

Circular

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Policy

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Fiscal prevention policy (unofficial translation)

Scope

- *credit institutions, stockbroking firms, payment institutions and electronic money institutions governed by Belgian law,*
- *branches established in Belgium of credit institutions, stockbroking firms, payment institutions and electronic money institutions governed by the law of a State that is not a member of the European Economic Area,*
- *central securities depositories, institutions supporting central securities depositories governed by Belgian law,*
- *branches established in Belgium of central securities depositories and institutions supporting central securities depositories governed by the law of a State that is not a member of the European Economic Area,*
- *central counterparties governed by Belgian law,*
- *(re)insurance companies governed by Belgian law,*
- *branches established in Belgium of insurance companies governed by the law of a State that is not a member of the European Economic Area.*

This Circular will be notified by separate letter to branches established in Belgium of credit institutions, stockbroking firms, payment institutions, electronic money institutions, (re)insurance companies, central securities depositories and institutions supporting central securities depositories governed by the law of another EEA Member State, including where such institutions or companies are operating in Belgium under the freedom to provide services, requesting them to safeguard the application of the general-good rules by setting up an adequate internal control system and internal audit function.

The institutions and companies falling within the scope of this Circular are hereinafter referred to as “(financial) institution” or, collectively, “(financial) institutions”.

Summary/Objectives

The cornerstone of a well-functioning financial sector is public confidence in financial institutions. This confidence is based on the good reputation of these institutions. Controlling reputational risk is therefore an essential element of a sound and prudent management of financial institutions.

Aspects relating to the integrity of the activities in the financial sector play an important role in the prudential supervision of the sound and prudent management of financial institutions.

Fiscal behaviour has undoubtedly for many years been an important aspect of this integrity. The sector is therefore expected to pursue a targeted fiscal prevention policy in accordance with the requirements of the various supervisory laws. This Circular aims to recall the principles underlying the fiscal prevention policy. It replaces the following Circulars with immediate effect:

- *Circular D4/EB/5 to investment firms of 18 December 1997*
- *Circular D1 97/10 to credit institutions of 30 December 1997*
- *Communication N° D. 207 to insurance companies of 30 November 2001*

Against the background of this Circular, the Bank expects financial institutions to critically review their fiscal prevention policy and, where necessary, to adjust and update it.

Dear Sir,
Dear Madam,

Under the various supervisory laws¹, every financial institution is required to have a management structure, an administrative and accounting organisation and an internal control system appropriate to its activities. On this basis, each institution should pursue a prevention policy aimed at controlling its reputation by adopting an in every respect irreproachable attitude in the tax field; in particular, each institution is prohibited under the various supervisory laws² from setting up special mechanisms with the aim or effect of enabling or facilitating tax fraud by third parties.

The objective and the different components of the fiscal prevention policy are summarised below. Subsequently, these components are discussed in detail. Of course, as in every field of activity, it is entirely up to each institution to define the content of its prevention policy.

1. Objective of the prevention policy

Financial institutions should refrain from cooperating, directly or indirectly, with customers who approach them to evade their tax obligations. Indeed, in order to ensure the proper functioning of the financial sector, every institution should take care to preserve its reputation and the public's trust in it. This objective is achieved when the institution adopts an in every respect irreproachable attitude in the tax field.

In this context, financial institutions are prohibited under the various supervisory laws from setting up special mechanisms. In this respect, it should be noted that the list of typical transactions in the document "Special Mechanisms" (see Circular NBB_2021_16 of 6 July 2021) is not exhaustive. These special mechanisms do not fall under tax law, but are a matter of good management and therefore fall within the Bank's administrative remit. Besides the criminal law dimension that it may have, the setting up of special mechanisms may have a significant impact on the assets of the institution, which may in turn affect its solvency and liquidity and even jeopardise its viability.

For the sake of completeness, it should be noted that the objectives thus defined are without prejudice to the application of the Law of 18 September 2017 on the prevention of money laundering and terrorist

¹ See

- Articles 21, 168, 315, 333, 502 and 603 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;
- Articles 42, 392, 564 and 585 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;
- Articles 21, 130 and 222 of the Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems;
- Article 26(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012;
- Article 10 of the Royal Decree of 26 September 2005 on the legal status of settlement institutions and institutions assimilated to settlement institutions;
- Article 26(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

² See

- Articles 21, § 1/1, 315, 329, § 2, 333, 502 and 603 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms;
- Articles 42, § 1/1, 564 and 585 of the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies;
- Articles 21, § 1/1, 130, 176, § 1/1 and 222 of the Law of 11 March 2018 on the legal status and supervision of payment institutions and electronic money institutions, access to the activity of payment service provider and the activity of issuing electronic money, and access to payment systems;
- Article 36/25, § 4, fourth paragraph (central counterparties) and Article 36/26/1, § 5/1 (central securities depositories and institutions supporting central securities depositories) of the Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium.

financing and on the restriction of the use of cash. This law applies, inter alia, to the laundering of money and other assets originating from the commission of an offence related to serious tax fraud, whether organised or not.

