

Brussels, 22 October 2014

## **Annex 2 to circular NBB\_2014\_11**

### Scope

- *all credit institutions, including EU and non-EU branches;*
- *all stockbroking firms, including EU and non-EU branches;*
- *all insurance companies carrying on life insurance business, including EU and non-EU branches;*
- *all payment institutions and electronic money institutions, including EU and non-EU branches, with the exception, however, of institutions which, by virtue of Articles 48 or 105 of the Law of 21 December 2009, are exempted from the application of the provisions of this law;*
- *all central contact points in Belgium of payment institutions and electronic money institutions to which authorisation has been granted in other member states of the European Economic Area, with the exception, however, of those which are subject, under Circular NBB\_2014\_12, to the obligation to complete the short-form questionnaire attached to this circular;*
- *settlement institutions, including EU and non-EU branches.*

**Periodical questionnaire  
on the prevention of money laundering,  
terrorist financing  
and the proliferation of weapons of mass destruction ("AML/CFT")**

**METHODOLOGY NOTE**

**Introduction**

**Key objectives of the Questionnaire AML/CFT - Risk-based approach**

International context

The "*International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (the FATF Recommendations)*" adopted in February 2012 [1] emphasize the importance attached by this international organization to the use of a risk-based approach to effectively achieve the prevention goals pursued.

This risk-based approach, the aim of which is to tailor the intensity of the preventive measures to that of the risks of money laundering and terrorist financing and proliferation, is recommended not only in the context of the prevention efforts undertaken by the financial institutions, but also for monitoring the implementation of these measures by the competent authorities. In accordance with Recommendation 26 of the FATF and its Interpretative Note, these authorities must increase the intensity and frequency of their controls in financial institutions where the risk of being used for money laundering or terrorist financing and proliferation is higher. Vice versa, in the case of financial institutions where the risk is lower, their controls may be relaxed. This approach to supervision is encouraged, to the extent that it is likely to allow a more efficient allocation of the supervisory resources available to these authorities.

Moreover, both the new FATF Recommendations and the new Methodology adopted in February 2013 by the FATF for assessing technical compliance with the Recommendations and the effectiveness of AML/CFT systems implemented in the member countries [2] clarify that the effectiveness of the supervision exercised by the competent authorities is measured in particular by the extent to which this supervision allows to enhance the effectiveness of the preventive measures taken by financial institutions.

Furthermore, the European Commission has prepared a draft new Directive [3] in order to adapt the relevant European legislation to the new FATF standards. One of the main pillars of the amendments that will be made to the European legal framework for the prevention of money laundering and terrorist financing will be the strengthening of the use of a risk-based approach, particularly in the area of the supervision by the competent authorities.

Consequences of a risk-based approach to supervision

A risk-based supervision implies that the competent authority periodically assesses, on an objective basis, the risks incurred by each individual financial institution subject to its supervision. These periodic assessments require relevant information to be collected, both with respect to the risk exposure of each individual financial institution and with regard to its vulnerability to this risk.

Besides its general knowledge of the risks which are present in the market, two aspects must be taken into account by the supervisory authority:

- the individual exposure of each financial institution to the risk of being used for money laundering, terrorist financing and proliferation of weapons of mass destruction, taking account of the nature of its

1 cf. [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

2 cf. <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

3 cf. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0045:FIN:EN:PDF>

activities and products, its customers, geographic areas of development, its distribution channels, its organizational structures, etc.;

- the vulnerability/resilience of each individual financial institution to deal with this risk, which is likely to increase or decrease the probability of occurrence of damage and/or to increase or reduce the consequences thereof, taking account of:
  - o the quality of its internal control in general;
  - o the quality of its specific measures to prevent money laundering and terrorism financing and proliferation, including :
    - the consistency of these measures with the legal and regulatory obligations;
    - the effectiveness of the implementation of these measures.

#### Objectives of the questionnaire and use of the answers by the National Bank of Belgium (NBB)

In assessing the individual risks incurred by each financial institution, the NBB relies on a number of information sources, such as its general knowledge of the quality of the organization and of the internal control, obtained in the course of its task of exercising general prudential supervision, annual reports of the senior management on the operation of the internal control system, annual reports of the compliance officer and of the person responsible for the prevention of money laundering and terrorist financing, regular interviews with the senior management, the internal audit and the compliance officer, the results of previous controls, both remotely and on-site, etc.

