



## *Anti-money laundering and counter-terrorist financing measures - Belgium*

### **2. National AML/CFT policies and coordination**

Effectiveness and technical compliance



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## 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### Key Findings

Belgium has established a framework for assessing the threats and vulnerabilities associated with ML/TF and for national co-operation and co-ordination.

Belgium appears to understand its TF risks correctly and is taking co-ordinated action to attenuate these risks at the national level. There is also good co-ordination in combatting the financing of proliferation.

Although ML risks appear to be identified and understood overall, their analysis has not benefited from a proactive approach, notably in focussing on vulnerabilities.

Elements of a risk-based approach have long fed into AML polices and activities. The CTIF and, to a large degree, the law enforcement authorities (particularly the police) have traditionally considered the identified risks when defining their objectives and activities.

At the time of the on-site visit however, co-ordination at the national level was hampered by :

- the failure of supervisory authorities and self-regulatory bodies to incorporate the main risks of ML/TF into their oversight policies;
- the failure to address a certain number of ML risks appropriately; and
- the incomplete dissemination of the non-confidential results of the risk assessments to financial institutions and DNFBPs, thus slowing down their being taken into account in internal procedures.

## 2.1 Background and Context

### (a) Overview of the AML/CFT Strategy

2.1. **By creating a co-ordinating mechanism in 2013, Belgium strengthened the system it uses to develop and co-ordinate its AML/CFT policy.** Prior to that, the CTIF had been responsible for developing AML/CFT policy and measures and for co-ordination in this area. Since 2008, the College for combatting tax social benefits fraud also co-ordinated elements of the AML strategy related to its areas of responsibility. The CCLBC, newly established (see below) has communicated the results of the ML risk assessment to the Minister of Justice, who has asked for both legislative and operational concrete proposals , , to be developed as a basis for initiatives by the new federal government (see 2.3 (b)). At present, Belgium does not have an overall long-term AML/CFT policy.

### (b) The Institutional Framework

2.2. As regards ministries and operational agencies, the institutional framework in Belgium described in the 2005 MER (para. 54 - 94) remains unchanged. Their roles and responsibilities essentially remain the same:

#### ■ Ministerial level:

- the Prime Minister (general policy),
- the Ministers of Justice and Finance (authorities jointly in charge of supervising the Belgian financial intelligence unit [FIU] known as the *Cellule de Traitement des Informations Financières* [Financial Intelligence Processing Unit] – CTIF), and
- especially some of the Belgian ministries, (Federal Public Services [FPS]):
  - FPS Finance (particularly tax fraud and freezing of TF assets),
  - FPS Justice (criminal policy and criminal investigations),
  - FPS Interior (particularly the TF threat),
  - FPS Economy (particularly registering Belgian businesses and restricting cash payments), and
  - FPS Foreign Affairs (countries subject to embargoes);

#### ■ Operational agencies:

- the CTIF (Belgian FIU),
- the Federal Police (investigations and support for inquiries),
- the Federal Prosecutor's Office (co-ordinating public action),
- the Central Office for Seizure and Confiscation (*Organe Central pour la Saisie et la Confiscation - OCSC*),
- the State Security Service (*Sûreté de l'État -- SE*),
- the General Service for Intelligence and Security (*Service Général du Renseignement et de la Sécurité -- SGRS*), and
- the Customs & Excise (*Administration Générale des Douanes et Accises -- AGDA*) (embargoes).

2.3. **Substantial changes nevertheless took place in 2010 regarding the division of responsibilities for ML/TF supervision** (see Section 6, point 6.1. and Section 5, table below point 5.1.(b)):

- As regards financial companies, as part of a general reorganisation of the framework for prudential supervision in 2010, the National Bank of Belgium (BNB) and the Financial Services and Markets Authority (FSMA) took back the supervisory powers for AML/CFT previously devolved to the Banking, Finance and Insurance Commission (*Commission Bancaire, Financière et des Assurances - CBFA*);
- The CTIF's responsibility for the AML/CFT supervision of designated non-financial businesses and professions (DNFBPs) was transferred to the supervisory, oversight or disciplinary authorities for the relevant businesses and professions.

(c) *Co-ordination and Co-operation Arrangements*

2.4. **A new mechanism for co-ordination between the authorities involved in AML/CFT came into force in 2013.** It formalises existing co-operation and co-ordination mechanisms and is intended to regularly update the assessments of the ML and TF risks and determine the national AML/CFT policies. This approach aims to meet the FATF's new requirements.

2.5. **This mechanism is based on concerted action within and between two Ministerial Committees, one specialising in ML, the other addressing TF and the financing of proliferation of weapons of mass destruction (PF):**

- i. the *Ministerial Committee for co-ordinating measures against laundering money from illegal sources* (created by Royal Decree [RD] of 23 July 2013) which establishes the general policy on AML and sets the priorities of the services involved in countering it; and
- ii. the *Ministerial Committee for intelligence and security* (RD of 23 July 2013, amending the RD of 21 June 1996 on the creation of a Ministerial Committee for intelligence and security), responsible for defining the government's general TF and PF policy.

2.6. **The Ministerial Committee responsible for countering ML is chaired by the Minister of Justice and includes members of the government** who have responsibilities for finance, the interior, the economy, small and medium enterprises (SMEs) and for co-ordinating countermeasures to fraud. A College (*Collège de coordination de la lutte contre le blanchiment de capitaux d'origine illicite - CCLBC*) associated with the Minister of Justice has been created to monitor the general implementation of the AML policy, as defined by the Ministerial Committee. The CCLBC is chaired jointly by the President of the CTIF and by the Prosecutor General responsible for financial, tax and economic crime. It consists of an *Assembly of Partners*, a Judicial Platform and a Joint Unit. The role of the *Assembly of Partners* is to identify and analyse the ML risks confronting Belgium: its role is preventive. It is chaired by the President of the CTIF, and its members include representatives from the FPSs for finance, the economy and justice, the BNB, the FSMA, the College of Prosecutor Generals, the CTIF, the Federal Police and the Standing Commission for the Local Police. The Assembly of Partners can on its own initiative decide to consult other bodies or authorities if it considers that this might facilitate its work. For instance, it decided in December 2013 that henceforth the National Security Service should be invited to attend its meetings. The purpose of the Judicial Platform is to co-ordinate the related enforcement policy. The role of the Joint Unit is to ensure that all measures implemented (both preventive and punitive) are consistent, and to propose to the Ministerial Committee what action to take.

