question, and by implementing the measures provided for in the action plan drawn up on that basis (see §§ 62 to 66 below). This internal audit must be able to rely on a credible “sample” of cases, compiled on the basis of current practices in this area. If the examination of this sample has been duly carried out and concluded, the Bank will not undertake any other control actions in this respect. See §§ 66 of the Circular in this regard.

Financial institutions are asked to carry out an internal audit to thoroughly examine the internal procedures relating to the due diligence obligations in respect of the repatriation of funds from abroad, as well as compliance with these procedures. This examination does not pertain to other funds received in the context of asset management activities or as payment of a single insurance premium. It concerns the internal procedures and their correct and consistent application at the time of the repatriation of the funds, taking into account the relevant rules and criteria applicable at that time. It is therefore not necessary to carry out this examination of past facts on the basis of current regulations and expectations.

The Bank considers that the internal audit function, given its statutory duties and independence, is best placed to perform this examination. It does not, however, want to exclude the possibility for the internal audit function to call on or be assisted by other supervisory services (such as the compliance function), provided that conflicts of interest are properly managed and that the ultimate responsibility lies with the internal audit function.

The Bank is aware that as time passes (i.e. the older the repatriations examined), evidence may be based more on (concrete) indications, context, etc., and allows financial institutions to take this into account when assessing the transactions.

If the internal audit indicates that the financial institution has reasonably fulfilled its obligations (meaning that it has credibly fulfilled its due diligence obligation with regard to the repatriated funds), the Bank considers the examination closed.

If the internal audit examination reveals significant deficiencies, the financial institution should draw up a proportionate action plan, as part of which the relevant repatriations will be subject to a new examination. This action plan should be proportionate to the findings of the audit and might, depending on these findings, only cover a particular period in the past or repatriations from certain countries, to certain categories of customers, etc.

This examination should not be based on the requirement that the origin of the funds be properly proven, but that a “reasonable person” (primarily the AMLCO) can be satisfied as to the legitimacy of the origin of the funds, and that this legitimacy be supported by documents if possible, all in proportion to the risk of money laundering.

This Circular outlines information that can be taken into account when assessing this risk – amount, country of origin, knowledge of the customer and his assets, knowledge of the donation or inheritance, registration of the inherited property in the declaration of estate, etc. (see § 32). If such reasonable evidence cannot be provided, the institution is obliged to report to the Financial Intelligence Processing Unit (CTIF-CFI).

The Bank invites each financial institution engaged in asset management activities or issuing single premium life insurance policies, under which it receives or has received large amounts of repatriated funds from abroad, to provide it, by 31 October 2021, with a schedule for the conduct and completion of the internal audit examination, with the understanding that the deadline for such completion is 30 June 2022. The action plan should be drawn up within three months of the completion of the internal audit assignment. The internal audit report and the action plan should be submitted to the Bank.

As this Circular aims to clarify expectations for due diligence regarding repatriations of funds from abroad, the Bank specifies that transfers of funds between Belgian financial institutions do not fall within the scope of this Circular, unless the funds concerned have previously been repatriated. In the latter case, the Bank notes that the Anti-Money Laundering Law allows the two institutions to exchange information on the customer and the funds involved. This information can relate to the origin of the funds or even any reporting to CTIF-CFI.

## **2. INTRODUCTORY REMARKS**

- 1) In its capacity as supervisory authority as referred to in Article 85, § 1, 3° of the Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash (hereinafter “the Law” or “the Anti-Money Laundering Law”), the National Bank of Belgium (hereinafter “the Bank”) is empowered by Article 86, § 2 of the same Law to address comments and recommendations to the financial institutions falling under its supervisory powers in order to clarify the scope of the obligations imposed on them by the Law and the regulations adopted in implementation thereof, particularly the Regulation of the Bank of 21 November 2017 on the prevention of money laundering and terrorist financing (hereinafter “the Anti-Money Laundering Regulation of the NBB”).
- 2) In this regard, the Bank expresses in this Circular its expectations regarding proper compliance by the financial institutions falling under its supervisory powers (hereinafter the “financial institutions”) with the due diligence obligations imposed on them by or pursuant to this Law when they receive significant amounts of transferred funds, whether initiated by their customers themselves for their own benefit or by third parties for the benefit of their customers.
- 3) The comments and recommendations below apply in all cases of repatriations of funds, but are particularly relevant in the context of asset management activities (private banking) or the issuing of large single premium life insurance policies, also taking into account the associated risk factors, including:
  - the large amounts of customer assets that are usually involved,
  - the frequency of the repatriations of funds from abroad and, where appropriate, from high-risk countries or territories, from countries or territories with low or no taxes, or from countries which are known to be or to have been widely used to transfer funds there for the purpose of committing fiscal fraud or concealing the proceeds thereof,
  - the frequent use of potentially complex legal structures and/or legal structures with little or no transparency,
  - the potential technical complexity of analysing the origin of the funds, especially from a fiscal perspective,
  - etc.
- 4) The Bank's comments and recommendations below are intended as a response to the questions that financial institutions engaged in private banking activities have collectively addressed to the Bank, and take into account the results of the Bank's prior dialogue with these institutions

regarding the answers to be provided <sup>[1]</sup>. This Circular's structure is therefore based on the questions that these financial institutions have addressed to the Bank and to which the Bank intends to respond.

- 5) The comments and recommendations below apply both in case of transfers of large amounts from an account opened with another Belgian financial institution and in case of transfers executed from abroad (hereinafter "repatriations of funds"). However, this Circular only applies if there has been a prior repatriation of funds from abroad.
- 6) In the latter case, the cross-border nature of the repatriations of funds requires that, when analysing the related risks of money laundering, particular attention be paid to the risk factors associated with the foreign countries from which the funds are repatriated to Belgium. Such operations may in particular involve specific risks of laundering the proceeds of "serious fiscal fraud, whether organised or not" (see Article 4, 23°, k of the Law).
- 7) However, it should also be noted that, pursuant to Article 36/4 of the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, the Bank is not competent in fiscal matters <sup>[2]</sup>.
- 8) Consequently, the comments below which relate to the concept of "serious fiscal fraud, whether organised or not" within the meaning of the Anti-money Laundering Law and which reference provisions or concepts of fiscal law, apply only to the assessment of the correct application of this Law. They are not binding on the administrative or judicial authorities competent in fiscal matters.
- 9) The Bank is also not competent in criminal matters and, in particular, cannot rule on the conditions under which a financial institution, its directors or employees can be prosecuted and sentenced as perpetrators, co-perpetrators or accomplices to a money laundering offence under Article 505 of the Criminal Code.
- 10) However, where it is established that a financial institution has not taken the measures required by or pursuant to the Anti-Money Laundering Law to effectively detect suspicious funds or transactions and, if necessary, report suspicions to CTIF-CFI, and if it can be demonstrated that this institution or its directors or employees have knowingly perpetuated serious deficiencies in these prevention mechanisms or have deliberately bypassed or tolerated the bypassing of these mechanisms in order to enable customers to commit money laundering offences, the Bank considers that this institution and, where appropriate depending on the circumstances, its directors or employees, face the risk of being prosecuted as perpetrators, co-perpetrators or accomplices to a money laundering offence under Article 505 of the Criminal Code. In order to minimise this risk, financial institutions should ensure that appropriate and effective measures are taken to prevent money laundering.
- 11) As to the scope of the exemption from civil, criminal or disciplinary liability granted by Article 57 of the Law to financial institutions, their directors, employees, agents or distributors that have disclosed information to CTIF-CFI in good faith, see the explanation of that article in the explanatory memorandum of the Law, Chapter 4 of the ["CTIF-CFI Guidelines of 15 August 2020 for obliged entities"](#) and the page ["Protection of reporting persons"](#) on the Bank's website.

### **3. GUIDELINES FOR OBLIGED ENTITIES**

#### **A. Expectations regarding the detection and reporting of suspicious transactions and funds to CTIF-CFI**

<sup>1</sup> In particular at a workshop organised by the Bank in association with Febelfin on 26 November 2020, to which the Bank invited, among others, the AMLCOs of the financial institutions concerned.

<sup>2</sup> Without prejudice to the rules and recommendations on "special schemes with the purpose or effect of promoting fiscal fraud by third parties" (see Article 236, § 5 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, [Circular D1 97/9 - D4 97/4/ of 18 December 1997 on special schemes](#) and [Circular D1 97/10/ of 30 December 1997 on prevention policy in respect of special schemes](#)).

