

Communication

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Horizontal control analysis examining a sample of summary tables of the overall assessment of the risks of money laundering and/or terrorist financing

Scope

All companies subject to the supervision of the National Bank of Belgium that fall within the scope 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, including:

- *all credit institutions, including EU and non-EU branches;*
- *all stockbroking firms, including EU and non-EU branches;*
- *all insurance companies authorised to conduct life insurance business, including EU and non-EU branches;*
- *all payment institutions and electronic money institutions governed by Belgian law, including branches established in Belgium of EU and non-EU institutions, and payment institutions and electronic money institutions authorised in another country of the European Economic Area which are required to designate a central contact point in Belgium;*
- *all settlement institutions falling within the scope of the Law of 18 September 2017.*

Summary/Objectives

Through this communication, the National Bank of Belgium aims to draw lessons from the summaries of the first “overall risk assessments” performed by the financial institutions in accordance with Article 16 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, and to communicate these to the financial institutions in order to improve the quality and relevance of these assessments.

Structure

- I. General comments*
- II. The distinction between the ORA and the reporting of results to the Bank*
- III. The ORA process*
- IV. Identification of risks (phase 1)*
- V. Gap analysis (phase 2)*
- VI. Importance of an ambitious action plan (phase 3)*

Dear Sir,
Dear Madam,

Since the entry into force 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”), the financial institutions subject to the supervision of the National Bank of Belgium (hereinafter “the Bank”) are required to **perform an overall assessment of the risks of money laundering and/or terrorist financing** to which they are exposed (hereinafter “ORA”) and to **update** this assessment when it appears that the ORA is no longer adequate to describe the current risks of money laundering and terrorist financing (hereinafter “ML/FT”)¹.

This assessment is primarily useful for the financial institution itself, as it forms the main foundation for establishing adequate policies, procedures and internal control measures on the subject². Moreover, each institution should be able to demonstrate that its policies, procedures and internal control measures allow for the proper management and reduction of the risks identified in the context of the ORA³.

When a financial institution does not perform its ORA correctly, the impact could be considerable: the institution not only runs the risk of misallocating its resources, but also of being itself involved in money laundering or terrorist financing activities. Where appropriate, the financial institution may, in addition to the non-negligible impact on its reputation, be subject to coercive measures and/or administrative sanctions imposed by the Bank, and even to (criminal) legal proceedings.

From this perspective and starting from its own risk classification, the Bank carried out a **horizontal analysis** and an assessment of a substantial number of ORA summary tables and the related questionnaires, which had been completed by the financial institutions under its supervision and were to be communicated to the Bank by 15 July 2018 at the latest⁴. Parallel to this analysis, the Bank took into account the responses to the periodic questionnaire relating to anti-money-laundering and counter-terrorist-financing (hereinafter “AML/CFT”), the content of the AMLCO’s annual report and any other relevant information (e.g. inspections or information from CTIF-CFI).

As an extension of this control action and in cases where the Bank deemed this appropriate, it addressed **specific and individualised oral or written feedback to the institutions**. For other financial institutions, this feedback was incorporated in other (particularly event-driven) control actions or taken into account in the preparation of future inspections.

On the basis of the analyses performed, the Bank also generated a number of **more general findings** which are detailed below. Several transversal expectations and recommendations were formulated in the process. However, the Bank emphasises that these findings, expectations and recommendations concerning the reporting of 15 July 2018 are in no way exhaustive and that **each AMLCO should, with the support of his senior officer responsible for AML/CFT, review the ORA of his financial institution in light of this communication**, identify any improvements and/or updates to be made and perform the improvements and/or updates required. The conclusions of this review should be reported to the Bank in **the AMLCO’s next annual activity report on 2019** (to be submitted by 30 June 2020 through eCorporate). Where appropriate, the **updated ORA summary table** should also be submitted to the Bank (either also through eCorporate or by e-mail for financial institutions that do not have access to eCorporate).

1 For the full legislative and regulatory framework, please refer to the references included in the section “Comments and recommendations by the NBB” on the Bank’s website: See in particular Risk-based approach and overall risk assessment (<https://www.nbb.be/en/financial-oversight/combating-money-laundering-and-financing-terrorism/risk-based-approach-and>).

2 The ORA differs in this respect from the individual risk assessment required by Article 19 of the Law, which is intended to determine, on a case by case basis, which due diligence measures are appropriate to apply.