2.7. **The Ministerial Committee for Intelligence and Security is chaired by the Prime Minister and includes other members of the government:** The Minister of Foreign Affairs, the Minister of Justice, the Deputy Prime Minister and Minister of Defence, the Minister of Interior and the Ministry for Economy. The Committee is responsible for defining the government's general policy for intelligence and security, and since 2013, its policy on countering TF and PF. Committee decisions are implemented by a College (*Collège du renseignement et de la sécurité - CRS*), which is an administrative body acting as an intermediary between the Ministerial Committee and the services applying the policy for intelligence and CFT (and PF) operationally. Among the services responsible for applying this policy in practice are the Federal Prosecutor's Office, the

State Security Service, the General Service for Intelligence and Security Service, AGDA, the Central Unit for Threat Assessment (*Organe central pour l'analyse de la menace -- OCAM*), the CTIF and the TF Unit of the Federal Police's Central Service for Terrorism and Sects. The College is also responsible for analysing the risks of TF.

2.8. **These co-operation mechanisms are supplemented by measures that organise co-ordination at an operational level.** This includes in particular agreements between the CTIF, the other State agencies and the judicial authorities describing how information is exchanged (see R 29 and Section 3). The CTIF hosts liaison officers from other State services (such as the Police and AGDA). The Federal Police have also developed co-ordination methods and procedures, particularly with the Customs Administration. In 2003, the College of Prosecutors-General created 'Ecofin', a network of expertise in countering economic, financial and tax crime (including ML). It helps draft and implement criminal policy (see MER 2005, para 70). The BNB and the FSMA have also arranged to exchange information via a protocol covering countering ML/TF (see Section 6).

*(d) Country's Assessment of Risk*

2.9. **Belgium has conducted two national risk assessments, in December 2013 for ML and in February 2014 for TF.** These two documents summarise the knowledge of threats and vulnerabilities related to ML/TF developed over the last few years by different authorities.

2.10. **The assessment of the threat and risks relating to ML was carried out by the Assembly of Partners of the CCLBC.** It highlights the threats of ML and the predicate offences, the factors that aggravate the threats and risks, and makes recommendations to improve the system. The information is presented as it was provided by each authority, so that in this initial evaluation, the horizontal analysis of trends (i.e. of the potential impact that phenomena observed in one activity sector could have, directly or indirectly, on another) remains partial. Nevertheless, it provides a good basis for identifying the risks that Belgium faces.

2.11. **The assessment of TF risks was carried out by the CRS.** This second section of the national risk assessment refers to the ML risk assessment and extracts conclusions that apply to both phenomena (ML and TF). It follows the ML risk assessment in that the information is presented as it was provided by each authority. The contributions are followed by typologies studies illustrating the trends identified.

**2.2 Technical Compliance (R 1, R 2, R 33)**

*Recommendation 1 - Assessing risks and applying a risk-based approach*

2.12. **Belgium is largely compliant with R 1** – Measures are in place for assessing the risks in the country, and the necessary mechanisms for taking into account the evolution of these risks have been defined. Entities having obligations under the AML/CFT law are required to identify their ML/TF risks with a view to implementing adapted measures, core requirements of R 1. Nevertheless, certain elements are lacking, and in particular there are no mechanisms for ensuring the dissemination of the non-confidential results of the TF risk assessments to supervisors or to the businesses and professions subject to AML legislation. In addition, situations in which exemptions to the AML/CFT obligations are allowed and simplified measures may be applied, are not based on an assessment of low or lower risk. Finally, effort is needed by supervisors to ensure that obligated entities implement their AML/CFT obligations taking risk into account.

*Recommendation 2 - National co-operation and co-ordination*

2.13. **Belgium is largely compliant with R 2** – There is no national (overall) AML/CFT policy that takes into account risks that have been recently identified; however, basic elements of national co-operation and co-ordination (criteria 2.1 and 2.3) are essentially in place with a view to further development.

*Recommendation 33 - Statistics*

2.14. **Belgium is partially compliant with R 33** – The authorities have full statistics as regards reporting suspect operations and ML investigations, and partial statistics on TF investigations and on prosecutions and convictions related specifically to ML and TF. Statistics relating to frozen, seized or confiscated assets or to judicial co-operation are incomplete, and often the data collected by one authority is not comparable with that collected by another. There is a new IT system for judicial co-operation, but it covers only requests made outside the EU since 2013.

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**2.3 Effectiveness: Immediate Outcome 1 (Risk, Policy and Co-ordination)***(a) Country's understanding of its ML/TF risks*

2.15. **Since the 1990s, the Belgian AML framework has evolved in line with changes to the identified risks.** Thus, when the AML issue was first raised in 1993, the Belgian authorities identified the risk of tax fraud and its interaction with ML, and they progressively reinforced the legislative framework and co-operation between the CTIF and FPS Finance. Similarly, in 1996, the federal government approved an action plan to counter both organised crime and economic, financial and fiscal crime, that identified the risks posed by non-financial businesses and professions. These two aspects were not introduced into the FATF standard until 2003 and 2012 respectively. In addition, the College for combatting tax and welfare fraud was established in 2008.

2.16. **The national assessment of ML risks in 2013 is a further step** towards understanding the risks in their entirety. Before the CCLBC was created in July 2013, the CTIF was alone responsible for co-ordination. Identifying and analysing the ML risks that Belgium faces is now the responsibility of an Assembly of Partners (see above, point 2.1(c)). The phenomena and activities that make up the threats and, to a certain degree, the vulnerabilities of the country are identified. However, this has been done in a fragmented manner, since the report does not provide a synthesis of the observations made individually by each authority that contributed to it. The conclusions of the report do identify the types of criminal activity that are high-risk in relation to ML (financial crime, tax fraud) and the activities exposed to ML (cross-border transportation of cash, trade in precious metals, company structures). According to the findings of the evaluators (see point 1.1), these elements correspond to the areas that are particularly at risk for ML/TF.