#### A.1. Are financial institutions required to inform CTIF-CFI of every repatriation?

- 12) According to Article 47 et seq. of the Law, obliged entities, particularly financial institutions, are obliged to report to CTIF-CFI if they know, suspect or have reasonable grounds to suspect that funds, transactions or observed facts are related to money laundering. These principles also apply in case of repatriation of funds. It is therefore not necessary to systematically report every repatriation of whatever nature to CTIF-CFI, even when there is no suspicion. See also the [“CTIF-CFI Guidelines of 15 August 2020 for obliged entities”](#), which are published on CTIF-CFI’s website. If every repatriation was systematically reported to CTIF-CFI without any suspicion of money laundering, it could be considered that these reports were not made “in good faith”, which could prevent the reporting financial institution from being eligible for the exemption from liability set out in Article 57 of the Law.
- 13) The investment of funds abroad by Belgian residents, whether inside or outside the European Economic Area, cannot a priori be considered unlawful. It should be noted in this respect that Article 63 of the Treaty on the Functioning of the European Union provides that all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited. However, an investment of funds abroad may also have (or have had) the purpose of concealing the illicit origin of the funds concerned, for example the fact that they are the proceeds of serious fiscal fraud, or of carrying out a predicate offence to money laundering.
- 14) When a financial institution receives large amounts of funds to be credited to a customer's account or as payment for an insurance premium to be paid by the customer, the due diligence obligations to be complied with by this institution in accordance with Article 35, § 1, 1° of the Law generally include a careful examination of this transfer of funds in order to ascertain whether it is consistent with the purpose and nature of the business relationship or of the intended transaction and with the customer's risk profile. These due diligence obligations must be fulfilled in accordance with the risk-based approach imposed by Articles 7 and 19, § 2 of the Law. Where necessary, in particular if the transfer involves a large sum in absolute terms or in relation to the customer's profile, this examination must take particular account of the origin of the funds (see also the page [Customer and transaction due diligence](#) on the Bank’s website).
- 15) Any transfer of funds that cannot be regarded as a normal or ordinary transaction of the customer, in particular because of the amount, the apparent complexity of the transaction, etc., should be considered “atypical” and should therefore be subject to a thorough analysis in accordance with Article 45 of the Law. Under the risk-based approach, account must be taken of the fact that the funds are transferred from abroad. See in particular Articles 38 and 39 of the Law, which require that enhanced due diligence measures be implemented with regard to business relationships or occasional transactions with natural or legal persons or with legal arrangements, such as trusts, that involve a high-risk third country (see Articles 4, 9°, and 38 of the Law), and with regard to business relationships or transactions, including the reception of funds, that are somehow linked to a State with low or no taxes (Article 39). The Bank also considers that particular attention should be paid, in this context, to transfers from a country that is known to be or to have been widely used to transfer funds there for the purpose of committing fiscal fraud or concealing the proceeds thereof. Reports of “atypical” transfers of funds must be the result of the due diligence exercised both by the agents who are in direct contact with customers or who are responsible for carrying out their transactions, and by the automated transaction monitoring system. The criteria to be used by those agents and by the automated system to identify and report atypical transactions should be determined by the financial institutions in their internal policies and procedures. For the definition of these criteria, see in particular the [Joint Guidelines of the European Supervisory Authorities of 4 January 2018 on risk factors](#) (and their subsequent updates).
- 16) Where an atypical transfer of funds from abroad is reported to the AMLCO in accordance with Article 35, § 1, 1° of the Law, the in-depth analysis of this atypical



transaction which the AMLCO must carry out in accordance with Article 45 of the Law (see the page "[Analysis of atypical facts and transactions](#)" on the Bank's website) should aim in particular to clarify and document, according to the circumstances, why the funds in question were invested abroad, in order to decide whether or not their transfer to the customer's account with the Belgian financial institution concerned is suspicious within the meaning of article 47 of the Law (see the page "[Reporting of suspicions](#)" on the Bank's website).

17) For further details, see the clarification of the above answers in Annex 1 to this Circular.

A.2. Is a financial institution allowed to accept repatriated funds if it believes there is a suspicion of money laundering and intends to report this to CTIF-CFI? Must every reporting to CTIF-CFI result in the termination of the business relationship with the customer?

- 18) Regardless of the suspected predicate criminal activity, the Law does not prohibit a financial institution from receiving funds, repatriated from abroad or not, when it knows, suspects or has reasonable grounds to suspect that these funds are related to money laundering. However, the Law requires the financial institution to report this suspicion to CTIF-CFI. As long as the suspicion initially reported to CTIF-CFI has not been dispelled, the Bank also recommends that the reporting financial institution submit an additional report to CTIF-CFI if the customer instructs the financial institution to transfer the disputed funds to an account opened with another financial institution in Belgium or abroad or, a fortiori, if this customer expresses the wish to withdraw large amounts of these funds in cash, in one or more instalments. Such additional reporting enables CTIF-CFI, if it deems it necessary, to use the power conferred on it by Article 80 of the Law to oppose such a transfer or withdrawal. In these cases, it also is particularly important for the financial institution to submit this additional report before executing the transfer or withdrawal, in accordance with Article 51, § 1, first subparagraph of the Law, and to indicate in its report the deadline by which this transfer or withdrawal should be carried out.
- 19) It should be stressed that reporting to CTIF-CFI is not only required when the relevant funds are actually received, but also as soon as the financial institution is approached by a potential or existing customer with a view to a possible repatriation of funds that the financial institution knows, suspects or has reason to suspect are the proceeds of one or more of the criminal activities listed in Article 4, 23° of the Law. It should be noted that Article 47, § 1, first subparagraph of the Law explicitly stipulates that the obliged entities (including financial institutions) are obliged to report to CTIF-CFI in particular when they know, suspect or have reasonable grounds to suspect that transactions or even "attempted transactions" are related to money laundering or terrorist financing.
- 20) A suspicion should also be reported if the initial analysis carried out upon receipt of the funds did not give rise to any suspicion or did not reveal any reasonable grounds for suspecting an illicit origin of the funds, but new information subsequently obtained makes it necessary to review this assessment.
- 21) When a financial institution receives funds repatriated from abroad before it has been able to complete its documented examination of the legitimacy of the origin of the funds and the transaction (see §§ 33, 34 and 41 below) and therefore has not yet been able to determine whether it can consider the funds to be of legitimate origin or whether a suspicion should be reported to CTIF-CFI, the financial institution enters a critical period until it has completed this examination and decided whether or not a suspicion exists. The Bank considers that in view of the high risk associated with this situation, the financial institution is obliged, on the one hand, to do everything in its power to keep this critical period as short as possible and, on the other hand, to subject the account to which the funds concerned are credited to enhanced due diligence. If, during this critical period, the customer requests transfers of funds or cash withdrawals of large amounts from this account, it is the opinion of the Bank that the financial institution should subject these requests to enhanced scrutiny and take them into account when determining whether or not a suspicion exists. Should, after such transfers have been executed, the

documented examination of the legitimacy of the origin of the funds and of the repatriation lead to the conclusion that suspicions of money laundering indeed exist, the suspicious transaction report submitted to CTIF-CFI must clearly mention all transfers made from the account concerned. Furthermore, it should be noted that, when financial institutions make use of the option provided for in Article 31 of the Law of not completing the verification of the identity of the customer and of any agents or beneficial owners of the customer prior to entering into a business relationship, in the specific circumstances listed in the internal procedures and in accordance with the conditions laid down by the Law, the second subparagraph of the same Article 31 of the Law prohibits any transfer, withdrawal or remittance of funds or securities to the customer or the customer's agent from the account concerned before the identity of the above-mentioned persons has been effectively verified.

22) For further details, see the clarification of the above answers in Annex 2 to this Circular.

A.3. What are the obligations of a financial institution that discovers a posteriori that funds it has previously accepted are suspected of being linked to money laundering? Is it allowed to execute a cash withdrawal by the customer or carry out an instruction to transfer the funds to another financial institution, particularly if their business relationship has been terminated?

23) Where a financial institution finds that funds it holds for a customer that had not previously given rise to suspicions of money laundering, are afterwards suspected to be related to money laundering, it is obliged to report these suspicions to CTIF-CFI, even if they arise after it has received the funds.

24) If, after these suspicions have been reported, the customer requests a transfer of all or part of the funds, and no new information has emerged to dispel the suspicion that these funds are related to money laundering, the requested transfer constitutes a new transaction for which a new suspicion must be reported to CTIF-CFI (in addition to the first reporting).

25) This is also the case if, after the initial reporting of suspicions, the financial institution terminates the business relationship with the customer concerned on the basis of the new risk assessment required under Article 22 of the Anti-Money Laundering Regulation of the NBB, and the customer gives instructions for the transfer of his assets after the termination of the business relationship.

A.4. Where funds are transferred to another financial institution following the termination of the business relationship with a first financial institution for reasons related to suspicions of money laundering, how can the new financial institution comply with its own due diligence obligations?

26) Each financial institution subject to AML/CFT obligations is required to comply with its legal due diligence obligations, in accordance with its own internal policies and procedures established pursuant to Article 8 of the Law, and to conduct an individual risk assessment according to Article 19, § 2 of the Law in order to determine the appropriate due diligence measures to be taken. These provisions also apply to financial institutions that receive funds from a customer whose funds or transactions have aroused the suspicions of another financial institution.

27) However, this principle of independent judgment of each financial institution is subject to two qualifications:

a. Where the two financial institutions concerned are part of the same group, the group-wide ML/FT prevention procedures which they are both required to implement pursuant to Article 13 of the Law (and Article 45(1) to (3) and (5), first sentence of the 4th AML Directive, which it transposes) must include, in particular, procedures relating to information-sharing within the group for AML/CFT purposes. Such procedures should in particular cover the exchange of information between entities of the group in relation to suspicions held by any of them regarding the funds or

transactions of a person who is a customer of multiple entities of that group. To enable this exchange, Article 56, § 2, 1° and 2° of the Law provides for an exception to the prohibition of disclosure of suspicions to third parties if such disclosure is made within the group in accordance with the group procedures referred to in Article 13 of the Law.

- b. Article 56, § 2, 3° of the Law also provides for an exception to the prohibition of disclosure of suspicions to third parties between credit institutions and financial institutions that are acting for the same customer in the context of the same transaction, provided that:
- the information exchanged relates to that customer or transaction,
  - this information is used exclusively for the prevention of money laundering or terrorist financing, and
  - the institution receiving the information is subject to obligations equivalent to those laid down in Directive 2015/849 with regard to the prohibition of disclosure and personal data protection.

