



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

5. Preventive measures

Effectiveness and technical compliance



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5. PREVENTIVE MEASURES

Key Findings

Understanding of AML/CFT risks and obligations

- The financial institutions we met generally seemed to have a good understanding of the risks, including the banks dealing with the diamond trade, Bpost and the new entrants in the financial sector (payment institutions and electronic money institutions). Money remittance institutions also seem to understand the risks of TF and misuse to which they are exposed.
- Generally, the DNFBPs do not seem to have grasped the full extent of the ML/TF risks to which they are exposed, nor the need to protect themselves against potential ML/TF misuse.
- Regarding the diamond trade, while the sector acknowledges that the risks are high, it considers that the existence of strict, stringent AML/CFT measures is a key risk-mitigation factor. However, the implementation of the existing rules does not appear to be sufficiently rigorous, on the whole, to ensure that these high risks are effectively controlled.
- Most financial institutions have a good understanding of AML/CFT obligations. However, certain payment institutions and certain bureaux de change have a patchy understanding of the requirements concerning beneficial owners and politically exposed persons (PEPs).

Implementation of the preventive measures

- Customer due diligence measures (CDD) and ongoing due diligence measures on transactions would appear to form the foundation of the AML/CFT system for the financial and non-financial institutions interviewed.
- Institutions in the financial sector generally seem to implement proportionate AML/CFT measures and adopt appropriate measures based on the risks. The financial sector generally seems to implement enhanced due diligence measures in recognised high-risk situations, though to a lesser extent for correspondent banking relationships and wire transfers within the EU.
- While DNFBPs seem to have understood the need to take enhanced measures when handling a transaction or customer involving a higher-risk country, they seem to be less aware of this necessity for PEPs and the other situations requiring close attention. When DNFBPs are unable to meet CDD requirements, they indicated that they decline to enter into a business relationship or carry out a transaction, even if they do not send in an STR.
- Closer AML/CFT supervision by the competent authorities is necessary to ensure that those subject to the AML/CFT Law fulfil their obligations appropriately.



Suspicious transaction reporting

- The financial sector has, on the whole, adopted the practice of STR. Even so, the activities of the bureau de change sector and payment transactions carried out by institutions through a network of agents give rise to a significant proportion of automatic STRs, which are not useful for following the transactions of customers who have already been reported. A strengthening of controls in this area is necessary.
- The DNFBPs under the requirement to report transactions on the basis of thresholds/criteria (casinos in particular) often limit themselves to this type of 'objective' reporting and do not report based on an assessment of the suspicion arising from transactions carried out. Notaries and the accounting/tax professions nevertheless seem to take 'subjective' factors into account when deciding whether or not to report suspicious transactions. There are still virtually no STRs from lawyers and diamond traders. This approach may lessen the ability to detect ML and result in an under-representation of certain phenomena in criminal prosecution.

5.1 Background and Context

(a) Financial institutions and DNFBPs¹

5.1. *Financial institutions* - Belgium has **104 credit institutions**, including 55 branches of institutions based in the European Economic Area (EEA).² There are also 676 financial institutions declared as operating under the *freedom to provide services* on the basis of the European passport, which allows licensed institutions from one Member State of the EEA to offer their services in another Member State without being established there. At end of 2012, the country's five largest banks held 66.3% of the total assets of all of the banks combined, and three of them were Belgian subsidiaries of foreign groups. The ML/TF risks to which the Belgian banking sector is exposed stem more specifically from the types of transactions performed for their customers (payments/deposits, money remittances) and their international relations. Belgium also has banks specialised in financing the diamond industry: primarily three major European stakeholders (one of which operates out of London), and branches of smaller Indian banks. These banks are exposed to more specific ML/TF risks associated with their customers' business activities (see below).

5.2. Most of the financial activities subject to the AML/CFT system are conducted in banking groups. Investment services are also offered by 20 brokerage firms, 7 management companies for collective investment funds and 19 investment management and investment advisory companies. For the latter two categories, customers' assets are always held by another institution (a bank or brokerage firm) and the company provides only management or consulting services, so there are no asset transfers and less risk of ML/TF. Even so, there may still be risks associated with the source of the funds. Some of these companies also offer a service for receiving and issuing stock exchange orders, but it never includes asset transfers, which have to be carried out and liquidated by a bank or a brokerage firm. There are also 530 Belgian and foreign management companies for collective investment schemes. The only cases in which there may be a ML/TF risk involve open collective investment schemes (i.e. with a variable number of shares). In practice, this risk is covered because all of the open, self-managed collective investment schemes have delegated the marketing of their shares to a brokerage firm or credit institution (which are subject to AML/CFT controls).