2.17. **At this stage, the analysis of ML risks covers essentially the suspect operations detected.** The threat analysis is largely based on information collected by the CTIF (particularly on STRs), from the police and the judicial authority (especially those related to investigations and convictions), and from FPS Economy. This creates a bias towards certain phenomena that either have already been the subject of STRs received by the CTIF or have been addressed through criminal prosecution. This does not encourage the detection of new trends or the implementation of measures that might anticipate or slow down their emergence. For this reason and in the absence of confidential elements in the national ML risk assessment, the contribution of the intelligence services to the threat assessment is unclear, since the State Security service was only invited to meetings of the Assembly of Partners in December 2013 when the risk assessment had been finalised.

2.18. **Therefore, given that some authorities contributed little or not at all to the risk assessment, a comprehensive understanding of risks is not yet possible.** The threat analysis did not receive input from other potentially useful sources especially for the understanding of vulnerabilities, for example some AML supervisors not represented in the Assembly of Partners (such as those supervising the accounting/tax and legal professions and gambling). The contribution of financial supervisors (although members of the Assembly of Partners) has also been limited, which, given the use made of the financial sector for ML purposes, is detrimental to understanding. Added to this, the private sector was not asked to contribute to the work, as sectoral risk assessments have not yet been carried out (except for the diamond sector; see below). Nevertheless, it appears that some businesses and professions subject to AML legislation, particularly in the financial sector, already have a clear understanding of their ML/TF risks (see Section 5) and could usefully contribute. The authorities indicated however that the contribution of the CTIF, in particular, to the risk assessment benefited from the continuing contacts with the financial and non-financial professions. Lastly,



as regards quantitative input to the risk analysis, general statistical data held by the BNB and Statbel, such as changes in payment methods, the circulation of fiat money and the source and destination of international payments (e.g. from the Target2<sup>1</sup> database) were not used to attain a better understanding of vulnerabilities. The same applies to statistics available at European level from institutions such as Eurostat and the Central European Bank.

2.19. **Belgium has resources to analyse terrorist risk that have gradually incorporated aspects of TF.** The Ministerial Committee for Intelligence and Security has existed since 1996 and deals, inter alia, with terrorism. Its decisions are implemented by the CRS (see above, point 2.1(c)). Members of the CRS have gradually incorporated TF issues into their work. The Police, for example, have included TF as a priority since the 2008-2011 National Security Plan. For 2012-2015, the view of risk includes TF aspects prepared by OCAM. The agency is also responsible for the plan on radicalisation ('Plan R') which since 2005 has aimed to detect and monitor radical individuals, groups and media, and includes aspects of TF.

2.20. **However, the national assessment of TF risks does not appear to have benefited from the same attention as that conducted for ML risks.** The assessment draws only one specific conclusion: the need to implement existing national measures for asset freezing. Otherwise, it quotes the conclusions from the ML risk assessment considering that the other risks are under the purview of the Federal Prosecutor's Office and OCAM. Furthermore, not all the authorities with potentially useful information about TF have contributed to the assessment, in particular the AML/CFT supervisors. It is also regrettable that the CTIF is not a member of the CRS, even though until July 2013, it alone was in charge of co-ordinating CFT measures. Through the absence of the CTIF, the CRS is deprived of the direct participation of a long-standing player in CFT.<sup>2</sup> The CTIF did contribute to the assessment, but its contribution was not fully utilised in CRS's work.

2.21. **Despite shortcomings in the process for assessing TF risks, the main competent authorities appear to demonstrate an adequate understanding of the risk,** based on the actions and assessments they carry out at sectoral level. It also appears that sensitive information and some available analyses have not all been included for security and confidentiality reasons. The finding must nevertheless be qualified for supervisors, particularly in the non-financial sectors, who have not yet gone through a process to identify TF-related vulnerabilities.

*(b) Managing the ML/TF risks identified*

2.22. **Belgium was very early to include risk as a factor influencing AML policies and activities.** In 1995, serious tax fraud was introduced into the AML Law as a predicate offence for ML. In 1998, because of the risks identified in their activities, bailiffs, lawyers, company auditors, external chartered accountants, estate agents, cash transporters and casino operators became subject to AML legislation. Similarly, the enhanced risk in cash payments has led to their prohibition, for amounts over EUR 15 000 in 2004 under the AML/CFT Law, and over EUR 3 000 in 2014 (the same obligations have applied to service providers since 2012).<sup>3</sup> Cash transactions are now prohibited for real-estate transactions. Lastly, because of the risks in diamond trading, the authorities have decided that traders must comply with the measures in the RD of 2013. These are more severe than those specified in the international standard because they apply to all transactions, not just cash, above a defined threshold (R 22c). The Belgian authorities know the risks of the diamond sector, and this knowledge enabled them to provide a critical contribution to the joint FATF / Egmont Group ML/TF typologies study on diamonds<sup>4</sup>.

1 Real-time euro-based gross settlement transfer system, developed and managed by the Eurozone countries.

2 The Belgian authorities have since indicated that the National Security Council, whose creation was announced in the Government Statement of October 2014 and which will be responsible for all security and intelligence issues, will include the CTIF among its members.

3 At the end of 2014, the government indicated that it intended to raise the threshold to EUR 7 500.

4 FATF and Egmont Group (2014)

2.23. **The risk-based approach has had positive results.** The VAT carousel fraud area is the best example in this regard. In 2001, the cost of VAT fraud was estimated at EUR 1.1 billion, and this prompted the formation in 2002 of a support unit (made up of police officers and tax specialists) in the taxation service's Special Investigations Unit. It compared tax data from national and international sources and reviewed the phenomenon in detail, in order to identify the different modus operandi used by criminals (including the ML consequent on the fraud). The approach has enabled the situation to be relatively well controlled, with losses reduced to EUR 18.5 million in 2012. The system has been recognised within the EU as the forerunner to an integrated approach to VAT carousel fraud.