This exception to the prohibition of disclosure may apply where a financial institution which has suspicions regarding a customer's funds or transactions is instructed by the said customer to transfer his funds to another financial institution; in this case, the first financial institution is legally entitled to inform the second (upon request of the latter or on its own initiative) of its suspicions regarding the customer's funds or transactions.

However, contrary to the provisions of the 4th European AML Directive and the Belgian Anti-Money Laundering Law regarding the exchange of information within groups, the communication of suspicions to another financial institution acting for the same customer in the context of the same transaction does not constitute a legal obligation.

- 28) As to whether negative information received from the financial institution from which the funds originate obliges the financial institution to which the funds are transferred to refuse to enter into a business relationship with the customer concerned, see §§ 18 to 22 above.

A.5. How should financial institutions deal with cases where they wish to strengthen KYC for existing customers but find that the customer is unable to provide the necessary documentation, even though there is no evidence that the funds are of illicit origin?

- 29) Article 33, § 1, first and second subparagraphs of the Law stipulates that if obliged entities are unable to comply with their obligation to identify and verify the identity of a customer, his agents or his beneficial owners, especially when updating the customer's identification and identity verification, they must terminate the business relationship as well as investigate, in accordance with Article 46 of the Law, whether the reasons for their inability to comply with KYC obligations raise a suspicion of money laundering, and whether there are grounds to report to CTIF-CFI. See also the pages "[Non-compliance with the identification and identity verification obligation](#)" and "[3. Inability to exercise ongoing due diligence](#)" on the Bank's website.
- 30) However, before terminating a business relationship for this reason, a financial institution may take prior, proportionate and temporary measures to induce the customer to provide it with the information and documents necessary to allow it to fulfil its obligations to identify and verify the identity of this customer, and it is acceptable that it terminates the business relationship effectively only at the end of this period if the customer has not responded to the requests addressed to him. In this case, the absence of a response clearly indicates that the legal obligations to identify and verify the identity of the persons involved in the business relationship cannot be met. However, the time given to the customer to regularise his situation should not exceed what is reasonable.

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## **B. Expectations regarding the verification of the origin of the funds - supporting documents**

## B.1. General introductory remarks

- 31) Article 19, § 2 of the Law stipulates that “in all cases, obliged entities shall ensure that they can demonstrate to the supervisory authorities competent pursuant to Article 85 that the due diligence measures applied by them are appropriate in view of the ML/FT risks they have identified”.
- 32) Consequently, when selecting the due diligence measures to be implemented and determining the intensity of those measures, a financial institution should generally ensure, in each case that arises, that these measures are such that it can satisfy a “reasonable person” (starting with its senior officer responsible for AML/CFT and its AMLCO) that these measures are appropriate in view of the money laundering risk which is associated with the case in question and which has been subject to a thorough assessment taking full account of the specificities of this case. In this respect, it seems appropriate to take into account, for example:
- the amount involved,
  - the geographical risk factors that may affect the transaction,
  - the financial institution's knowledge of the customer, his assets and the origin thereof,
  - the information that can be obtained from the customer and from public information sources about the donor or the deceased, this person's assets and the origin thereof,
  - the relationship between the donor or deceased on the one hand and the donee or heir/legatee on the other,
  - the proportionality of the amount donated in relation to the donor's assets,
  - whether or not the inherited assets were duly mentioned in the declaration of estate,
  - etc.

It follows (and the Bank is aware of this) that, as time passes, the aforementioned characteristics are based more on (concrete) indications, context, etc. The financial institution may factor this into its assessment.

- 33) In view of the above, the Bank expects financial institutions whose activities frequently involve repatriation of funds to establish a procedure and process for examining such transactions, the purpose of which should be:
- (ii) to sufficiently justify the legitimacy of the transaction and the origin of the funds involved for a reasonable person to exclude any suspicion of money laundering, and,
  - (iii) to document this justification as well as possible, so that the apparent legitimacy of the transaction and the origin of the funds involved is adequately substantiated for a reasonable person to consider it sufficiently credible.
- 34) Both for establishing the justification of the apparent legitimacy of the transaction and the origin of the funds, and for collecting the documentation to substantiate it, the degree of rigour applied should be proportionate to the level of money laundering risk associated with the transaction.
- 35) Based on the documented justification resulting from this process, the financial institution should decide, under the responsibility of its AMLCO, whether all suspicion of money laundering can be reasonably excluded and, if not, whether a suspicion should be reported to CTIF-CFI.
- 36) See also the comments in §§ 12 to 16 above and the clarification of the above answers in Annex 1.

B.2. If the funds repatriated by the customer were acquired through donations (particularly manual and/or bank gifts), to what extent should potential fraud by the donor be taken into account? What measures are expected if, due to circumstances, the customer is unable to provide certain supporting documents?

- 37) See §§ 10 to 13 above. A donation of funds derived from serious fiscal fraud (as referred to in the Anti-Money Laundering Law at the time of repatriation) committed by the donor may effectively result in the donee who receives these funds committing money laundering if he is aware of the irregular fiscal status of these funds and has not taken or is not taking all necessary measures to regularise their fiscal status. This is particularly the case when the recipient customer is unable or unwilling to provide additional information requested from him for the AMLCO's in-depth analysis which would help to dispel the suspicion that the funds are derived from serious fiscal fraud.
- 38) The financial institution should determine, on a case-by-case basis and in accordance with the assessment of the risks related to the transaction, and using its procedure for the examination of such transactions as referred to in § 33 above, which documentation is necessary to provide sufficient credible evidence of the legitimacy of the transaction and of the origin of the funds.
- 39) When the funds are acquired by donation, it is generally recommended to obtain a copy of the deed of donation (or of any written confirmation of the manual or bank gift which the donor may have addressed to the donee). It should be noted, however, that while the deed of donation is proof of the direct acquisition of the funds by the donee, it does not provide any information on the acquisition of these funds by the donor or on the origin of the donor's assets. Depending on the risks involved, the donee's financial institution should extend its enquiries to that end. See in particular § 10 of Annex 1 hereto.
- 40) Similarly, when the funds are acquired by way of a legacy or inheritance, a copy of the declaration of estate may be useful to support the assessment of the transaction in terms of the prevention of money laundering, in that it may clarify the direct origin of the funds received. However, a proper declaration does not exempt the financial institution from reporting to CTIF-CFI if it suspects or has reasonable grounds to suspect that the inherited funds are the proceeds of criminal activity (e.g. serious fiscal fraud as referred to in the Anti-Money Laundering Law at the time of repatriation) attributable to the deceased. Furthermore, this financial institution will also be obliged to report to CTIF-CFI if it knows, suspects or has reasonable grounds to suspect that the funds transferred to it are the proceeds of serious inheritance tax fraud attributable to the heirs. This is the case, for example, if the financial institution knows, suspects or has reasonable grounds to suspect that, although a declaration of estate has been made, none or only part of the funds transferred are mentioned in this declaration. A fortiori it should report to CTIF-CFI if it knows, suspects or has reasonable grounds to suspect that no declaration of estate has been made.
- 41) When the documentation that can be collected to support the justification of the transaction and the origin of the funds is insufficient in the light of the requirements of the internal procedures, in particular when the circumstances make it impossible for the customer to provide certain supporting documents (e.g. when the customer invokes the long time elapsed since the acquisition of the funds by the donor, the loss or destruction of supporting documents, etc.), the financial institution should decide under the responsibility of its AMLCO:
- a) If there is reason to suspect that the lack of sufficient documentation raises or supports a suspicion of money laundering (e.g. if it results from the customer's intention to conceal) or if the deficiencies in the documentation are such that the credibility of the provided justification cannot be reasonably substantiated and thus

the suspicions cannot be dispelled <sup>[3]</sup>; in these cases, the suspicions should be reported to CTIF-CFI; or

- b) If the lack of sufficient documentation is exclusively due to material problems arising from the specific features of the individual situation (events occurred too long ago, unintentional destruction of useful documents, etc.), but is not such as to call into question the justification of the legitimacy of the transaction or the origin of the funds, or to raise or support suspicions of money laundering; in these cases, the financial institution may consider it appropriate not to report a suspicion to CTIF-CFI; on the other hand, it is strongly recommended that the motivation of the financial institution's decision be properly laid down in writing, that the factual elements on which this decision is based be documented as much as possible and that the whole be kept in such a way that it can be produced if necessary; furthermore, in the individual risk assessment, the financial institution should take into account the shortcomings in the documentation that could be collected in order to determine the level and nature of the due diligence to be exercised with regard to the customer's future transactions.

- 42) In this context, each financial institution should determine the extent to which a simple statement by the customer as to the donor's background and the origin of the funds donated – in particular, the fiscal status of these funds – could constitute the basis for justifying the legitimacy of the transaction and the origin of the funds. However, such a statement by the customer may be taken into account only if it appears reasonable having regard to the risks associated with the customer and the transaction. Under a reasonable risk-based approach, full account should be taken of the fact that the mere signing of a written statement by the customer or, a fortiori, the mere oral statement by the customer, without corroboration by additional verifications and documentation, has very little persuasive power.
- 43) Depending on the level of risk identified, the financial institution should therefore seek to corroborate the customer's statement by cross-checking it with other reliable and independent sources of information. From this point of view, the level of rigour is expected to increase in proportion to the money laundering risk. See in this respect also §§ 31 to 35 and 61 above.