3 See Article 17, second paragraph of the Law.

4 Circular NBB_2018_02 of 24 January 2018 on the overall assessment of money laundering and terrorist financing risks, as well as its three annexes.

Main findings of the horizontal analysis of the ORA summary tables

I. General comments

The entry into force of the Law represented a partial break with the past: the approach chosen by the Legislator is now explicitly and essentially risk-based and supported by a legal obligation for risk assessment. The first ORA, which had to be approved by each financial institution's management committee or senior management⁵, therefore had the merit of raising financial institutions' awareness of the importance of the ORA as foundation of their internal AML/CFT organisation.

The results of the horizontal control action of the ORA summary tables, which were to be submitted to the Bank by 15 July 2018, were unsatisfactory on average and, therefore, provided ample room for improvement. The Bank found that certain financial institutions limited themselves to a purely formal approach without taking into account the purpose or importance of the ORA.

That being said, very large differences were noted from one financial institution to the other regarding the quality of the ORA summary tables. Certain entities belonging to groups that already applied this ORA approach in the past (e.g. the "SIRA" process in the Netherlands), but also some stand-alone and/or smaller financial institutions were able to meet the prudential expectations (taking into account the principle of proportionality).

Additionally, our analyses often revealed a lack of consistency between the information included in these ORA summary tables and the information reported to the Bank in the annual AML/CFT questionnaire, in the AMLCO's annual activity report or by other means.

II. The distinction between the ORA and the reporting of results to the Bank

The Bank found that it would be useful to specify its expectations regarding the **content of the ORA summary table**, which was to be submitted by the financial institutions by 15 July 2018 and which will have to be resubmitted to the Bank in the future in case of future updates of the ORA:

- the risk identification phase: the Bank expects the summary table to include *all* significant activities of the financial institution, as well as the inherent risk attributed by the financial institution to each of these activities (i.e. also the description of the inherent risks considered "Low" by the financial institution). Thus, the financial institution demonstrates that all of its activities have been subject to a risk analysis (see point IV below)⁶;
- in contrast, the summary table may differ completely from the ORA itself with regard to the **inherent risks that the financial institution has assessed as "Low"**, in the sense that the table **is not required to include the management measures taken for these risks or the level of residual risk attached to each inherent risk identified as "Low"** (gap analysis phase);
- as a result, the summary table **also is not required to list the actions to be taken** for these inherent risks assessed as "Low" by the financial institution (action plan).

The Bank would also like to specify that the template in Annex 1 to Circular NBB_2018_02 of 24 January 2018 on the overall assessment of money laundering and terrorist financing risks was provided **as an example** to the financial institutions for drafting the ORA summary table or even the ORA itself. The columns included in this template list the absolute minimum of information to be reported to the Bank with regard to the ORA. However, there is nothing to prevent the financial institutions from adding other columns with regard to the risk identification phase including, for example, the risk scenarios (in what ways can the risk materialise?) or an assessment of the residual risk.

Finally, the Bank would like to specify that, by reporting an ORA summary table, financial institutions are not exempted from documenting the process of the ORA itself and from making this documentation

⁵ Article 3, 1° of the Anti-Money-Laundering Regulation of the NBB.

⁶ The Bank often found that certain, sometimes important, aspects of the activities performed or certain, sometimes important, segments of customers were left out of the ORA summary table, or even the ORA itself, either by oversight or because it was decided a priori with or without analysis that these types of activities or customers are (almost) not exposed to ML/FT risks.

available to the Bank in its capacity as AML/CFT supervisory authority (that can always request this documentation when needed)⁷.