2.24. **Not all of the risks identified in the past years have been addressed adequately.** It can thus be observed that the criteria for reporting suspicions of gaming operators have not been reviewed since 1999, despite the progress made internationally in understanding the risks in this sector, and the technological advances in on-line casinos. Furthermore, although the CTIF identified significant ML risks in company domiciliation and monetary gold in 2011 and 2012 respectively, these sectors still fall outside the AML/CFT framework. Finally, the revelation by the CTIF of the problems linked to shortcomings in the supervision of lawyers has not resulted in any action. One of the reasons for the difficulty in addressing these significant risks seems to be a lack of priority given to AML/CFT, as well as the absence of an overall, continuing and well-defined strategy for the authorities to prevent and combat ML and TF.

2.25. **The findings of the recent assessment of ML risk were beginning to feel their effect at the time of the on-site visit.** In January 2014, the principal conclusions were communicated to the Minister of Justice, who chairs the Ministerial Committee. The conclusions were supported by a short description of the main structural problems identified by the CCLBC: judicial resources and the effectiveness of controls and administrative sanctions. The use of cash and the cross-border transportation of cash were highlighted as areas that were not adequately addressed. Proposals and solutions to remedy the problems were also outlined. Following this communication, the Minister asked for concrete measures, both legislative and operational, to be developed before convening the Ministerial Committee. It should be noted that at the time of the on-site visit, the government had resigned (in May 2014) and could only deal with day-to-day business. Nevertheless, based on the conclusions in the risk assessment on the effectiveness of the legal system, the *Prosecutor General* for Brussels had already decided to create a group of 15 judges within his jurisdiction who are specialists in financial crime, including ML. The group should be operational from December 2014. For their part, AGDA has strengthened checks on cross-border transportation of cash. Despite the high risk associated with certain non-financial sectors, in particular lawyers, no measure was envisaged for reinforcing the AML/CFT controls of these activities.

2.26. **The TF risk assessment appears unlikely to influence the authorities' policies and activities,** since it lacks conclusions and recommendations other than those on implementing the rules for freezing of terrorist assets – the CRS is focussed on developing a Belgian list. Nevertheless, those members of the CRS that the assessment team met with, indicated that the current priority for CFT is to track people who move between Belgium and sensitive regions, such as Syria. The CRS plans to prepare concrete proposals based on the TF risk assessment. This being said, the relevant players in counter terrorism and CFT have developed CFT activities and policies that address the risks identified outside the framework of the TF risk assessment.

*(c) Using the risk assessments to support exceptions to CDD rules*

2.27. **The recent risk assessments have as yet had no impact on the legal framework for AML/CFT that applies to financial institutions and DNFBPs.** They have not led to waivers or to the application of reinforced or simplified measures. There is also no risk analysis showing that all the cases in Art. 11 of the AML/CFT Law present a low or lower risk (see criteria 1.7, 1.8 and 10.18 of the TC Annex).

*(d) Alignment of the activities of the competent authorities and self-regulatory bodies with the national AML/CFT policies and the identified risks*

2.28. **The CTIF has traditionally considered identified risks when defining its objectives and activities.** Apart from the points discussed above, the CTIF has developed a risk-based approach based on the national ML risk assessment for the operations involved in processing ML cases opened after suspicious



transaction reports. For instance, information shared by AGDA relating to risk assessment may be used to refine the CTIF's analysis criteria.

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2.29. **The criminal prosecution authorities have recognised ML/TF risks in their objectives and activities to differing degrees.** Although the national risk assessments have not yet had any direct impact on the practices of the criminal prosecution authorities, the police have for some time taken risk into account: the Department for Economic and Financial Crime has adopted a programme package *Recovering Illegally-acquired Assets and Money Laundering*. It advocates a targeted approach to ML, concentrating police resources on the groups of perpetrators judged as priority when it detects either suspect assets held by legal persons, or the use of cash for ML purposes. Similarly, a Federal Police Service specifically for diamonds was set up in Antwerp in 1998. Lastly, the Federal Police's Central Service for Terrorism and Sects uses measures against terrorist financing to destabilise terrorist groups as part of the 'destabilisation' section of its terrorist and extremist violence programme. The systematic inclusion of ML/TF risks in the work of the courts has not been observed, although there have been some isolated initiatives (for instance, one court has developed a means of targeting people with a lifestyle evidently more lavish than their declared income) (see Section 3).

2.30. **Supervisors have not in general included the principal threats and vulnerabilities identified by the national risk assessments in their supervisory policies.** Although its resources are limited, FPS Economy seems to have fully recognised the threats linked to the diamond sector and the issues raised by cash. The FSMA and the BNB have identified the main activities under their control that are exposed to ML/TF risks (see Section 6). In their circulars to the financial institutions,<sup>5</sup> they draw attention to particular risk criteria and recently issued a warning concerning the risks related to the activity of gold recycling. Nevertheless, in their supervisory work the authorities have not yet focused more of their effort on auditing the implementation of preventive measures for customers most at risk of laundering money from tax fraud, or on business relationships with professions that the national risk assessment judged to be sensitive, such as diamond traders, lawyers and retailers who handle significant amounts of cash. AML/CFT is still not sufficiently considered when defining the risk profiles of entities undergoing inspections, which would then be used to determine the frequency and scope of such inspections.

2.31. **The reservations expressed by the accountancy and legal professions, lawyers in particular, about the national risk assessments are problematic.** The supervisory bodies for these professions did not provide a contribution to the national ML risk assessment, and although they say that they started to consider risk once they became aware of these analyses, they do not share the assessment's conclusions, which present their professions as particularly risky in terms of ML. They consider that they have adequate controls in place to counter the main threats and that misconduct is largely the preserve of those outside the regulated professions. With the exception of one analysis carried out by the professional association of diamond traders that noted an absence of major risks in the sector, no sectoral assessment (by the supervisors of the sectors themselves) had been finalised as at the date of the on-site visit, despite current initiatives.<sup>6</sup>

*(e) The co-operation and co-ordination of the competent authorities and the self-regulatory bodies*

2.32. **In general, the framework for AML co-operation and co-ordination appears adequate.** A large number of the competent authorities are already members of the College for combatting tax and welfare fraud,<sup>7</sup> created in 2008, and these authorities follow an annual action plan. Creating a co-ordination body that covers AML and its various structures is progress towards better co-ordination and co-operation between

5 CBFA Circulars dated 6 April 2010 and 1 March 2011, BNB/FSMA Circular Recent developments in the prevention of money laundering, (BNB/FSMA, 2013).