B.3. If the customer's assets and/or the funds repatriated by the customer derive from an inheritance or a donation previously received by the donor, to what extent should potential fraud by the person who originally acquired the funds concerned be taken into account?

- 44) The death of the perpetrator of the offence from which the funds derive ends the possibility of any criminal proceedings against this person. However, neither the death of the perpetrator of a predicate criminal activity, as referred to in Article 4, 23° of the Law, nor the donation of the proceeds of that activity erases the illicit nature of the origin of the funds concerned.
- 45) The intensity of the measures to be taken to determine the origin of the assets and funds, particularly from the point of view of their transfer from one person to another, depends on the assessment of the risks associated with the transaction. Thus, where the donor's assets derive from an inheritance or donation received by the donor himself, it may indeed be necessary, in view of the level of money laundering risk identified by the financial institution, to clarify and document the legitimacy of the origin of his assets, going back to the persons who accumulated the assets before they were transferred to the donor or the deceased. It should be recalled in this context that it is not the task of the financial institutions to decide whether the offences from which the funds may derive or the money laundering offence itself are time-barred; this assessment falls within the competence of the judicial authorities (see also § 8 of Annex 1 hereto). In order to trace

<sup>3</sup> It should be recalled that the explanatory memorandum to the Law of 18 September 2017 stipulates that the slightest suspicion of the illicit origin or destination of the funds with which the professional is confronted (conversion, transfer, concealment, ...) or of a transaction or set of transactions that seem suspicious, is sufficient to trigger the obligation to report a suspicious transaction (Chamber, 2016-2017, DOC 54 2566/001, p. 160)

the origin of the funds, it may be useful to try to obtain a copy of the declaration of estate or the deed of donation or of any written confirmation of the manual or bank gift addressed by the donor to the donee.

B.4. Should the repatriation of the proceeds of a donation, legacy or inheritance that the customer received in illo tempore on a foreign account and held there, be treated differently than a transfer executed from abroad by the donor or the estate of the deceased directly to the Belgian account of the donee, legatee or heir?

- 46) The fact that the customer kept his assets on an account abroad is not illegal and does not in itself justify reporting to CTIF-CFI (see § 13 above). As a reminder, the financial institutions' attitude should be based solely on whether or not there are suspicions or reasonable grounds to suspect that the funds or the transaction are related to laundering of funds derived from one of the criminal activities listed in the Law, including serious fiscal fraud (see also §§ 12 to 16 above).
- 47) A donee or heir who initially kept funds received by way of donation, legacy or inheritance in an account opened abroad and then repatriates them from that account, only commits money laundering if he knows that the donor or the person from whom he inherited those funds, acquired them in an illicit manner, in particular if he knows that the funds are the proceeds of serious fiscal fraud (see Annex 1 hereto) and if, in spite of this, he does not take all appropriate measures to regularise the fiscal status of those funds. However, if the financial institution suspects that the funds are of illicit origin, it is not competent to establish with certainty that its customer is aware of this: a suspicious transaction report is required if the customer could not reasonably have been unaware of the illicit origin of the funds (see § 13 of Annex 1 hereto).
- 48) In order to determine whether the repatriation should be considered suspicious, the risk-based approach requires that the individual risk assessment and the due diligence exercised with regard to the repatriations take account of a range of relevant risk factors, including in relation to the complexity of the transaction or to the geographical areas involved. With regard to the latter risk factor, in terms of detecting money laundering operations involving the proceeds of serious fiscal fraud, particular attention should be paid to transfers made from a country with low or no taxes as referred to in Article 39 of the Anti-Money Laundering Law or a country which is known to be or to have been widely used to transfer funds there for the purpose of committing fiscal fraud or concealing the proceeds thereof. For these risk factors, see also § 3 above.
- 49) When the funds in question were kept abroad for a certain period of time and are only repatriated at a later date, the examination of the operation should also include an examination of the reasons why the customer kept the funds concerned abroad after receiving them. This examination should aim to dispel the suspicion that the decision to keep the funds abroad was possibly intended to conceal any serious fiscal fraud by the donee or the heir himself. This assessment may also be influenced by whether the customer included these funds in his declaration of estate and whether he has fulfilled his other fiscal reporting obligations in relation to these funds or the income from these funds, or his obligation to declare the existence of the foreign accounts in which these funds were held during that period.

B.5. What documentation should be obtained with regard to the origin of the funds derived from the sale of real estate by the donor or the deceased?

- 50) As a general rule, where the customer claims that the funds derive from the sale of real estate by the donor or the deceased, it is useful to obtain a copy of the deed of sale from which the funds involved in the transfer originate. Where it is not possible to document the origin of the funds by means of the deed of sale, the financial institution should seek to obtain other forms of documentation to substantiate the legitimacy of the origin of the funds, for example the supporting documents required under the deed of donation or the declaration of estate and/or the tax regularisation file and certificate, and

decide whether the available documentation is sufficient to satisfy a reasonable person that the transaction does not raise suspicions of money laundering.

B.6. What documentation should be obtained with regard to the origin of the funds derived from the accumulation of substantial savings through deductions from the remunerations received?

- 51) Where the customer claims that the repatriated funds derive from employee savings accumulated over the years by the donor or deceased, or even by the customer himself, through deductions from the remuneration received abroad by the person concerned, the financial institution should first assess the credibility of the alleged origin of the funds, not only on the basis of the level of the customer's remuneration at a given date, but also taking into account additional information, such as the period during which this remuneration was received, or the amount of the expenses borne by the person concerned during this period (in particular due to the person's family situation, investments in real estate, etc.). It must then determine what documentation on the person's savings capacity it considers sufficient to substantiate the legitimacy of the origin of the funds, particularly from a fiscal perspective. Wherever possible, pay slips, tax returns or tax assessment notices may be used for this purpose. Where it is not possible to document the origin of the funds through such documents, the financial institution should seek to obtain other forms of documentation to substantiate the legitimacy of the origin of the funds (e.g. account statements of the bank account into which the remuneration was deposited), and decide whether the available documentation is sufficient to satisfy a reasonable person that the justification provided is sufficiently credible and that the transaction does not raise any suspicion of money laundering.

B.7. Are financial institutions required to report to CTIF-CFI if the heirs or donees have no knowledge of the origin of the capital to be repatriated but cannot be suspected of being the perpetrators, co-perpetrators or accomplices to any criminal activity from which this capital may be derived?

- 52) As indicated elsewhere (see § 39 above and § 10 of Annex 1 hereto), where the funds constituting the donation, inheritance or legacy are derived from serious fiscal fraud by the donor or the deceased, this may result in the donee, heir or legatee committing money laundering if that person is aware of the irregular fiscal status of these funds and has not taken or is not taking all necessary measures to regularise their fiscal status. Where a donee, heir or legatee claims to have no knowledge of the origin of the funds transferred to him by the donor or the deceased by way of donation or upon the latter's death, the financial institution should assess the credibility of this claim, taking into account the specific features of the case (in particular the nature and intensity of the relationship between the donor or the deceased, on the one hand, and the donee or the heir or legatee, on the other). If such a claim comes from a person who cannot reasonably be considered to have been unaware of the origin of the funds that the donor or the deceased transmitted to him by way of donation or upon the latter's death, this may indicate a desire on the part of that person to conceal their origin and could give rise to suspicions of money laundering.

**C. Examination of the legitimacy of repatriated funds from a tax point of view**

C.1. How should financial institutions deal with repatriation cases where customers demonstrate that they have complied with all their fiscal obligations but the initial origin of the funds can no longer be clearly documented?

- 53) See §§ 31 to 35 and 41 above. If the lack of sufficient documentation is exclusively due to material problems arising from the specific features of the individual situation (events occurred too long ago, unintentional destruction of useful documents, etc.), but is not such as to call into question the justification of the legitimacy of the transaction or the



origin of the funds, or to raise or support suspicions of money laundering, the financial institution may consider that the legitimacy of the origin of the funds is sufficiently certain and that there is therefore no need to report a suspicion to CTIF-CFI.

- 54) However, it is recommended that the motivation of the financial institution's decision be properly laid down in writing, that the factual elements on which this decision is based be documented as much as possible and that the whole be kept in such a way that it can be produced if necessary.

C.2. What documents must a financial institution have if a regularisation procedure has been initiated, before it is allowed to accept the funds? At what point in the regularisation procedure can the financial institution accept the funds?

- 55) As mentioned above (see §§ 18 to 21 above), the Law does not prohibit financial institutions from receiving funds which they know, suspect or have reason to suspect are of illicit origin, but obliges them in such cases to report their suspicions to CTIF-CFI.
- 56) As specified in § 21 above, if a financial institution receives funds before it has completed the analysis and documentation process which would allow it to conclude that either the origin of the funds or the transaction is legitimate, or that suspicions exist which need to be reported to CTIF-CFI, the financial institution must subject the account to which the funds are credited to enhanced due diligence and, in case of requests to transfer large sums from this account, implement the additional measures referred to in § 21 above.
- 57) If a Belgian financial institution agrees to receive funds of which it knows, suspects or has reason to suspect that they derive from serious fiscal fraud as referred to in the Anti-Money Laundering Law at the time of repatriation, it must ensure that the customer has effectively taken all necessary measures to regularise the fiscal status of these funds. Given the exemption from criminal and fiscal liability granted to the taxpayer, such regularisation would resolve the initial illicit nature of the origin of the funds derived from serious fiscal fraud. Consequently, it is recommended to obtain from the customer the documents issued by the fiscal authorities which make it possible to document that the funds in question have been subject to the applicable tax regime from the beginning or that they have been or are being regularised, and that the taxes due have actually been paid. In this context, due to the generally high amounts involved, a mere statement, even in writing, by the customer or his adviser that the measures for the tax regularisation of the repatriated funds have been taken and that the taxes due have been paid, cannot generally be considered sufficient.
- 58) Financial institutions should also avoid situations where the customer, after having taken the necessary measures to regularise the fiscal status of part of his funds invested abroad, in particular by means of a "one-off declaration", repatriates not only these regularised funds but also, simultaneously, other funds that he has decided not to regularise, without the financial institution subjecting these additional non-regularised funds to due diligence measures in order to ascertain their legitimate origin from a fiscal perspective (see in this respect also §§ 59 to 68 below).