However, due to the strengthening of international standards, it appeared necessary to diversify the sources of information on which the NBB bases its assessment of the risks of money laundering and terrorist financing and proliferation and, at the same time, to pursue and strengthen the awareness-raising efforts of financial institutions.

These are the objectives of the periodic questionnaire, which was used for the first time in 2014 and which at this stage still focuses mainly on information relating to the consistency of the AML/CFT arrangements in place with the legal and regulatory obligations.

The collection of this information contributes to a better documented assessment of the vulnerability / resilience of each institution to the risks of money laundering and terrorist financing and proliferation, and allows the NBB to target its controls accurately and efficiently, in order to allow an optimal allocation of its monitoring resources.

The answers to the questionnaire constitute one of the bases for the Bank to target its supervision; however, this supervision may not be limited to a review of the answers to the questionnaire.

Designed with this in mind, the questionnaire should therefore be seen as a prudential tool. It is based on the power assigned to the Bank by the prudential laws [4] and by the Law of 11 January 1993 [5], to receive any information necessary to exercise its supervisory powers.

This methodology note aims to clarify the practical modalities of the questionnaire attached hereto.

<sup>4</sup> Law of 25 April 2014 on the legal status and supervision of credit institutions, Article 134, § 1;  
Law of 9 July 1975 on the supervision of insurance companies, Article 21, § 1;  
Law of 6 April 1995 on the legal status and supervision of investment firms, Article 92, § 4;  
Law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, Article 36/29;  
Law of 21 December 2009 on the legal status of payment institutions and electronic money institutions, access to the activity of payment service provider, access to the activity of issuing electronic money, and access to payment systems, Article 25, paragraph 3.

<sup>5</sup> Law of 11 January 1993 on preventing use of the financial system for purposes of laundering money and terrorism financing, Article 39, § 2, paragraph 1.

## **1. General format of the questionnaire**

The questionnaire 2015 is divided into six chapters covering the main legal and regulatory AML/CFT obligations for financial institutions:

Chapter I : Identification of customers,

Chapter II : Identification of agents,

Chapter III : Identification of beneficial owners,

Chapter IV : Customer acceptance policy,

Chapter V : Due diligence in respect of transactions and business relationships.

Chapter VI : Electronic transfers of funds

Each of these chapters begins with a general self-assessment question relating to the consistency of the internal procedures of the respondent financial institution with the relevant legal and regulatory obligations, and with a general self-assessment question on the effectiveness of the practical implementation of these internal procedures. These first two questions are followed by detailed questions designed primarily to provide a more accurate picture of the consistency of the existing internal procedures with the relevant legal and regulatory obligations.

Different questionnaires have been established for credit institutions and stockbroking firms, insurance companies, and payment institutions and electronic money institutions. The various questionnaires are coherent with each other but can be distinguished from each other by the fact that questions which are irrelevant to the respondent institutions are neutralized to indicate that they need not be answered (see colour codes in the left margin of the questionnaire).

In general, the terminology used in the questionnaire is standardised with that of the Law of 11 January 1993 on preventing use of the financial system for purposes of laundering money and terrorism financing ("the Law") and that of the CBFA Regulation of 23 February 2010 on the prevention of money laundering and terrorist financing ("the Regulation"). In case of doubt as to the exact scope of the questions, please refer in the first place to the clarifications provided in Circular CBFA\_2010\_09 of 6 April 2010, as amended by Circular CBFA\_2011\_09 of 1 March 2011, on the customer due diligence obligation, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and the prevention of the financing of the proliferation of weapons of mass destruction (consolidated version).

It should be noted that the answers given must take account of all the activities of the financial institution, even though some of these activities may fall under the supervision of both the NBB and an authority other than the NBB. Thus, credit institutions should in particular take account of their life insurance intermediation activities. Similarly, life insurance companies should take into account their mortgage loan activities.

## 2. Nature of the answers

### (a) Self-assessment questions

The self-assessment questions concerning the consistency and the effectiveness of internal procedures can be answered with "fully", "largely", "partly" and "insufficiently" consistent or effective. These terms must be understood as follows:

#### Self-assessment of consistency:

"Fully" consistent	According to the financial institution, the internal procedures are not deficient in any way in complying with the relevant legal or regulatory obligations.
"Largely" consistent	According to the financial institution, the internal procedures are not significantly deficient in complying with the relevant legal or regulatory obligations; the deficiencies identified, both individually and combined, may be considered to be minor.
"Partly" consistent	According to the financial institution, the internal procedures are significantly deficient in complying with the relevant legal or regulatory obligations, and the deficiencies identified may significantly increase the financial institution's vulnerability to risk; this opinion may be based either on the individual scope of one or more of the deficiencies identified, or on the scope of all deficiencies combined.
"Insufficiently" consistent	According to the financial institution, the internal procedures are seriously deficient in complying with the relevant legal or regulatory obligations, and the deficiencies identified may unacceptably increase the financial institution's vulnerability; the seriousness of the deficiencies identified may be based either on the individual scope of one or more of these deficiencies, or on the scope of all deficiencies combined.