6 The accountancy profession, the financial sector and lawyers have indicated that they are working on an ML/TF risk assessment for their respective sectors.

7 Its members are senior officers from the social services and tax authorities, the judiciary, the police services involved in combating tax and welfare fraud, and the CTIF.

the competent authorities and the supervisors. The development should encourage greater co-ordination between the CTIF and the financial supervisors. This co-ordination already exists as regards policies, but is insufficient as regards prevention activity. For instance, there is no structured information exchange to target inspections, apart from isolated communications made by the CTIF (Art. 35 of the AML/CFT Law) which feed into the analysis of the risks associated with the financial institution concerned. Discussions are nevertheless in progress to formalise and strengthen the relationship between the CTIF and the BNB. Co-ordination is evident also in the joint circulars prepared by the FSMA and the BNB, on the compliance function in December 2012 and on recent developments in ML prevention in December 2013. The Federal Police also encourage co-ordination on AML/CFT questions with the CTIF and the College of Procurers-General, in order to prepare the National Security Plan. Neither supervisors for the accounting/tax and legal professions and gambling or the intelligence community seem to be sufficiently involved. There is also no operational co-operation between the CTIF and the supervisors (for instance, to report members of the professions who should undergo AML/CFT inspections, as permitted under Art. 35 of the AML/CFT Law).

2.33. **The framework for TF/PF co-operation and co-ordination has been developed** but suffers because key administrative authorities for TF/PF within the CRS (the CTIF and supervisors) are not represented. The Federal Police also encourages co-ordination on TF questions with the CTIF and the College of Procurer-Generals, in order to prepare the National Security Plan. The TF Unit of the Central Service for terrorism and sects also exchanges information with AGDA about the problem of cross-border cash flows, the intelligence services, the CTIF, and OCAM.

2.34. **As regards combatting proliferation, including financing of proliferation, FPS Foreign Affairs holds interdepartmental co-ordination meetings** relating to the implementation of UN sanctions or EU restrictive measures, attended by the National Security Service. The National Security Service is also in direct contact with the Treasury administration, which is responsible for reviewing the financial aspects of transactions between Belgian and Iranian businesses. The Regional Services controlling exports of dual-use items act generally as a front office for files they submit for opinion to the multidisciplinary Advisory Commission on the Non-proliferation of Nuclear Weapons. Since the Iranian transport sector (maritime and air) is subject to sanctions, FPS Mobility & Transport and FPS Interior are also involved. Lastly the administrations responsible for export control, AGDA and FPS Foreign Affairs have established formal procedures for co-operation in order to monitor exported goods. Nevertheless, the absence of a formal mechanism linking the CTIF and the supervisors of financial institutions and DNFBPs to the CRS limits the scope for co-ordination and co-operation in relation to TF/PF, although this is mitigated, for the CTIF in any case, by its contribution to the national TF risk assessment.

*(f) Informing financial institutions and designated non-financial businesses and professions (DNFBP) of the results of risk assessments*

2.35. The professional associations of the financial institutions and DNFBPs were notified in June 2014 about the national ML risk assessment of December 2013. **At the time of the on-site visit, the financial institution and DNFBP representatives met with generally were not aware of the national ML/TF risk assessments.**<sup>8</sup> A presentation was made to accountancy professionals in February 2014 and to the FEBELFIN, the Belgian financial-sector Federation, in July 2014. There had been no other briefing or guidance on the conclusions from the risk assessments, either in general or specific to the sectors concerned as at the time of the on-site visit. In particular, there will be further discussions with the legal and accounting/tax professions that have expressed reservations about the assessment (see above). There had been no communication on the national ML risk assessment, which poses a particular problem regarding the low level of understanding by NPOs of TF risks.

2.36. **However, information on the ML/TF risks has long been communicated to the financial institutions and the DNFBPs.** The CTIF raises the awareness of the private sector and the relevant authorities to the risks of ML and TF by publishing warnings and typological analyses on its web site. The financial sector

8 The authorities provided information to the evaluators leading them to believe that in autumn 2014 financial institutions and DNFBPs had knowledge of the ML risk assessment.

supervisory guidelines of 2010/11 and the joint FSMA/BNB circular of December 2013 on cash in the gold sector (referred to above) are also a means of providing information on the risks. As regards TF risks, a memorandum of understanding between FPS Justice and FPS Interior and the Federation of Enterprises in Belgium has been in place since 2009, on the mutual exchange of information relating to signs of a possible terrorist threat, which includes terrorist financing.

2.37. **In conclusion**, Belgium assesses its ML and TF risks. It appears to understand the TF risks correctly and has taken co-ordinated steps to mitigate those risks at the national level. This co-ordination also addresses combatting the financing of proliferation. While ML risks appear to be identified and understood overall, the analysis of this activity is not approached proactively so as to enable the identification of trends or emerging phenomena, notably with regard to vulnerabilities. In particular, the assessments did not benefit from the contribution of all competent authorities or the private sector. Elements of a risk-based approach have for many years fed into the development of AML policies and activities. The CTIF, and to a large extent the law enforcement authorities (especially the police) have traditionally considered the identified risks when defining their objectives and activities. Nevertheless, a certain number of weaknesses were noted at the time of the on-site visit:

- i. there is no overall, integrated approach that adequately ranks ML/TF risks in order to ensure the organisation and consistent planning of AML/CFT activities and policies;
- ii. supervisors and self-regulatory bodies (SRBs) have not incorporated the main ML/TF risks into their inspection policies;
- iii. a certain number of identified ML risks have not been addressed; and
- iv. incomplete dissemination of the non-confidential results of the risk assessments to financial institutions and DNFBPs slows down their being taken into account in their internal procedures.

2.38. **Belgium has achieved a substantial level of effectiveness for Immediate Outcome 1.**

## 2.4 Recommendations on National AML/CFT Policies and Co-ordination

2.39. The following important measures appear necessary to improve the understanding of risks and their being taken into account in national policies and co-ordination.