C.3. Should financial institutions, as part of the periodic review of their business relationships with their customers, systematically reassess the legitimacy, from a tax point of view, of the funds held by them at that time which have previously been repatriated and accepted, taking into account the tax regularisation standards applicable at the time of repatriation?

**a) Analysis of the legitimacy from a tax point of view of the funds upon their receipt by the financial institution**

- 59) In principle, the verification of the legitimacy of the origin of the funds should be carried out upon receipt of those funds. If there are reasons to suspect that these funds derive from fiscal fraud, so that their transfer to an account opened with the financial institution

could give rise to a suspicion of laundering of the proceeds of, in particular, serious fiscal fraud, the financial institution should report a suspicion to CTIF-CFI, unless the customer has taken all useful and necessary measures to regularise the fiscal status of all funds involved. Where applicable, the customer will have had to submit a “one-off declaration” (“déclaration libératoire unique” in French, “eenmalige bevrijdende aangifte” in Dutch) (hereinafter “DLU/EBA”) to this end.

- 60) In the absence of such a tax regularisation, the financial institution should gather all relevant information and analyse it in order to be able to decide whether this information can reasonably dispel the suspicion that the repatriated funds are, in whole or in part, the proceeds of serious fiscal fraud or whether, if this is not the case, it should report a suspicion to CTIF-CFI.
- 61) For example, if a customer has repatriated funds that consist of the capital initially invested abroad and the interest earned on that capital, and if he has made a DLU/EBA in accordance with the tax regularisation legislation applicable at the time of repatriation, the financial institution has had to verify up to which amount the repatriated funds have been regularised through that DLU/EBA. Up to that amount, the DLU/EBA and the payment of the regularisation fee allow to rule out any suspicion of laundering of money deriving from serious fiscal fraud. However, with regard to the amounts which have not been regularised through the DLU/EBA, the financial institution has had to gather relevant information and analyse it in order to determine whether the suspicion that these amounts derived from serious fiscal fraud could be ruled out. If not, a suspicion had to be reported to CTIF-CFI. If this information gathering and analysis, carried out with all due care, led to the reasonable conclusion that the funds do not appear to be the proceeds of serious fiscal fraud, the financial institution could receive and keep these funds without the need for a further examination of their origin on the basis of the Anti-Money Laundering Law of 18 September 2017. However, if the financial institution has not yet carried out this information gathering and analysis with all due care, it has not fulfilled its legal due diligence obligations and should remedy this by immediately carrying out this information gathering and analysis with all due care in order to determine whether it can reasonably assume that these funds have a legitimate origin, in particular from a tax point of view, or whether, in the absence of a new procedure of tax regularisation initiated by the customer (see below), a suspicion should be reported to CTIF-CFI. If the financial institution fails to carry out this information gathering and analysis it also runs the risk of being prosecuted for complicity in laundering the proceeds of serious fiscal fraud committed by its customer. In this regard, it should be noted that the criminal prosecution for this offence is not time-barred as a consequence of its limitation under tax law.
- 62) In light of the above, the Bank recommends that financial institutions engaged in activities that frequently involve repatriation of large sums of money, thereby exposing them significantly to the risk of laundering of the proceeds of serious fiscal fraud, especially those financial institutions engaged in asset management or issuing large single premium life insurance policies, ensure that the relevant information gathering and analyses referred to in §§ 60 and 61 above that they have carried out in the past have been performed with all care required to reasonably conclude that there is no suspicion of laundering of the proceeds of serious fiscal fraud.
- 63) To this end, the Bank requests that these financial institutions instruct their internal audit functions to review their current and past internal procedures for due diligence with regard to repatriations of funds and their effective application. Past procedures and their application should be assessed in light of the obligations and expectations applicable at that time in the past. This assessment should be based on samples and should aim to determine whether and to what extent the legitimacy, from a tax point of view, of the funds previously repatriated by their customers and currently held by them should be re-examined. The Bank also invites the financial institutions to draw up, on this basis, an action plan to re-examine the repatriation operations in question as soon as possible, if required.

- 64) The Bank considers that the internal audit functions are best placed to perform this task given their (statutory) duties and independence. If the financial institution considers that the involvement of other services may be relevant and useful, such involvement should be justified in the internal audit report, including the manner in which potential conflicts of interest have been managed. The involvement of other services is without prejudice to the responsibility of the internal audit function for the entire report.
- 65) The Bank expects the financial institutions to provide the NBB by 31 October 2021<sup>[4]</sup> with a schedule for the execution and completion of this task. This task should be completed by 30 June 2022. The action plan should be drawn up within 3 months of the completion of the internal audit assignment. The internal audit report and the action plan should be submitted to the Bank <sup>[5]</sup>.
- 66) Insofar as this internal audit assignment, carried out in accordance with the rules for the function, can reasonably confirm that the effective application of the internal procedures of the financial institution has enabled it to obtain sufficient certainty in the past that the funds repatriated by its customers and held by it since are not the proceeds of serious fiscal fraud, or if that financial institution has effectively implemented the measures described in its action plan to remedy the deficiencies identified, the Bank will consider that that financial institution has fulfilled in this respect its money laundering prevention obligations in accordance with the Anti-Money Laundering Law of 18 September 2017. See also §§ 7 to 10 above.

**b) Application of the Law of 21 July 2016 ("DLU/EBA quater")**

- 67) If previously repatriated funds are still held by a financial institution and the aforementioned relevant information gathering and analysis did not lead to a reasonable conclusion at the time of repatriation as to the legitimacy of their origin, including from a tax point of view, or when new repatriated funds are received the analysis of which gives rise to suspicions of laundering of the proceeds of serious fiscal fraud, account should be taken of the possibility for the customer to proceed to tax regularisation under the Law of 21 July 2016 establishing a permanent system of fiscal and social regularisation ("DLU/EBA quater").
- 68) Taking into account the significant differences between the Anti-Money Laundering Law on the one hand and the Law of 21 July 2016 on the other, four cases can be distinguished as regards the level of proof to be obtained in order to establish the legitimate origin of the funds from a tax point of view:
  - a. If as part of the regularisation procedure the customer has been able to provide proof that all his repatriated assets have been subject to the ordinary tax regime (see Art. 11 of the Law of 21 July 2016), this proof also allows to rule out, for the purposes of the Anti-Money Laundering Law, the suspicion that these funds derive from serious fiscal fraud. It follows that the reporting to CTIF-CFI of a suspicion of laundering of the proceeds of serious fiscal fraud by the Belgian financial institution to which these funds have been repatriated would be unfounded.
  - b. If the customer has filed a regularisation declaration for the repatriated funds without being able to provide the proof required under the Law of 21 July 2016 that these funds have been subject to the ordinary tax regime, and if this has resulted in the inclusion of the amounts concerned in the basis for calculating the regularisation fee effectively paid, the fiscal and criminal immunity enjoyed by the customer means that the funds concerned are no longer to be regarded as the proceeds of fiscal fraud. The reporting to CTIF-CFI of a suspicion of laundering of the proceeds of serious fiscal fraud by the Belgian financial institution to which these funds have been repatriated would therefore also be unfounded.
  - c. If the customer has decided not to file a regularisation declaration for the repatriated funds on the grounds that he is unable to provide the written proof required by Article

<sup>4</sup> By e-mail to « [Supervision.ta.aml@nbb.be](mailto:Supervision.ta.aml@nbb.be) »

<sup>5</sup> Through eCorporate

11 of the Law of 21 July 2016, but nevertheless has evidence that he considers sufficient, in the event that he is subject to criminal proceedings, to support the credibility of the allegation that the funds concerned have been subject to their ordinary tax regime, the financial institution to which those funds have been repatriated should assess the evidence put forward by the customer in order to decide whether they can reasonably be considered sufficient to rule out the suspicion that those funds derive from serious fiscal fraud. If so, the financial institution may decide not to report a suspicion to CTIF-CFI.

- d. If the customer has decided not to file a regularisation declaration for the repatriated funds on the grounds that he is unable to provide the written proof required by Article 11 of the Law of 21 July 2016, and is otherwise unable to provide evidence to support, in the event that he is subject to criminal proceedings, the credibility of the allegation that the funds concerned have been subject to their ordinary tax regime, the financial institution to which those funds have been repatriated should consider that there is a suspicion of laundering of the proceeds of serious fiscal fraud and report this suspicion to CTIF-CFI.

C.4. To what extent should the standards for proving the origin of assets set by the Contact Point for Regularisations (“Point de contact-régularisations” in French, “Contactpunt regularisaties” in Dutch) be taken into account for the purposes of the Anti-Money Laundering Law?