#### Self-assessment of effectiveness:

"Fully" effective	According to the financial institution, the internal procedures are effectively and adequately implemented in all its sectors of activity.
"Largely" effective	According to the financial institution, the implementation of the internal procedures is not significantly deficient; the deficiencies identified in their implementation, both individually and combined, may be considered to be minor.
"Partly" effective	According to the financial institution, the implementation of the internal procedures is significantly deficient and the deficiencies identified may significantly increase the financial institution's vulnerability to risk; this opinion may be based either on the individual scope of one or more of the deficiencies identified, or on the scope of all deficiencies combined.

"Insufficiently" effective                      According to the financial institution, the implementation of the internal procedures is seriously deficient and the deficiencies identified may unacceptably increase the financial institution's vulnerability; the seriousness of the deficiencies identified may be based either on the individual scope of one or more of these deficiencies, or on the scope of all deficiencies combined.

- (b) Consistency questions : the purpose of the consistency questions is essentially to verify whether the internal procedures duly take into account the main elements of the legal and regulatory obligations. These questions can generally be answered with "yes" or "no".

However, where different internal AML/CTF procedures govern the various activities exercised by one and the same financial institution or one and the same activity exercised through several distribution channels, the answer to some of the consistency questions may be "yes" for certain activities or distribution channels, and "no" for other activities or distribution channels. Similarly, where a question consists of several subquestions [6], the consolidated answer to this question may be the result of a combination of the positive answers to some of the subquestions and the negative answers to other subquestions.

In such cases, the financial institution must determine itself which answer ("yes" or "no") best reflects the overall situation, taking into account criteria such as materiality or relative importance of the different activities or distribution channels concerned or of the various subquestions. The answer "yes" can be used only if it corresponds to the reality of the vast majority of cases and if the reverse is true only in absolutely exceptional cases, so that the financial institution may consider that it is compliant in at least 90% of the cases, or that it complies with at least 90% of the obligations concerned. In all other cases, a negative response is required. In such cases, the answer "not applicable (N/A)" is not appropriate. To enable the Bank to correctly interpret the answer ("yes" or "no"), the financial institution is invited to briefly motivate its answer in the relevant comment box, by providing a brief explanation of its assessment (see below).

The answer "not applicable" (N/A) is systematically presented as the third possible answer to all questions which may generally be answered with « yes » or « no ». This answer "N/A" must however be strictly limited to cases where the rule which underlies the question does not apply to the financial institution concerned, taking account in particular of the particularities of the activities exercised or of the way in which they are exercised. Thus, for example, questions relating to the identification of occasional customers may need to be answered with N/A where the internal procedures of the financial institution concerned provide for an absolute interdiction – which is effectively observed - to trade with customers other than those with whom a business relationship has been established ( "regular customers" ). Similarly, where a financial institution does not authorise the opening of numbered accounts or the conclusion of numbered contracts, or where a credit institution is not involved in the marketing of life insurance products, the answer choice "N/A" may be appropriate, respectively, for the question about the rules concerning these

<sup>6</sup> Question 4.24, for example, encompasses the following subquestions:

- a. *Do your internal procedures provide for the following measures:*
  - i. *implementing appropriate risk-based procedures to determine whether the customer or a beneficial owner of the customer is a politically exposed person;*
  - ii. *obtaining approval at an adequate level before establishing business relationships with such customers;*
  - iii. *taking adequate, risk-based measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;*
- b. *Do these procedures apply where one of the following persons must be regarded as a politically prominent person :*
  - i. *a customer*
  - ii. *an agent of the customer*
  - iii. *a beneficial owner of the customer.*

This question thus includes 9 implicit subquestions, but requires only one answer.

accounts or contracts or for the questions about life insurance policies. To ensure a good understanding of the answers to the questionnaire, each answer "N/A" must be motivated briefly in the comment box provided for the question concerned.