- The ML risk assessment should be strengthened by the inclusion of (i) additional elements on threat including from the intelligence services, in confidential sections if necessary; (ii) information on vulnerabilities provided by the supervisors of financial institutions and DNFBPs or derived from statistical sources (for example, STATBEL, EUROSTAT, BNB and ECB); and (iii) contributions from the private sector.
- The understanding of TF risks will be supplemented by an increased participation of the CTIF in the work of the CRS and by creating mechanisms that associate the competent supervisory authorities.
- Belgium should seek to implement policies that address the recommendations of the ML risk assessment, particularly regarding resources for the justice system and the effectiveness of inspections and administrative sanctions.
- Exceptions to CDD measures should be supported by the findings of the national risk assessments.
- Supervisors should incorporate knowledge of the main threats and vulnerabilities identified by the national risk assessments into their supervisory policy.

- The non-confidential findings of the national risk assessments, along with their future updates, should be communicated in a timely manner to the institutions and persons subject to the AML/CFT Law and to the other sectors concerned (such as NPOs).

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## Bibliography

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## 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### Recommendation 1 – Assessing risks & applying a risk-based approach

a2.1. These requirements were added to the *FATF Recommendations* when they were last revised in 2012 and therefore were not assessed under the previous mutual evaluation of Belgium in 2005.

a2.2. **Criterion 1.1** – Belgium has conducted two national risk analyses. The College for AML Coordination (*Collège de coordination de la lutte contre le blanchiment de capitaux d'origine illicite -- CCLBC*) finalised its analysis in December 2013. The College for Intelligence and Security (*Collège du renseignement et de la sécurité -- CRS*) completed its analysis of terrorist financing risks in February 2014. These documents summarise the knowledge of the different competent authorities regarding ML/TF threats and vulnerabilities that they have developed in recent years.

a2.3. **Criterion 1.2** – In July 2013 (RD of 23 July 2013), Belgium implemented a new organisation of its AML/CFT co-ordination system. The new organisation comprises two entities: (i) the *Ministerial Committee for AML Co-ordination* establishes general AML policy and determines the priorities of the agencies involved in these efforts; and (ii) the *Ministerial Committee for Intelligence and Security* is responsible for determining the general government policy on countering TF and the financing of proliferation of weapons of mass destruction. (The colleges mentioned above fall under these committees.)

a2.4. **Criterion 1.3** – Because Belgium conducted analyses of ML threats and risks in December 2013 and of TF in February 2014, these are relatively up-to-date, although the TF analysis is based on information that sometimes dates back to 2011. Concerning future updates to these analyses, the RD of 23 July 2013 stipulates that national ML analysis should be ‘ongoing and evolving’, which implies that the authorities are required to keep these analyses up-to-date. Although these texts relating to TF risk analysis do not specify the terms and conditions for updating the analysis, the CRS seems to adhere to the same procedures and schedule as the CCLBC.

a2.5. **Criterion 1.4** – Concerning ML, the CCLBC may share the results of its analysis with the institutions and persons subject to the law (namely financial institutions and DNFBPs), the CRS, and with the oversight, supervisory or disciplinary authorities of the concerned institutions and persons. Some of these authorities are already permanent members of the CCLBC. The CRS is responsible for TF analyses. It may provide the results to some of the competent authorities, but there is no mechanism that aims to make the information – notably non-confidential information – available to self-regulatory bodies, financial institutions and designated non-financial businesses or professions.

a2.6. **Criterion 1.5** – Before July 2013 and for a long time prior to that, when the CTIF identified risk and steps needed to be taken to address them, the CTIF suggested necessary legislative changes to the government. Furthermore, it was already the responsibility of the public prosecutor’s office to determine criminal policy in terms of the policy for investigation and prosecution of offences under the authority of the Minister of Justice. The Federal Police then made decisions on the allocation of personnel and material resources consistent with the priorities identified in the National Security Plan, which itself is based on an analysis of criminal threats and risks (including ML).

a2.7. Because the institutionalisation of the risk assessment mechanism is very recent, the response to the risk analysis vis-à-vis the allocation of resources, legislative initiative or other measures has not yet been completely acted upon. However, the institutional framework to do so is in place: Belgium established the Ministerial Committee for AML Co-ordination in 2013 (see C 1.2). This committee must determine and decide – based on proposals from the CCLBC and on risk analyses – the general policy and the measures to take to address the threats and risks identified without making any reference however to resources. The CCLBC is responsible for implementing this general policy. Similarly, in 2013 Belgium gave the Ministerial Committee for Intelligence and Security the task of co-ordinating efforts to combat TF and PF (see C 1.2). This committee is also assisted by the CRS.



## NATIONAL AML/CFT POLICIES AND COORDINATION

a2.8. **Criterion 1.6** – According to Art.11§2 of the ‘AML/TF Law’, the entities and persons subject to the law are not subject to identification and verification requirements under certain conditions. These exemptions are not based on an observed low risk of ML/TF resulting from an assessment carried out at the national or European level but on a presumption of low risk. Moreover, they are not limited to a particular type of institution, financial activity or DNFBP. Nor is the application of these exemptions limited to a financial activity carried out on an occasional or very limited basis such that the ML/TF risks are low.

a2.9. **Criterion 1.7** – The AML/TF law (Art. 12) requires financial institutions and DNFBPs to apply enhanced due diligence in high-risk situations and cites in particular those situations identified on the basis of the 2003 FATF Recommendations (contracts negotiated at a distance, politically exposed persons, correspondent banking) – for which it requires the regulated bodies to perform enhanced due diligence. The national ML/TF risk assessments identified a certain number of activities and sectors with high risk for which requirements for enhanced due diligence have not been imposed, although such measures should be applied according the general rule of Art. 12.

a2.10. **Criterion 1.8** – Belgian authorities report that simplified due diligence is authorised and that it may be applied in the situations described in Art.11§1 of the AML/TF law (see C 10.18). However, no risk analysis has been performed at the national or European level that establishes that all of these situations present a lower risk.