2. Form of the prevention policy

The prevention policy should include at least the following six components;

- concretisation of the prevention policy in a policy memorandum;
- development of guidelines for staff;
- elaboration of adequate procedures to implement the policy memorandum and the guidelines, and taking of appropriate internal control measures;
- monitoring by the internal audit department of compliance with the said guidelines and procedures;
- raising awareness of and providing permanent training to staff;
- periodic deliberation by the persons tasked with senior management, where applicable the management committee, on compliance with the policy adopted and informing the statutory governing body at least once a year on this subject in the context of its supervisory function.

These various elements are developed below.

2.1. Policy memorandum

The persons tasked with senior management, where applicable the management committee, of a financial institution should define a fiscal prevention policy in a regularly updated policy memorandum and are responsible for its implementation and application. The compliance function is responsible for monitoring the effective application of the institution's prevention policy.

The policy memorandum should set out the institution's objectives and identify and analyse the risks it is exposed to in this area.

The policy memorandum should show that the prevention policy is coherent and consistent at the level of the institution as well as at the level of the group.

The policy memorandum should pay due attention to the performance by board members of management assignments in their capacity as representatives of the institution in subsidiaries or in other companies with which an operational collaboration exists or operational arrangements have been made.

Particular attention should also be paid to those departments of the institution that provide services, such as legal and tax advice, to other entities of the group or a customer of the group.

The financial institution should avoid any direct or indirect involvement in transactions that could negatively affect its image as a Belgian financial institution or the image of the Belgian financial sector.

In the context of the obligation to have an adequate organisation and internal control (in accordance with the various supervisory laws), the policy memorandum should also address the following aspects:

- drafting and disseminating appropriate guidelines and the necessary procedures in relation therewith, and taking the necessary internal control measures to ensure compliance with these guidelines and procedures;
- monitoring by the internal audit function.

In this respect, the attention of the institutions is also drawn to the principles set out in Circular NBB_2015_21 of 13 July 2015 concerning the internal control system and the internal audit function.

2.2. Guidelines for staff

The guidelines, for example in the form of a vade-mecum, should specify the policies of the persons tasked with senior management, where applicable the management committee. They should constitute a coordinated set of guidelines for all staff of the institution, including staff employed in its own agencies (both in Belgium and in branches abroad) and anyone who may act as an agent of the institution, including authorised agents and brokers. If the institution has outsourced activities that are covered by the above guidelines, it should ensure that the guidelines for these activities are complied with and that it can monitor this compliance.

The guidelines should be comprehensive and provide sufficient guidance for establishing the necessary procedures. These guidelines should be based on the identification and analysis of the risks to which the institution is exposed in the tax field. In particular, the Bank expects the institution to provide guidelines for activities such as lending, payment transactions, the provision of securities services, asset management and advice, underwriting of life insurance policies, tax advice services, the provision of tax advice by staff in direct contact with customers, and other services which the persons tasked with senior management, where applicable the management committee, consider to be risky.

The guidelines should also address the relationships with customers and public authorities. For example, they should include adequate limits on the possibility of powers of attorney being given to staff members by third parties. They should also specify that the information on customer assets and transactions that the institution is required to report to the tax authorities is correct and complete.

The staff's attention should be drawn to the fact that participation in a "special mechanism" as referred to in the various supervisory laws, may result in severe sanctions, including dismissal.

2.3. Procedures and internal control measures

The persons tasked with senior management, where applicable the management committee, should, with regard to their prevention policy, set up an adequate internal control system and evaluate it at least annually (see also Articles 4 and 5 of Circular NBB_2015_21 of 13 July 2015). They should ensure that the necessary procedures are drawn up in accordance with the guidelines issued and that these procedures are themselves issued and disseminated.

Particular attention should be paid to compliance with the procedures. The internal control measures taken by the institution in this context should form a coherent and integrated whole.

2.4. Internal audit function

The internal audit function of the financial institution should, in all its activities, pay attention to compliance with the institution's self-imposed rules on integrity and ethics. Compliance with the rules of conduct, including the prevention policy, should be explicitly included in the planning of audit missions and in work programmes, working papers and written reports. Management should ensure that the internal audit function has the necessary competence to monitor compliance with the prevention policy (see also Article 8 of Circular NBB_2015_21 of 13 July 2015).

2.5. Awareness-raising and training

Also in the context of the prevention policy, the persons tasked with senior management, where applicable the management committee, should take appropriate measures, such as awareness-raising and permanent training, to familiarise staff, including agency staff, and representatives, such as authorised agents and brokers, with the relevant legal provisions, with their policies in this field and with the different types of "special mechanisms".

2.6. Deliberations of the persons tasked with senior management, where applicable the management committee

The institution's fiscal prevention policy and compliance with it should, like other aspects of integrity and ethics, be regularly addressed when the persons tasked with senior management, where applicable the management committee, discuss the internal control and periodically report on this to the statutory governing body, the supervisor and the accredited statutory auditor³. The report on the assessment of the internal control or, in the case of insurance and reinsurance companies, the reporting on the assessment of the effectiveness of the governance system should pay particular attention to compliance with the prohibition on setting up special special mechanisms.

A copy of this Circular will be sent to your institution's accredited statutory auditor(s).

Yours faithfully,

Pierre Wunsch
Governor

³ See also Article 5 of Circular NBB_2015_21 concerning the internal control system and the internal audit function in conjunction with Circular NBB_2011_09 on the report of the senior management on the assessment of the internal control and chapter 14 of Circular NBB_2016_31 on the expectations of the National Bank of Belgium regarding the governance system for the insurance and reinsurance sector.