- 69) Since the question that arises is whether the funds can be considered as the proceeds of serious fiscal fraud, and whether the suspicions can be dispelled by taking effective measures to regularise the fiscal status of these funds, the conditions for such regularisation as clarified by the Contact Point for Regularisations of the Service for Advance Decisions in Tax Matters (“Décisions anticipées en matière fiscale” in French, “Voorafgaande beslissingen in fiscale zaken” in Dutch) and by tax jurisprudence should indeed be taken into account. However, as mentioned above (see § 68), the financial institution to which the assets are repatriated could consider, on the basis of a case-by-case examination, that there is no reason to report a suspicion of laundering of the proceeds of serious fiscal fraud, even though, within the framework of the regularisation procedure, the customer was unable to provide the written proof required to exclude all or part of his assets from the basis for calculating the regularisation fee. Indeed, the lack of sufficient proof within the framework of the tax regularisation procedure results in the inclusion of the amounts concerned in the basis for calculating the regularisation fee, the payment of which gives the customer the benefit of fiscal and criminal immunity, which allows to consider, once the fee has been effectively paid, that the funds are no longer the proceeds of fiscal fraud.

C.5. What about customers who have regularised their foreign income from the capital, but not the capital itself: what proof does the financial institution need of the origin of the capital (e.g. if it was the previous generation that expatriated the funds)?

- 70) It goes without saying that a financial institution that has reasonable grounds to suspect that all the assets of a customer that it holds are the proceeds of serious fiscal fraud, cannot consider that a tax regularisation that only covers part of these assets would be sufficient to rule out its suspicion of laundering of the proceeds of serious fiscal fraud for the remainder and to exempt it from the obligation to report this suspicion to CTIF-CFI.
- 71) However, it may be that the capital invested abroad has a perfectly legitimate origin and that only the income generated by this capital should be considered as deriving from serious fiscal fraud. This may be so, for example, when funds with a legitimate origin are expatriated so that the income they will generate will unlawfully escape taxation in Belgium. Depending on the situations, only part of the repatriated funds may have to be subject to tax regularisation measures. It is up to the financial institution to carry out this analysis and to document the legitimate origin of all the customer assets it holds.

- 72) With regard to the extent to which the justification used should be documented, see §§ 31 to 36 and 59 to 68 above.
- 73) If the repatriated funds have been the subject of a “one-off declaration” which has allowed only part of the funds concerned to be regularised, it should be examined, as part of the due diligence obligations to be met, to what extent the repatriated funds have been regularised through that DLU/EBA. For the amounts that have not been regularised through the DLU/EBA, the financial institution should collect and analyse relevant information to determine whether the suspicion that these amounts derive from serious fiscal fraud can be ruled out. In this regard, see §§ 60 and 61 above.
- 74) As regards the extent to which heirs or donees are obliged to regularise funds derived from any fiscal fraud committed by the deceased or by their donors, see in particular §§ 44 and 45 above and §§ 10 and 11 of Annex 1 hereto.

C.6. Should the Belgian financial institution check whether indirect taxes have been paid? In particular, what should it do if it appears that a (potential) customer who transfers funds from abroad has not paid any TSEO (tax on stock exchange operations) and/or any TSA (tax on securities accounts)?

- 75) The definition of serious fiscal fraud as a predicate criminal activity to money laundering is not limited to certain forms of taxation (see §§ 1 to 9 of Annex 1 hereto): serious fiscal fraud that has allowed to evade indirect taxes (VAT, excise duties, TSEO, TSA, etc.) falls equally within this definition as fraud that has allowed to evade direct taxes. Although a suspicious transaction report may be justified when the financial institution is unable to establish that the suspected fiscal fraud can effectively be considered as serious fiscal fraud within the meaning of the Anti-Money Laundering Law, such a report is required a fortiori if the financial institution has reasons to suspect that the fiscal fraud is serious.
- 76) When, due to the nature of the evaded tax, the regularisation of the fiscal status of the funds could not or cannot be obtained on the basis of a one-off declaration or pursuant to the Law of 21 July 2016 establishing a permanent system of fiscal and social regularisation, the legitimacy, from a tax point of view, of the origin of the funds can only be restored by the effective and full payment of this tax, plus any tax increases, penalties and default interest.

C.7. Can a distinction be made between the limitation period for an offence involving the acquisition of a capital and the limitation period for an offence involving the laundering of income if the income has been regularised? For example, in the case of misappropriation of corporate assets in the 1990s of which the income has been regularised?

- 77) The Law requires financial institutions to take the necessary due diligence measures to ensure that there are no reasonable grounds to suspect that the customer funds they hold are the proceeds of one of the criminal activities listed in the Law. It should be recalled that these activities are not defined by reference to the Criminal Code but in criminological terms, and that it is therefore not the task of the financial institutions to qualify the facts under criminal law in order to determine whether a suspicion should be reported to CTIF-CFI. This principle is explicitly stipulated in Article 47, § 1, second subparagraph of the Law. A suspicious transaction report is also required when the financial institution suspects that the funds have an illicit origin but is unable to identify the predicate criminal activity(ies) from which the funds may derive. The slightest suspicion that the funds have an illicit source is sufficient to trigger the obligation to report a suspicion to CTIF-CFI so that the latter can carry out all analyses in accordance with the Law in order to determine whether there are serious indications of money laundering and, if such is the case, to forward the relevant information to the Public Prosecutor or the Federal Public Prosecutor.
- 78) Since it is not up to the financial institutions to qualify under criminal law the facts from which the funds derive, it is a fortiori not up to them to express an opinion on whether

those criminal offences are time-barred or not. Furthermore, that assessment, which falls within the exclusive competence of the judicial authorities, cannot dispel the suspicions of a financial institution that the funds in question may have an illicit origin. The sole effect of the limitation is to preclude criminal proceedings and the imposition of criminal penalties; it does not allow to consider the facts in question as lawful.

79) See also §§ 6 to 9 of Annex 1 hereto.

C.8. If a financial institution has come to the conclusion that the assets have a legitimate origin, does it also have to actively examine whether there is simple fiscal fraud and substantiate this (e.g. does a Belgian resident have to prove that he paid tax on stock exchange operations for transactions from a Dutch securities account)?

80) As indicated elsewhere (see § 6 of Annex 1 hereto) the explanatory memorandum to the Law stipulates that, if an obliged entity suspects that certain funds have an illicit origin that may be fiscal fraud, it should report this suspicion to CTIF-CFI without having to first establish whether or not the fiscal fraud is serious. Furthermore, the nature of the tax evaded is not a relevant criterion for determining whether or not the funds should be considered to have an illicit origin. However, the information gathered by the financial institution must contain indications that the transactions requested by the customer are not in line with his characteristics or with the purpose and nature of the business relationship or the intended transaction, so that its transactions should be considered "atypical" and, as such, be subject to a thorough analysis by the AMLCO. If this examination provides sufficient assurance that, even if there is a suspicion of fiscal fraud, it is clear that this fraud cannot be considered as serious, in particular because the amounts involved are limited, both in absolute terms and in relation to the characteristics of the customer, or because the suspected fiscal fraud clearly has not led to the confection and use of falsified documents or to the use of complex structures or a complex organisation, the legal obligation to report suspicions to CTIF-CFI does not apply to the funds or the transfer thereof, as long as these funds do not appear to be related to any of the criminal activities listed in Article 4, 23° of the Law. If there is any doubt, however, a suspicion should be reported.

## D. Various questions

D.1. What are the NBB's expectations in terms of governance and internal organisation for the management of repatriation files?

81) The AML/CFTP governance rules defined by or pursuant to the Law are to be applied generally to all AML/CFT functions, without distinction according to the predicate criminal activities to the money laundering. In this regard, see the page "[Organisation and internal control](#)" on the Bank's website.

82) In this respect it should be recalled in particular that according to Article 9, § 1 of the Law, the member of the statutory governing body of the financial institution or, where appropriate, of its senior management, who is appointed as the person responsible, at the highest level, for AML/CFTP, should supervise the implementation of and compliance with the provisions of the Law and its implementing decrees and regulations; this includes ensuring that all structures and mechanisms are effectively put in place within the financial institution to detect and report suspicious transactions to CTIF-CFI, regardless of the nature of these transactions, including repatriations, and regardless of the suspected predicate criminal activity, including serious fiscal fraud.

83) The person charged with ensuring the implementation of the policies, procedures and internal control measures regarding AML/CFTP in accordance with Article 9, § 2 of the Law (the AMLCO) is in particular responsible for ensuring the analysis of atypical transactions and the preparation of the relevant written reports in order to, if necessary, report suspicious transactions to CTIF-CFI in accordance with Article 47 of the Law.

- 84) Pursuant to Article 49, first subparagraph of the Law, the power to decide whether a transaction is suspicious or not and to report a suspicion to CTIF-CFI belongs in principle to the AMLCO and cannot be attributed to persons who are in direct contact with customers or transactions. Nevertheless, Article 49, second subparagraph of the Law provides that any manager, employee, agent or distributor of a financial institution should personally report the relevant information or intelligence to CTIF-CFI whenever the AMLCO cannot do so.
- 85) This principled competence of the AMLCO does not preclude him from having to rely on persons who are in direct contact with customers or transactions to obtain the information necessary for his analysis or to have certain verifications carried out under his responsibility.
- 86) Furthermore, it is recalled that Article 9, § 2, third subparagraph, 2° of the Law stipulates that the AMLCO should, in particular, possess the adequate expertise that is necessary to perform his functions effectively, independently and autonomously. Where, due to its business model, a financial institution frequently receives large sums of money repatriated from abroad, it should ensure that its AMLCO has the necessary expertise to act on suspicions of laundering of the proceeds of serious fiscal fraud. Given the potentially highly technical nature and complexity of the analysis of repatriation operations and, in particular, of their tax aspects, it may be useful or even necessary for the AMLCO's analysis to rely on the expertise of specialist advisors, particularly in the field of tax law. Where appropriate, this may be organised by establishing an ad-hoc committee within the financial institution. In that event, care should be taken to ensure that appropriate measures are implemented to prevent conflicts of interest on the part of such advisors and/or such a committee and to guarantee the objectivity of the opinions delivered. In any case, the decision whether or not to consider a transaction as suspicious should remain the prerogative of the AMLCO designated in accordance with Article 9, § 2 of the Law.