a2.11. **Criterion 1.9** – The AML/CFT Law stipulates that supervisors implement effective mechanisms to ensure that the regulated entities and persons comply with the preventive requirements stipulated by the law (Art.39§1). Moreover, obligated entities and persons are required to take ML/TF risks into account in the customer acceptance policies and in implementing AML/CFT measures (see C.1.10). However, the AML/CFT inspection systems for the financial sector and DNFBPs have shortcomings in the area of the risk-based approach (see R 26 and R 28).

a2.12. **Criterion 1.10** – There is no explicit obligation for obligated entities to make a general assessment of ML/TF risks and to keep it up-to-date. This lack of an explicit obligation is not considered to be a deficiency because the AML/CFT Law stipulates that the entities and persons subject to the law are required to implement most of their requirements in accordance with the risk identified: (e.g. updating identification data; Art. 7§3 and 8§2). Furthermore, the obligated institutions and persons are required to define objective risk criteria (e.g. Art.26 Regulations taken for financial institutions; Art. 8 Regulations for diamond industry; Art. 8.1. Institut des Réviseurs d’Entreprises - IRE standards) which form the foundation on which their risk-based approach must be built. up-to-date. They must also take into account risks, in particular when applying CDD measures and customer relations monitoring (Art. 12, 14 and 16 of the AML/CFT Law). This approach implies that they conduct an analysis of risks that may affect them.

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a2.13. **Criterion 1.11** – (a) Financial institutions and DNFBPs that are required to define objective risk criteria (see C.1.10) must set out adapted preventive measures (e.g. Art. 26, Regulation for financial institutions; Art. 8 Regulations for diamond traders; Art. 8.1. IRE standards). Moreover, the AML/CFT Law requires that regulated institutions and persons be able to justify to their respective supervisors that the scope of the measures put in place is adequate and appropriate in light of the ML/TF risks when they deviate from the scope of the AML/CFT requirements based on the risk identified (Art. 38§2). For financial institutions, the obligation for approval by senior management of the policies, controls and procedures for managing and mitigating the risks flows from general prudential principles. b) The law stipulates that regulated institutions and persons are required to implement adequate internal audit procedures that specifically take into account the heightened ML/TF risk in order to ensure compliance with the law (Art.16§1). c) The law stipulates that regulated institutions and persons must implement certain requirements in response to any higher risks identified (Art. 12§1).

a2.14. **Criterion 1.12** – The law allows the application of simplified measures only in the cases described in Art.11§1 of the AML/TF Law (see C.10.18) and does not allow financial or non-financial institutions any discretion to apply simplified measures in other situations.

*Weighting and conclusion*

a2.15. Measures for assessing the risks of the country are in place as are the necessary mechanisms for taking the evolution of these risks into account and for defining the information of interested parties. Additionally, those subject to the AML/CFT law are required to identify their ML/TF risks in order to implement appropriate measures, core requirements of R 1. Nevertheless, the scheme lacks certain elements, and in particular there is no mechanism to ensure the dissemination of the non-confidential results of TF risk assessments to supervisors and regulated entities. Furthermore, the application of exemptions to the AML/CFT scheme or of simplified measures is not justified by assessments of low or lower risk. Finally, efforts are necessary in order for supervisory authorities as a whole to be able to ensure that regulated entities implement their AML/CFT obligations taking risk into account. **Belgium is largely compliant with R 1.**

**Recommendation 2 – National co-operation and co-ordination**

a2.16. Belgium found to be largely compliant in 2005 with the FATF standard pertaining to national co-operation (formerly R 31) because of the lack of consultation between the CTIF and the FPSs having authority to control professions not subject prudential supervision.

a2.17. **Criterion 2.1** – The principle of a national AML/CFT policy was institutionalised by the two RDs of 23 July 2013. It falls to the Ministerial Committees created to draw up this policy (see C.1.2. and C.1.5); the national risk analysis must be ‘ongoing and evolving’ and must make it possible to adapt the strategies to the phenomena identified. Because this framework is recent, Belgium has not yet defined overall national AML/CFT policy underpinning policies to prevent and combat ML/TF. (Some sectoral policies exist: Until now, the public prosecutor’s office has determined criminal policy consistent with the policy to investigate and prosecute offences [including laundering] under the authority of the Ministry of Justice.)

a2.18. **Criterion 2.2** – Co-ordination mechanisms have been instituted to draw up a national AML policy, and an authority has been designated for this purpose. Such mechanisms also exist for CFT (see C.1.2).

a2.19. **Criterion 2.3** – The mechanisms for co-operation on the drafting of policies as set forth in the RDs of 23 July 2013 are supplemented by measures that organise operational co-ordination. This is notably the case between the CTIF and the other government agencies (including supervisors) and judicial authorities (see R 29). Several MOUs between the CTIF and its partners spell out the terms of information sharing. The CTIF hosts liaison officers from other government entities. Co-ordination methods and processes have also been put in place by the Federal Police (with AGDA) and by the College of Prosecutors-General (network of experts who in particular address matters relating to ML). The FSMA and BNB have adopted a protocol that organises their exchanges of information, including for AML/CFT information.

a2.20. **Criterion 2.4** – The Ministerial Committee for Intelligence and Security is responsible for co-ordinating efforts to combat the financing of PF. The co-ordination procedures described above (see C.2.3) apply in this area, and the same authorities are involved as for TF. However, certain other authorities that are responsible for implementing freezes relating to PF are not involved directly in the activities of the CRS, notably FPS Finance and Treasury Administration.