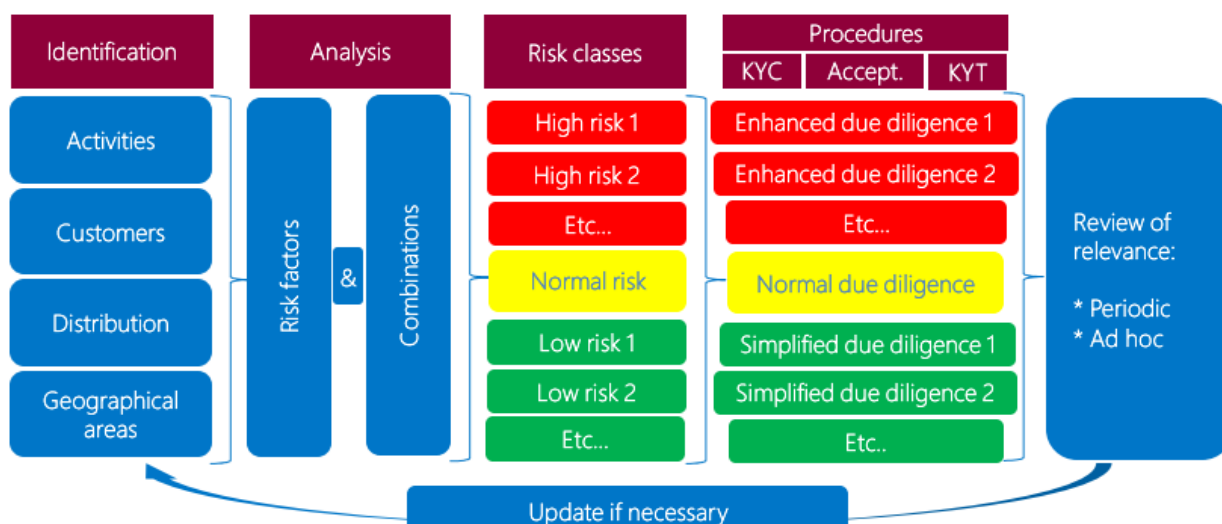
III. The ORA process

Often, the content of the **questionnaire relating to the methodology followed** to achieve the ORA⁸ was unsatisfactory and did not make it possible to understand how the financial institution was organised to perform the ORA in an organised and controlled (and controllable) manner.

Conversely and as a matter of good practice, the Bank found that, in certain cases, the ORA was not performed in isolation by the AMLCO, who was responsible for the project, but that the AMLCO tried to approximate concrete reality as closely as possible by involving not only the specialists of the AML cell but also the persons who are in direct contact with customers or their transactions, the IT department, etc.

Additionally, the Bank also found that certain financial institutions do not follow the different steps of the overall risk assessment in methodological order; the objective of the ORA is certainly not to justify the comprehensiveness of the existing risk management measures, but rather to verify whether these measures are sufficient and, if necessary, to supplement or amend them with additional measures. As a reminder, the following steps should be taken:

1. Identify the risks (point IV below);
2. Analyse the risks (point V below);
3. Manage/reduce the risks (point VI below).



The Bank's findings in relation to these different steps of the ORA process are listed below, in methodological order.

In accordance with the comments and recommendations posted on its website, the Bank moreover would like to remind you that an ORA **procedure** should be established within your financial institution⁹. The Bank expects each financial institution to be able to demonstrate to it that it has implemented its ORA procedure correctly, following the various steps outlined above, and that it has deduced the consequences from this procedure, in terms of identifying weaknesses and remedial measures, in a consistent manner. In this context, the Bank would like to stress the crucial role and the responsibility of the senior officer responsible for AML/CFT within the management committee or the senior management and of the AMLCO.

⁷ See Article 17, first paragraph of the Law.

⁸ Annex 3 to Circular NBB_2018_02.

⁹ See Policies, procedures, processes and internal control measures: comments and recommendations (<https://www.nbb.be/en/financial-oversight/combating-money-laundering-and-financing-terrorism/organisation-and-internal-6>).

This procedure, which should also be approved by the management committee or the senior management of the financial institution, makes it possible for the ORA process to be subject to internal control. It should systematically cover the different steps of the ORA and, given that the ORA process is a permanent exercise, the procedure should specify the **modalities for reviewing the ORA**. A review is required:

- whenever one or more events occur that are likely to have a significant influence on the risks¹⁰, i.e. in case of a change in activities or distribution channels, the targeting of new categories of potential customers, and new indications of emerging risks mentioned in particular in the annual reports of CTIF-CFI, the opinion of the ESAs on risks, the supranational risk assessment, the national risk assessment, other credible public information, etc.; and/or
- if, after verification of the effects of the risk reduction measures (mitigation) that are already in place and/or are taken in the context of the ORA action plan, it appears that these measures are not (sufficiently) effective or efficient and, as a result, other measures seem to be necessary.