D.2. What internal procedures should a financial institution have for managing repatriation files?

- 87) In this regard, see the page "[Policies, procedures, processes and internal control measures](#)" on the Bank's website.
- 88) In view of the special scrutiny required for repatriation operations, it may be necessary, depending on the level of risk for the financial institution of being confronted with such operations, that the criteria applied by the persons in direct contact with customers and transactions (see Art. 16 of the Regulation of the NBB of 21 November 2017 on the prevention of money laundering and terrorist financing) and the criteria applied in the automated transaction monitoring system (see Art. 17 of the same Regulation) be defined in such a way as to allow for an effective detection of such operations. It is also recommended that a procedure be established and applied to enable customers to give advance notice of their intention to carry out repatriations and to enable the relevant information needed to analyse these repatriations to be gathered at an early stage. Finally, given the particularities of repatriation operations, it may be advisable for institutions with frequent exposure to such operations to establish appropriate internal procedures for analysing these operations and formulating an appropriate justification of the legitimacy of the funds on the basis of the documentation that is necessary to support the credibility of that justification.

D.3. May a financial institution apply a relative or absolute threshold below which repatriation should be examined with less rigour? If so, what amount is acceptable?

- 89) Pursuant to Article 8 of the Law, each financial institution should develop policies, procedures, processes and internal control measures based on the overall risk assessment required under Article 16 of the Law. Pursuant to Article 17, second subparagraph of the Law, each financial institution should be able to demonstrate to the Bank that its policies, procedures and internal control measures, including its customer acceptance policies and its transaction due diligence procedures, are appropriate in



view of the ML/FT risks it has identified. Article 5 of the Anti-Money Laundering Regulation of the NBB requires financial institutions to document how the ML/FT risks they have identified and assessed pursuant to Article 16 of the Law, are taken into account in the policies, including the customer acceptance policy, procedures and internal control measures that they define pursuant to Article 8 of the Law. They should keep this document available for the Bank, in order to meet the requirement of Article 17, second subparagraph of the Law. See the page "[Risk-based approach and overall risk assessment](#)" on the Bank's website.

- 90) In this context, the amount of the transactions can be considered as one of the elements to measure the level of money laundering risk. However, this level is also determined by a series of other factors, including the characteristics of the customer, his current or desired transactions (including their complexity), the geographical areas involved, etc. Therefore, a risk-based approach using only a criterion related to the amount of the transaction cannot generally be considered sufficient and adequate. On the other hand, it could be accepted that internal procedures provide that no enhanced due diligence measures are applied where the amounts involved are small enough to consider that the risk of these transactions being used to launder, inter alia, the proceeds of serious fiscal fraud, is low. In this respect, it is recalled that according to the explanatory memorandum to the Law, the seriousness of the fiscal offence can be assessed on the basis of the confection and/or use of falsified documents, but also the significance of the amount concerned by the transaction and the abnormal nature of this amount in view of the activities or the equity of the customer.

D.4. Are there other criteria or best practices that should be taken into account in the risk assessment?

- 91) For the other criteria to be taken into account in determining the level of due diligence and the nature of the measures to be taken, see the previous question. For example, in addition to the amount of the transfer, criteria relating to the countries from which the funds are transferred, the complexity or opacity of the legal structure of the originator of the transfer, the reasons for the transfer, the relationship between the donor, who is the originator of the transfer, and the donee, who is the beneficiary of the transfer, etc., may have to be taken into account. See also §§ 3 and 32 above and the page "[Risk-based approach and overall risk assessment](#)" on the Bank's website.

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Yours faithfully,

Pierre Wunsch  
Governor

Annexes: 2



## Annex 1: Question A.1:

### Are financial institutions required to inform CTIF-CFI of every repatriation?

#### Further clarification of the answers in §§ 12 to 16 of the Circular

1. According to Article 47, § 1, first subparagraph of the Law the obliged entities (including financial institutions) are obliged to report to CTIF-CFI:  
*“when they know, suspect or have reasonable grounds to suspect:*
    - 1° *that funds, regardless of the amount, are related to money laundering or terrorist financing;*
    - 2° *that transactions or attempted transactions are related to money laundering or terrorist financing. This obligation also applies when the customer decides not to carry out the intended transaction;*
    - 3° *other than the cases referred to in 1° and 2°, that a fact of which they know, is related to money laundering and terrorist financing.”*
  2. The concept of "money laundering" is defined in Article 2 of the Law:  
*“(…) shall be regarded as “money laundering”:*
    - 1° *the conversion or transfer of money or other property, knowing that this is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of his action;*
    - 2° *the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of money or property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;*
    - 3° *the acquisition, possession or use of money or property, knowing, at the time of receipt, that these were derived from criminal activity or from an act of participation in such an activity;*
    - 4° *participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to under 1°, 2° and 3°.”*
  3. The term "criminal activity" used in this definition of money laundering is defined in Article 4, 23° of the Law and covers a wide range of criminal or unlawful conduct in the criminological sense of the term [6], including: fraud detrimental to the financial interests of the European Union (point j), serious fiscal fraud, whether organised or not (point k), social fraud (point l), embezzlement by public officials and corruption (point m), serious environmental crime (point n), stock market-related offence (point r), breach of trust (point v), misappropriation of corporate assets (point w), etc.
  4. With regard to serious fiscal fraud, whether organised or not (point k), the explanatory memorandum to the Law of 18 September 2017 [7] states the following:  
*“The seriousness of the tax crime can be assessed on the basis of the confection and/or use of falsified documents, but also the significance of the amount concerned by the transaction and the abnormal nature of this amount in view of the activities or the equity of the customer. In the new definition of fiscal fraud, the level of organisation is one of the criteria for determining the seriousness thereof, without it being a necessity for its qualification as a crime.”*
  5. See also Article 1 of the [Royal Decree of 9 February 2020](#) implementing Article 29, § 4 of the Code of Criminal Procedure. This Royal Decree stipulates that the facts referred to in Article 29, § 3 of the
- <sup>6</sup> In this context, it should be noted that the legislator deliberately refers to "criminal activities" and not to "offences" in the definition of money laundering.
- <sup>7</sup> Chamber, 2016-2017, DOC 54 2566/001, p. 33 - see <http://www.lachambre.be/FLWB/PDF/54/2566/54K2566001.pdf>

Code of Criminal Procedure, the investigation of which reveals indications of serious fiscal fraud, whether organised or not, and which constitute criminal offences according to the tax laws and the decrees adopted in implementation thereof, are characterised by the following criteria:

“(…)

- *the facts are characterised by both their seriousness and their organised nature;*

*The organised nature of the facts presupposes the use of complex constructions or mechanisms, possibly with an international dimension.*

*The seriousness of the facts refers inter alia to taxpayers who wilfully and repeatedly violate tax laws and the decrees adopted in implementation thereof. Facts can also be considered serious when the fraud is related to the confection or use of falsified documents, or when the amount of the transaction is considerable or abnormal.*

- *there are serious indications that the facts are related to offences under ordinary law with a serious financial, economic, fiscal or social component or to elements of serious corruption;*
- *for the investigation of the facts, judicial acts of investigation involving coercive measures must be carried out;*
- *there are serious indications that the facts serve to finance the activities of a terrorist group or criminal organisation.”*

6. However, Article 47, § 1, second subparagraph of the Law also specifies that *the obligation to report to CTIF-CFI in accordance with 1° to 3°, does not entail that the obliged entity must identify the predicate criminal activity to the money laundering.”*

In the explanatory memorandum to the Law of 18 September 2017 <sup>[8]</sup>, this provision is explained as follows:

*“In order to avoid any discussion on this matter the draft article now explicitly underlines that it is not up to the obliged entities to identify the predicate criminal activity to the suspected money laundering. For example, when an obliged entity suspects that certain funds have an illicit origin that could be fiscal fraud, that obliged entity should report this to CTIF-CFI without having to establish beforehand whether this fiscal fraud is serious or not. (...)*

*In most cases the reporting persons do not know which criminal activity is predicate to the suspected money laundering. It is CTIF-CFI's task to perform a thorough analysis to find the link between the funds involved, the suspicious transaction or the reported facts and one of the forms of crime referred to in the law (Senate, No. 1323/1, O.S. 1994-1995, p. 5 and Senate, Nos 1335/1 and 1336/1, O.S. 1997-1998, p. 18.).*