*Weighting and conclusion*

a2.21. There is not national (overall) AML/CFT policy that takes into account the recently identified risks, but the basic elements for national co-operation and co-ordination (C.2.1 and C.2.3) are in place for the most part, in light of its development in the near term. **Belgium is largely compliant with R 2.**

**Recommendation 33 – Statistics**

a2.22. In 2005, Belgium was evaluated as largely compliant with the FATF standard that covers the collection of statistics (formerly R 32). Indeed, some statistical data was missing (with regard to the CTIF and pertaining

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to mutual legal assistance and extradition). Although the CTIF now has comprehensive statistics, there is still a lack of information on international co-operation.

a2.23. **Criterion 33.1 –**

- a. The CTIF keeps statistics for its own internal use and for dissemination in its reports. These statistics include the number of STRs received and disseminated. The range of statistics relevant to these statements is broad and helps with the processing, management and monitoring of STRs received. There are also statistics that enable the quantification of the number of court decisions relating to cases submitted by the CTIF to the judicial authorities, in which ML and TF convictions were handed down in connection with one or several predicate offences.
- b. The Federal Police have their own statistical tool that inventories the investigations in progress, notably those relating to ML/TF offences. The College of Prosecutors-General has a database that contains the records from the correctional sections of the 28 public prosecutor's offices at the trial courts (REA/TPI system); it identifies prosecutions relating to ML/TF. This statistical tool is incomplete because it does not include statistical data from all the public prosecutor's offices; it does allow for distinctions between prosecutions linked to terrorism and those relating to TF. Statistics about the number of ML- and TF-related convictions are available, but incomplete because of delays in recording.
- c. Statistical data about seizures and confiscations are available, but the data held by the OCSC are piecemeal (see discussion on effectiveness in conjunction with IO 8, Section 3.5 of the report).
- d. The computer system at the Mutual Criminal Legal Assistance Department can now provide accurate statistical data but only pertaining to requests received since 1 January 2013. Similarly, the CTIF collects quantitative data about the number of information requests received and sent, as well as the breakdown by foreign FIU of information requests received or sent by the CTIF. The police's national general database cannot provide statistics about international co-operation. Nevertheless, the judicial police have data about the joint investigation teams (JITs), for example. The AGDA maintains statistical data about the number of spontaneous reports and requests for assistance it receives and sends.

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a2.24. While the statistics relevant to STRs and investigations are good, those pertaining to prosecutions and convictions for ML and TF are not up-to-date. The data on property seized and confiscated are fragmented and unreliable. Data pertaining to mutual legal assistance are virtually non-existent even though the ML/TF risks in Belgium are often international in nature. **Belgium is partially compliant with R 33.**

## ACRONYMS

AGDA	<i>Administration générale des douanes et accises</i> (Belgian Customs & Excise)
AISBL	<i>Association internationale sans but lucratif</i> (international non-profit association)
AML/CFT	Anti-money laundering / counter-terrorist financing
Art.	Article / Articles
ASBL	<i>Association sans but lucratif</i> (non-profit association)
BCE	<i>Banque Carrefour Entreprises</i> (Belgian Companies Register)
BNB	<i>Banque Nationale de Belgique</i> (National Bank of Belgium)
BNI	Bearer negotiable instruments
C.	Criterion
CAF	Service de coordination anti-fraude de l'inspection spéciale des impôts
CBFA	<i>Commission bancaire, financière et des assurances</i> (former Belgian financial supervisor)
CCLBC	<i>Collège de coordination de la lutte contre le blanchiment de capitaux d'origine illicite</i> (College for AML Co-ordination)
CIC	<i>Code d'instruction criminelle</i> (Criminal Instruction Code)
CPC	<i>Code de procédure criminelle</i> (Criminal Procedure Code)
CRS	<i>Collège du renseignement et de la sécurité</i> (College for Intelligence and Security)
CTIF	<i>Cellule de traitement des informations financières</i> (Belgian FIU)
DJF	Direction de la lutte contre la criminalité économique et financière de la police
DJP	Direction de la lutte contre la criminalité contre les personnes
DNFBP	Designated non-financial businesses and professions
ECB	European Central Bank
EU	European Union
FATF	Financial Action Task Force
FIU	Financial intelligence unit
FSMA	Financial Services and Markets Authority ( <i>Autorité des services et des marchés financiers</i> )
GDP	Gross domestic product
IEC	<i>Institut des Experts comptables et des Conseils fiscaux</i> (Institute of Chartered Accountants and Tax Consultants)
IN	Interpretative Note
IO	Immediate outcome
IPCF	<i>Institut Professionnel des Comptables et Fiscalistes Agréés</i> (Professional Institute of Certified Accountants and Tax Accountants)
IRE	<i>Institut des Réviseurs d'Entreprises</i> (Institute of Statutory Auditors)
ISI	Inspection Spéciale des Impôts
JIT	Joint investigation team
MD	Ministerial decree (Arrêté ministériel)

## ACRONYMS

MER	Mutual evaluation report
ML	Money laundering
MoU	Memorandum of understanding
MVTS	Money or value transfer service
NPO	Non-profit organisation
OCAM	<i>Organe centrale pour l'analyse de la menace</i> (Central Unit for Threat Analysis)
OCDEFO	<i>Office Central de la lutte contre la Délinquance Économique et Financière Organisée</i> (Central Unit for Combatting Economic and Organised Financial Crime)
OCSC	<i>Organe central pour la saisie et la confiscation</i> (Central Unit for Seizure and Confiscation)
OECD	Organisation for Economic Co-operation and Development
OLAF	<i>Office européen de lutte anti-fraude</i> (European Anti-Fraud Office)
Para.	Paragraph
PC	<i>Code pénal</i> (Penal Code)
PEP	Politically exposed person
PF	Financing of the proliferation of weapons of mass destruction
PJF	Directions judiciaires déconcentrées
Plan R	Plan radicalisme
R	FATF Recommendation
RD	Royal Decree ( <i>Arrêté royal</i> )
Reg.	Regulation
SA	<i>Société anonyme</i> (public limited company)
SCA	<i>Société en commandite par actions</i> (company with liability limited by shares)
SCRI	<i>Société coopérative à responsabilité illimitée</i> (unlimited-liability co-operative company)
SCRL	<i>Société coopérative à responsabilité limitée</i> (limited-liability co-operative company)
SE	<i>Sûreté de l'État</i> (State Security Service)
SGRS	<i>Service Général du Renseignement et de la Sécurité</i> (General [military] Intelligence and Security Service)
SNC	<i>Société en nom collectif</i> (general partnership)
SPF	<i>Service public fédéral</i> (Federal Public Service = Belgian Federal Ministry)
SPRL	<i>Société privée à responsabilité limitée</i> (private limited-liability company)
SR	FATF Special Recommendation (before the 2012 revision)
STR	Suspicious transaction report
TC	Technical compliance
TF	Terrorist financing
TFS	Targeted financial sanctions
UNSCR	United Nations Security Council Resolution