Finally, the Bank emphasises the fact that, even in the absence of significant events as described above, the necessity of a review should be assessed periodically within the financial institution and at least **once a year**¹¹. If such a review effectively takes place, the updated ORA summary table should be reported to the Bank through eCorporate (or by e-mail for financial institutions that do not have access to eCorporate). Finally, the Bank notes that this analysis and its main conclusions should be mentioned in **the AMLCO's annual activity report**, a copy of which should also be sent to the Bank every year¹². Additionally, the Bank plans to clarify its comments and recommendations relating to the content of the AMLCO's annual activity report on its website, in the sense that **this annual report should explicitly state whether or not a review of the ORA was required for the year reported and should, in any case, justify the decision taken**.

IV. Identification of risks (phase 1)

a. *Risk class – Subcategory*

The Bank stresses that *all* ML/FT risks to which the financial institution concerned is potentially exposed should be identified during the ORA process, regardless of whether they involve the customers targeted, the products marketed, the services or operations offered by the financial institution, the countries or geographical areas where it develops its activities or the distribution channels used by it¹³. For this purpose, the financial institution should first have a good understanding of its own organisation: what are the various business lines? In which departments could ML/FT risks arise? Etc.

Furthermore, the Bank notes that each financial institution should identify the relevant risk factors for each of the activities performed, with reference to, at least, the ESA Guidelines on risk factors, the ESA opinion on risks in the financial sector, the supranational risk assessment, the national risk assessment and Annexes I and III of the Law^{14 15}.

In the ORA summary table, the Bank should be able to find *all* these concepts in the columns "Risk class" and "Risk subcategory" (see also point II of this communication on the content of the ORA summary table). A non-exhaustive list of examples of good practices encountered by the Bank is provided below.

¹⁰ Article 3, 3 ° of the Anti-Money-Laundering Regulation of the NBB.

¹¹ See Risk-based approach and overall risk assessment: comments and recommendations for further details (<https://www.nbb.be/en/financial-oversight/combating-money-laundering-and-financing-terrorism/risk-based-approach-and>).

¹² See Reporting by financial institutions: comments and recommendations (www.nbb.be/en/financial-oversight/combating-money-laundering-and-financing-terrorism/supervision-nbb/reporting-0).

¹³ See Article 16, first paragraph of the Law.

¹⁴ The Bank found that the ORA summary tables often did not include enough risk factors, sometimes using only the general factors mentioned in Article 16 of the Law.

¹⁵ In certain cases and especially with regard to **insurance companies**, only product-related risk factors were used, whereas it is essential to include the risk factors relating to a) the products and services offered, b) the customers targeted, c) the distribution channels used, and d) the relevant geographical areas, in accordance with the provisions of Article 16, first paragraph of the Law.

Risk class – Subcategory Risks related to customers	Customers or beneficial owners that are politically exposed persons (PEPs) or family members of PEPs or that are known to be closely associated with PEPs Customers or beneficial owners residing in a high-risk country Customers that are trusts or similar legal constructions Customers that are active in risk sectors Customers that are identified remotely Customers that cannot reasonably justify their inability to provide documentation supporting their claimed identity
Risks related to products/services/transactions	Products or services allowing for payments from third parties without knowing the identity of those third parties Products or services that are cash intensive (many payment services or certain current accounts) Very high-value transactions Incoming non-SEPA payment transactions Outgoing non-SEPA payment transactions Risk of a personal loan being used for the purpose of terrorist financing (e.g. loans without a precise purpose or whose purpose cannot be verified)
Risks related to the countries or geographical areas concerned	Funds are received from or sent to jurisdictions subject to financial sanctions, embargoes or restrictive measures in relation to terrorism, terrorist financing or the proliferation of weapons of mass destruction The respondent bank is established in a high-risk country (correspondent banking) Life insurance benefits payable to a beneficiary residing in a high-risk country
Risks related to the distribution channel	Relationship entered into through a third-party introducer (broker) Relationship entered into through the internet Relationship entered into through a call centre

As a matter of good practice, the Bank also found that some ORA summary tables mentioned risks related to the non-integration of IT systems (hindering a complete view of the customers) or to the significant turnover of front-line staff (e.g. in the front office) or Compliance staff (that might not yet have received the necessary AML/CFT training in particular).

b. Risk exposure

Subsequently, the financial institution should **assess the inherent risk by combining the probability of the risk occurring with the impact of any such materialisation of the risk**, taking into account the activity effectively performed¹⁶. The Bank does not prescribe the values or units to be used by the financial institution, the main objective being that the financial institution (and the Bank) can obtain a coherent and comprehensible view of its risk exposure. This should enable the financial institution to then define risk management measures in accordance with the risk appetite determined by its board of directors. In all cases, the Bank would like it to be clear from the documentation on the ORA process how the probability of the risk occurring and the impact of any such materialisation of the risk are scored.