- (c) Comment boxes : Each question is accompanied by a comment box, which allows the financial institution to clarify, qualify, or if necessary, briefly justify the answer given. The comment boxes should in particular be used to very briefly explain a positive or negative answer which is the result of a combination of negative and positive answers to subquestions (see second paragraph of point (b) above).

As mentioned previously, a brief justification is mandatory for all answers "N/A".

It should finally be noted that some of the consistency questions which may be answered with "yes", "no" or "N/A", also seek to gather a limited number of specific factual data, such as, for example, the date of the last update of any element of the internal procedures. These data, which may be considered to be mandatory standard comments on the consistency questions, should provide a better understanding of the answers to such questions. Questions 1.8, 4.45, 5.10, 5.17 and 5.19 for example, invite the financial institutions to provide, according to the answer given, specific additional information in the relevant comment box.

However, it is important to note that the aim of the questionnaire is not to gather comprehensive information covering every detail of the existing internal procedures, but that it should provide the Bank with a sufficiently accurate picture of the preventive measures defined and effectively implemented by the respondent financial institution, in order to enable it to carry out a relevant risk assessment. The comments provided in addition to the answers to the questions should be concise. The size of the comment boxes has therefore been limited.

If the financial institution wishes to refer in its comments to internal documents (such as the annual report of the person responsible for the prevention of money laundering and terrorist financing) or external documents (such as sectoral codes of conduct), the answers should nevertheless be sufficiently clear in themselves, without it being necessary for the Bank to consult and analyse the documents referenced. As mentioned above, the purpose of the questionnaire is to provide the Bank with information which allows it to exercise its supervisory powers in a risk-oriented manner and the financial institution may not restrict itself to providing limited and non-detailed information. Therefore, if the comments contain references to other documents, the supervisory departments may examine this information, if necessary, when exercising their supervisory powers remotely or on-site, in order to obtain a better understanding of the exact scope of the answer. The documents will however not be analysed at the stage of the risk assessment by the relevant NBB departments.

### **3. Frequency of the questionnaire:**

The financial institutions are invited to complete in the periodic questionnaire on combating money laundering, terrorist financing and the proliferation of weapons of mass destruction once a year, on the basis of the situation on 31 December of each year and, for the first time, on the basis of the situation on 31 December 2013.

Their answers should be received by the Bank by 28 February of the following year at the latest, and for the first time before 28 February 2014.

However, from the second year, the answers to the questionnaire must be provided based on an update of the answers of the previous year. Without prejudice to the additional questions that may gradually be added to the questionnaire, an update of the answers provided in the previous year will suffice, subject to confirmation that the answers of the previous year which have not been modified, remain valid.

#### **4. Responsibility for the accuracy of the answers and signature**

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

However, it is recalled that the person designated within each financial institution in accordance with Article 18 of the Law of 11 January 1993, is responsible mainly, under the same legal provision, not only for analysing atypical transactions in order to determine whether they should be considered suspect and should be notified to the Financial Intelligence Processing Unit (CTIF-CFI), but also for implementing the measures and procedures referred to in Articles 16 and 17 of the Law, in particular the internal control measures and procedures which are necessary to ensure compliance with the Law and which are the subject of the questionnaire. Article 35, § 3, paragraph 1 of the CBFA Regulation of 23 February 2010 also specifies that this person should ensure, in general, that the institution meets its obligations regarding the prevention of money laundering and terrorist financing, and, in particular, that the administrative organization and internal control measures required under Article 16 of the Law, are in place. This person must also have the power to propose, of its own accord, to the senior management of the institution, all necessary or useful measures for this purpose, including the release of the necessary resources.

The Bank expects the senior management of the financial institution to decide on the appropriate answers to the questionnaire, on a proposal from the person responsible for the prevention of money laundering and terrorist financing.

#### **5. Technical aspects**

The answers to the questionnaire must be submitted electronically. To that end, an electronic form ("web form") will be made available to the financial institutions in the first days of each year at the latest (for the first time, in the first days of January 2014 at the latest).

This electronic form will be accessible through the "One Gate" system.

The financial institutions will have to establish internal procedures to validate the answers.

A user manual will be published by the Bank.

A help desk will also be made available to the financial institutions to help them resolve the technical problems they might encounter when using the tool.

As soon as the answers have been finally approved by the financial institution, an automated pre-analysis will be conducted, in order to provide the supervisory teams with a dashboard allowing them to focus their attention on the most significant points which will have emerged from these answers. Therefore, no other form of delivery of the answers to the questionnaire will be allowed.

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