5.3. **Mortgage credits** are mainly distributed by credit institutions. Belgium has 127 independent mortgage credit companies, most of which play a social welfare role for small loans at conditions set by the public authority. Additionally, these companies are not allowed to collect public deposits, so present a lower risk of ML/TF. Belgium also has around 50 **finance leasing** companies and 85 **consumer credit** companies, most of which also belong to banking groups.

5.4. Belgium has 23 **life insurance** companies and 24 endowment insurance companies, as well as 275 operators acting under *freedom to provide service* provisions. There are also 9,326 **intermediaries** registered in the life insurance branches (brokers and non-exclusive agents), but who are not all active in this branch. The majority of life insurance contracts are concluded directly with insurance companies (in 2012, brokers accounted for 23.5% and agents for 4.8%). The characteristics of life insurance contracts (e.g. the need to identify the insured, an identifiable beneficiary, the method for collecting the premium and paying out the capital) and the detailed typology of ML/TF risk factors (e.g. surrendering premiums shortly after concluding the contract for no valid reason and involving heavy financial losses, operations resulting in the loss of a sizeable tax advantage, etc.) mean that the ML/TF risks identified for these products are lower in Belgium.

5.5. There are 12 **bureaux de change**. Since 2011, bureau de change registration covers only the spot foreign exchange business and physical money changing. A number of businesses have accordingly opted

1 The figures shown in this section were issued by the Belgian authorities and are available here: BNB (2013); BNB website (http://nbb.be/pub/cp/domains/psd/li/psd3_li.htm?l=fr&id=psd3); FSMA (2014); FSMA website (www.fsma.be/fr/Supervision/finbem/bo/Article/lijsten/bo1.aspx); Febelfin (2014a); Assuralia (2014).

2 The European Economic Area is an economic union formed of the EU Member States and the countries belonging to the European Free Trade Association (EFTA) – Iceland, Liechtenstein, Norway and Switzerland. The provisions governing the EU's internal market apply also to the EFTA countries.

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for the status of payment institution, which allows them to provide payment services, including **money remittance services**. Belgium has a total of 236 payment institutions, including 17 European institutions operating under freedom of establishment through 1 473 agents based in Belgium. A major European payment institution concluded an agreement with Bpost (see below) to offer a money remittance service through the network of post office counters and its 700 public sales outlets. In Belgium there are also **nearly 270 institutions offering a money remittance service and operating under freedom to provide services; most of these services come from the United Kingdom**.

5.6. The total value of money transfers in Belgium amounted to EUR 490 million in 2012, with most going to non-European countries, mainly Morocco, Turkey and the Democratic Republic of Congo.³ The risks associated with these transactions and with money and currency changing remain high because of the proportion of cash used.

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5.7. There are 50 **electronic money** institutions, including 10 institutions governed by Belgian law, one European institution operating through distributors and 39 operators doing business under *freedom to provide services*.

5.8. **Bpost** is also specifically targeted by the AML/CFT system. This public limited company, the primary business of which is providing postal services, also offers financial services through the postal network.⁴ It conducts business activities on its own behalf, some of them as part of its public service missions (postal current accounts, postal remittances, national postal money orders, etc.), in addition to the sale of 'bpaid' prepaid cards. It also conducts business activities on behalf of third parties, including a money remittance service as an agent for a European payment institution (see above). These money transfers, most of which are international, amounted to a total of EUR 317 772 000 in 2013, with an average value of EUR 326.

5.9. *Designated non-financial businesses and professions (DNFBPs)* – Belgium has 1 505 **notaries** working in 1 072 notary offices. Notaries are public officers who hold a monopoly for the establishment of authentic instruments in relation to real estate property transfers and the incorporation of legal persons. The 9 042 licensed and trainee **real estate agents** also play an important intermediary role in real estate transactions.⁵ These activities are potential channels for ML/TF that put these professions at risk.

5.10. The Belgian Bars record a total of 17 795 **lawyers**, but not all of them exercise activities covered by the AML/CFT system. According to the CTIF, 10% of them can be considered 'company lawyers' accordingly involved in operations pertaining to company operations and financial transactions. All of the **accounting/tax professions** included in the AML/CFT system represent 9 321 accountants and tax accountants, external chartered accountants and external tax consultants (professionals working individually and in firms); there are 1 053 statutory auditors. These professionals are involved in businesses' everyday operations and may be confronted with transactions connected to tax fraud and social security fraud (and the associated ML).

5.11. Belgium has nine **casinos**, which all hold licences to offer online casino gaming (which require the server to be based in Belgium), but only seven of them actively use this additional licence.⁶ Handling cash is one of the main ML/TF risks facing casinos.

3 Eurostat (2013); World Bank (2013).

4 A distinction must be made between Bpost and Bpost Banque, a 50% subsidiary of Bpost and a credit institution subject to BNB supervision.