With regard to the probability of risk occurrence, financial institutions should take care not to underestimate their risks. For example, a credit institution can have few PEP customers in its customer base in absolute terms, but this number can represent a substantial percentage of its total customer base.

¹⁶ The template provided by the Bank for drafting the ORA summary table does not include these two columns, but there is nothing to prevent the financial institutions from adding this information at their discretion.

In the ORA summary table, and more specifically in the column “Risk exposure”, the Bank found examples of good practices consisting of scores ranging from “Low” to “High” or even “Very High” accompanied by a motivation or legend.

Finally, the Bank stresses the fact that the risk management measures implemented should not be taken into account in the assessment of the risk exposure level at this stage (see point V below): for example, a financial institution that assessed an inherent ML/FT risk as “Low” because of the existence of various operational procedures within the institution, did not understand the ORA process correctly, as its purpose is to determine the intensity of the risk management measures on the basis of an assessment of the inherent risks, not the residual risks.

V. Gap analysis (phase 2)

a. *Existing risk management measures*

The Bank notes that, in a second phase (the gap analysis phase), the financial institution should make an inventory of the risk management measures it already applies to manage or limit the various risks identified¹⁷. This inventory of the risk management measures should also include compliance with the legal framework laid down in AML/CFT regulations.

b. *Adequacy of risk management*

Subsequently, the financial institution should subject these internal procedures and controls to a critical examination, either to conclude that they are sufficient in view of the inherent risks detected or to identify the (potentially substantial) improvements to be made in order to effectively reduce the risks (mitigation and question of **residual risk**)¹⁸.

The Bank found that the aim of the ORA was often to justify, a priori and without proper analysis, that the control procedures and measures in place were sufficient in view of the risks identified. Furthermore, in certain cases, instead of this assessment, some financial institutions limited themselves to referring to the legal provisions. This is inadequate: it is the internal procedures and not the legal provisions that should be analysed in order to determine whether they are, on the one hand, in accordance with the legal provisions and, on the other hand, sufficient to effectively manage and reduce the risks identified.

In the ORA summary table, and more specifically in the column “Adequacy of risk management”, the Bank identified examples of good practices consisting of scores ranging from “Sufficient” to “Insufficient” accompanied by a motivation or legend.

VI. Importance of an ambitious action plan (phase 3)

The action plan should be sufficiently **ambitious** in providing timely and appropriate solutions for the weaknesses identified (regardless of whether this involves introducing a new procedure, reviewing the automated transaction monitoring system, etc.). When establishing this action plan, it may therefore be appropriate to **prioritise** actions based on the impact of the identified gaps on the overall efficiency of the AML/CFT mechanisms implemented, especially if the plan comprises a large number of new measures to be introduced.

In the ORA summary table, and more specifically in the column “New/additional measures, if any”, some institutions merely and almost systematically included a vague and stereotypical formula such as “increase due diligence measures” or “adjust procedure” or “provide training”, which did not make it possible for the Bank to assess the adequacy of the ORA performed.

Finally, the Bank notes that the financial institutions should ensure the **overall coherence** of the action plan: for instance, financial institutions will logically be required to provide for more (substantial) actions with regard to the activities or risk factors for which the residual risk was assessed as high during phase 2 (gap analysis) than for the activities or risk factors for which the residual risk was assessed as low.

¹⁷ This corresponds to the column “Existing risk management measures” of the ORA summary table.

¹⁸ This corresponds to the column “Adequacy of risk management” of the ORA summary table.

The content of this communication supplements the comments and recommendations by the Bank published on its website. This communication, as well as an unofficial English translation, can also be found on the Bank's website.

A copy of this communication is being sent to the auditor(s)¹⁹ of your company or institution.

Yours faithfully,

Pierre Wunsch
Governor

¹⁹ Where applicable.