*The task of distinguishing between suspicious transaction reports related to serious crime justifying cooperation between the financial and non-financial sector and suspicious transaction reports that are judged to have a lesser impact on social and economic order was always entrusted to CTIF-CFI by the preventive AML/CFT system, which gives a narrower definition of money laundering than the criminal approach, and not to the obliged entities. By acting as a filter, CTIF-CFI ensures that the services of the Public Prosecutor's Office are not inundated with irrelevant reportings (Parl.doc., Chamber, 1992-1993, No. 689/2, p. 3.; A. DE NAUW, *Les métamorphoses administratives du droit pénal de l'entreprise*, Gent, Mys & Breesch, 1994, p. 135).*

*This does not prevent the obliged entities from referring to a predicate form of crime if they know or suspect or have reasonable grounds to suspect that the laundered funds derive from a criminal activity listed in Article 4, 23° of the draft Law.*

*As has always been the case in the Law of 11 January 1993, the slightest suspicion is sufficient for the obligation to report to be applicable. This is the case if the professional cannot exclude that the transaction or fact which becomes known to him is connected to money laundering or terrorist financing (Explanatory Memorandum, Parl.doc., Chamber, 1997-1998, No 1335/1, p.18). Money laundering under the draft law consists, as in the past, of acts (conversion, transfer, concealment, ....) relating to*

<sup>8</sup> Likewise, p. 159 to 161

*funds deriving from criminal activity. Thus, the slightest suspicion of the illicit origin or destination of the funds with which the professional is confronted (conversion, transfer, concealment,...) or of a transaction or set of transactions that seem suspicious, is sufficient to trigger the obligation to report a suspicious transaction.*

*The obliged entities are clearly expected to report a suspicion when the information or documents received from the customer or available in the customer's file do not enable them to obtain full assurance about the legitimacy of the funds or of the transaction, or about its economic, legal or fiscal justification."*

7. Consequently, it should be stressed that it is not permissible for a financial institution that suspects or has reasonable grounds to suspect that funds or a transaction are related to laundering of money deriving from, for example, social fraud, serious fiscal fraud or another form of crime stated in the Law, to decide not to report a suspicion to CTIF-CFI on the grounds that it does not have proof of such social or fiscal fraud or other offences stated in the Law.
8. Nor is it permissible for a financial institution to decide not to report a suspicion to CTIF-CFI because it believes that the offences from which the funds may derive are time-barred. That assessment, which falls within the exclusive competence of the judicial authorities, cannot remove the suspicion of a financial institution that the funds in question may have a criminal origin. The sole effect of the limitation is to preclude criminal proceedings and the imposition of criminal penalties; it does not allow to consider the facts in question as lawful. A fortiori, in case of laundering of the proceeds of serious fiscal fraud (as referred to in the Anti-Money Laundering Law at the time of repatriation) , it is inadmissible that a financial institution considers itself exempt from the obligation to report a suspicious transaction to CTIF-CFI on the grounds that the establishment and/or recovery of the tax debt of the customer who committed serious fiscal fraud is time-barred by operation of the tax laws.
9. Conversely, if, based on the justification and documentation received (see also §§ 33 and 34), a reasonable person can conclude that there is sufficient certainty as to the legitimacy of the funds and of the transfer, the financial institution is not required to have formal proof of this legitimacy to rule out any suspicion of money laundering and consequently not to report any suspicion to CTIF-CFI.
10. In this context, it should be recalled that repatriations from abroad can constitute money laundering operations on the part of the originators of the transfers (e.g. donors). According to Article 2, 1° of the Law, the following is considered to be money laundering: *"the conversion or transfer of money or other property, knowing that this is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of his action"*.
11. The same operations can, however, also be money laundering operations on the part of the beneficiaries in Belgium of these transfers (e.g. donees, heirs or legatees). According to Article 2, 3° of the Law, the following is also considered to be money laundering: *"the acquisition, possession or use of money or property, knowing, at the time of receipt, that these were derived from criminal activity or from an act of participation in such an activity"*.
12. It is also noted that in both cases the perpetrator of the money laundering may be a different person from the perpetrator of the alleged criminal activity from which the funds derive. For example, if the originator and the beneficiary of the transfer of funds know that the funds transferred are the proceeds of a predicate criminal activity, especially social fraud or serious fiscal fraud committed by a third person, the transfer of those funds from one person to the other will constitute an operation to launder the proceeds of a criminal activity for both of them, even if neither person was involved in that activity.
13. It is also specified that if, for both the originator and the beneficiary of the transfer, the perpetration of the act of money laundering presupposes that they are aware of the illicit origin of the funds, the

slightest suspicion that the customer knows or cannot reasonably be unaware of this illicit origin is sufficient to give rise to a suspicion of money laundering on the part of the financial institution and, consequently, to an obligation to report the suspicion to CTIF-CFI.

14. For further information, see also the following pages on the Bank's website in particular:

- [Definitions](#)
- [Risk-based approach and overall risk assessment](#)
- [Individual risk assessment](#)
- [Customer and transaction due diligence](#)
- [Analysis of atypical transactions and reporting of suspicions](#)

## Annex 2 : Question A.2 :

**Is a financial institution allowed to accept repatriated funds if it believes there is a suspicion of money laundering and intends to report this to CTIF-CFI? Must every reporting to CTIF-CFI result in the termination of the business relationship with the customer?**

**Further clarification of the answers provided in §§ 18 to 21 of the circular.**

1. If a potential customer approaches a financial institution with a view to establishing a business relationship under which that customer intends to repatriate funds which the financial institution knows, suspects or has reason to suspect are related to money laundering, it should decide, based on the principles laid down in the customer acceptance policy required under Article 8, § 2, 1° of the Law, whether or not the establishment of the business relationship can be accepted.
2. In this respect, it is recalled that the Bank mentions the following in its recommendations for the elaboration of this customer acceptance policy (see the page ["Policies, procedures, processes and internal control measures: Comments and recommendations"](#), section 2.1.2, on the Bank's website):  
*"In terms of principles, it primarily aims to determine the conditions regarding the reduction of ML/FT risk which the financial institution imposes on itself for entering into a business relationship with its customers or to become involved in performing occasional transactions for its customers. This customer acceptance policy should enable institutions to adequately take into account [the overall risk assessment](#) and the diversity of the risks mapped in terms of nature and intensity. This diversity should also be reflected in the [risk classification](#). The customer acceptance policy should thus enable institutions to define appropriate procedures and arrangements for entering into a business relationship with or performing transactions for these customers. It is important to note that the customer acceptance policy is essentially intended to serve as a framework for the decision-making process as regards the establishment of a business relationship or the execution of the occasional transaction and the nature and intensity of the due diligence measures to be implemented. However, these decisions may not result automatically from the customer acceptance policy, but require an individual risk assessment carried out in accordance with Article 19 of the Anti-Money Laundering Law that allows the possible specificities of each individual case to be taken adequately into account. "*
3. This customer acceptance policy and the individual assessment of the risks associated with the customer concerned as required under Article 19, § 2 of the Law should enable the financial institution to comply also with Article 35, § 2 of the Law, which provides the following: *"If obliged entities have reasons to consider that they will not be able to fulfil their [transaction due diligence obligation], they may neither establish a business relationship with or carry out a transaction for the customer concerned. Moreover, if they cannot fulfil that same obligation with regard to their existing customers, they shall terminate any already established business relationship (...)"*.
4. The Bank therefore considers that the customer acceptance policy should provide for a refusal to enter into a business relationship with a potential customer when the individual risk assessment concludes that the financial institution is not in a position to implement due diligence measures that would enable it to adequately reduce and manage the risk of being used unwittingly by that customer for money laundering purposes, taking into account, in particular, the customer's intention to repatriate funds of suspicious origin. It should be noted that in this case, Article 35, § 2, second subparagraph of the Law expressly requires the financial institution to verify, in accordance with Article 46, whether the reasons for the failure to comply with the due diligence obligation are in themselves such as to give rise to a suspicion of money laundering and whether this suspicion should be reported to CTIF-CFI.
5. When an existing customer repatriates, or informs his financial institution of his intention to repatriate, funds that the financial institution knows, suspects or has reason to suspect are related to money laundering, this financial institution is obliged to report this suspicion to CTIF-CFI (see above). Article 22 of the Anti-Money Laundering Regulation of the NBB provides that, in this case, the financial institution should also carry out a new individual assessment of the money laundering risks associated with this customer, in accordance

with Article 19, § 2 of the Law, taking into account in particular the fact that the funds and/or transactions of this customer have been the subject of a suspicious transaction report. The financial institution decides, on the basis of this re-assessment and its customer acceptance policy, whether to maintain the business relationship, subject to the implementation of due diligence measures adapted to the risks thus re-assessed, or to terminate it. The business relationship can therefore not be terminated automatically without a re-assessment of the risks associated with it.

6. The new individual risk assessment that is required should, in particular, enable the financial institution to determine whether Article 35, § 2 of the Law, which is discussed above, is applicable to the case in question.
7. If the financial institution decides on this basis to maintain the business relationship, the enhanced due diligence exercised on this relationship should enable it to make additional suspicious transaction reports to CTIF-CFI, as long as the suspicion initially reported to it has not been dispelled, when the customer instructs the financial institution to transfer large sums of disputed funds to an account opened with another financial institution in Belgium or abroad or, a fortiori, when this customer expresses his wish to withdraw his funds in cash.
8. For more information, see also the following pages on the Bank's website:
  - [Policies, procedures, processes and internal control measures](#) (see in particular [Comments and recommendations](#))
  - [Due diligence on business relationships and occasional transactions and detection of atypical facts and transactions](#) (see in particular [Comments and recommendations by the NBB](#))
  - [Reporting of suspicions](#) (see in particular [Comments and recommendations by the NBB](#))