5 Chartered surveyors, when they exercise the regulated activities of real estate agents, are also covered by the AML/CFT system.

6 Gaming Commission (2013).

5.12. There are nearly 1 700 **diamond traders** in Belgium, mainly in Antwerp.⁷ They include rough diamond producers and merchants, polished diamond producers and wholesalers, and the manufacturers of machines or tools that contain a diamond component (e.g. grinders and saws). Traders who only retail in diamonds are not included. These diamond traders' business is mainly based on import and export, mostly to or from EU third-party countries. Shipments of diamonds imported into Belgium or exported from a country outside the EU must be physically checked by the Diamond Office.⁸ The weight, classification and value of the diamonds are compared with the data on the invoice and trade documents by experts acting on behalf of the SPF Economy. The SPF Economy is also responsible for verifying the authenticity of Kimberley Process Certificates with the objective of stemming the flow of conflict diamonds.⁹ The international nature of the diamond trade, the large volumes traded, the value of the products and ease with which diamonds are transported are among the main factors that make this trade a business with a high risk of ML/TF.

5.13. The 9 **security firms** in Belgium authorised to provide secure transport services for high-value items are also subject to the AML/CFT regime because their business activities involve handling cash and/or other high-value items such as precious stones. The 552 **bailiffs**,¹⁰ grouped into 249 non-commercial companies (*sociétés civiles*), are also subject to AML/CFT measures because, in their task of executing judicial decisions, they may, for example, be confronted with situations in which a debtor with outstanding debts (late VAT or social security payments) offers to pay a large sum in cash, which may be a sign of laundering money from a fraudulent bankruptcy or misappropriation of corporate assets.

5.14. 'Company service provider' is not an organised, regulated business as such in Belgium, so is not covered by the AML/CFT regime. To date, Belgium considers that this profession does not exist, as such, in Belgium. The activities covered by the FATF for this category are exercised primarily by lawyers and accountants (and possibly notaries).¹¹ However it appears that in recent years, professional company domiciliation services have developed in Belgium.¹² Typologies of fraud using company domiciliation and rules on the siting of companies' head office in Belgium have also been identified. The authorities have accordingly undertaken work to regulate these activities and make them subject to AML/CFT obligations, and may consider extending these measures to trustee companies (*sociétés fiduciaires* -- accounting and tax firms) (see Section 7 also).

(b) Preventive measures

5.15. AML/CFT preventive measures are grounded in the Law of 11 January 1993 on the prevention of the use of the financial system for the purpose of ML and TF ('AML/CFT Law'). The law was amended in 2010 to transpose the third AML/CFT Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of ML and TF, and the introduction of measures arising from the FATF mutual evaluation in 2005. Substantial changes were made, mainly to the regime applicable to DNFBPs, by tightening the anti-ML/TF requirements and supervision of the professionals.

7 FATF (2013).

8 www.diamondoffice.be.

9 www.kimberleyprocess.com.

10 In Belgium, bailiffs are ministerial and public civil servants who exercise their function on a self-employed professional basis. They are in charge of issuing and enforcing decisions of justice. They are also qualified to manage amicable debt recovery, organise voluntary sales of furniture and physical household effects, carry out building administration, establish affidavits at the request of a magistrate or a private individual, and the draft rental leases and other private agreements.

11 FATF (2005), para. 592.

12 It is difficult to quantify the number of these companies. The Belgium Office Business Center Association comprises 12 companies, but FPS Economy believes the sector is in fact much larger.

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5.16. Note that the **minimum threshold set for applying due diligence measures to occasional customers is EUR 10 000** (Art. 7 §1 2° of the AML/CFT Law), which is lower than the threshold in FATF Recommendation 10.

5.17. **Regulatory measures have been taken to apply the provisions of the law**, including the preventive obligations, to the various businesses and professions covered:

Table 5.1. Regulatory measures

Persons and institutions covered by the law	How the AML/CFT Law is applied	Authority/Authorities responsible for regulation, supervision and monitoring
Financial sector		
Credit institutions	RD of 16 March 2010 approving the CBFA Regulation of 23 February 2010 ¹	National Bank of Belgium (BNB)
Investment companies		
Clearing entities		
Insurance companies		
Payment institutions		
Electronic money institutions		
Banking and investment service brokers		Financial Services and Markets Authority (FSMA)
Insurance intermediaries		
Collective investment funds		
Collective investment fund management companies		
Investment management and investment advisory companies		
Bureaux de change		
Mortgage providers		FPS Economy
Regulated-market operators		
Consumer credit companies ²	No existing regulatory measures	
Finance leasing companies		
Bpost	Order of the Minister on 10 January 2014	FPS Finance

1. Following the reorganisation of financial sector supervision in Belgium in 2010 (see Section 6), earlier decisions by the CBFA, including circulars, remain valid (Art. 329 to 331 of the RD of 3 March 2011 [Ministry of Justice, Ministry of Finance et al, 2011]).
2. The Law of 31 July 2013 removed the provision of the Law of 2 August 2002 (Moniteur Belge / Belgisch Staatsblad, 2002) that assigned to the FSMA the role of supervising consumer credit companies and operations, with effect from a date to be set by royal decree. It was decided that FPS Economy would be charged with supervising credit regulation (mortgage and consumer credit) and that the FSMA would be charged with controlling access to the business of lenders and intermediaries in these sectors, through the Law of 19 April 2014. The section of this law related to the FSMA's competence will enter into force on 1 July 2015.

Table 5.1. Regulatory measures (continued)

Persons and institutions covered by the law	How the AML/CFT Law is applied	Authority/Authorities responsible for regulation, supervision and monitoring
Designated non-financial businesses and professions (DNFBPs)		
Real estate agents and chartered surveyors	RD of 30 July 2013 approving the regulation of FPS Economy	FPS Economy
Security companies	RD of 26 March 2014 approving the regulation of FPS Interior	FPS Interior
Diamond traders	RD of 7 October 2013 approving the regulation of FPS Economy	FPS Economy
Notaries	Regulation of the National Chamber of Notaries of 26 April 2011, amended on 18 April 2013	National Chamber of Notaries and Chamber of each of the 11 provincial companies
Bailiffs	Regulation of the National Chamber of Court Bailiffs, adopted on 27 October 2012 and amended on 16 November 2013	Belgian National Chamber of Court Bailiffs
Statutory auditors	Rule issued by the board of the IRE of 4 February 2011 ³	Institut des Réviseurs d'Entreprises (IRE)
External chartered accountants and external tax consultants	Regulation of the Institute of Chartered Accountants and Tax Consultants of 10 January and 7 February 2011	Institut des Experts comptables et des Conseils fiscaux (IEC)
Certified accountants and tax accountants	Regulation of the National Council of the Professional Institute of Certified Accountants and Tax Accountants of 28 January 2011	Institut Professionnel des Comptables et Fiscalistes Agréés (IPCF)
Lawyers	Regulation of the Order of French-speaking Bars and the German-speaking Bar of 14 November 2011. Included in the new code of professional conduct (Art. 4.68 to 4.74)	Order of the French-speaking Bars and the German-speaking Bar and each of the 14 bars
	Regulation of the Order of Flemish Bars of 21 December 2011	Order of the Flemish Bars and each of the 14 bars
Casinos	Law of 7 May 1999 and RD of 15 December 2004	Belgian Gaming Commission (FPS Justice)

3. The three institutes for the accounting/tax professions (IRE, IEC and IPCF) decided to adopt a common set of rules to allow a consistent application of the law.

5.18. The measures necessary to adjust the Belgian AML/CFT framework to the revised FATF Recommendations of 2012 have not yet been taken. The Belgian authorities indicated that, to avoid successive amendments to the legal and regulatory framework in a short lapse of time, they will make all the necessary adjustments at once, when the measures are taken to transpose into Belgian law the fourth AML/CFT Directive currently being developed.

5.19. Likewise, because the measures applicable to money transfers are governed by EC Regulation 1781/2006, they will be adjusted at the end of the legislative process under way at European level, in which Belgium is taking part, in view of adopting a new Regulation. This work intends to reflect FATF's new R 16

and thus introduce requirements regarding information about the beneficiaries of money transfers and the additional obligations for intermediary financial institutions.

(c) Risk-based exemptions or extensions of preventive measures

5.20. **Diamond merchants are the only dealers in precious stones subject** to the entire Belgian AML/CFT system. This is because these merchants handle the largest business deals, which can involve very substantial sums.¹³ Moreover, the international nature of the diamond market, the volumes traded, the ease with which the diamonds traded are transported, the key role of Antwerp in the international diamond trade, the concentration of the stakeholders and the continued existence, to a certain extent, of informal practices for concluding the deals are typical features of a sector with a high risk of ML/TF. This is corroborated by information held by the operational services (police and investigators) and ML/TF cases calling into question those involved in the diamond trade (see Section 3). In Belgium, the sector with the highest risk of ML/TF is therefore precious stones.

5.21. **Dealers in precious metals** (gold, silver and platinum) are not covered by AML/CFT preventive measures, but they are subject to the **provisions restricting cash payments** (EUR 3 000 or 10% of the total price), which also apply to any dealer or service provider (Art. 21). These requirements were introduced in 2012 to address the underground economy, ML, social security fraud and tax fraud. They were tightened in 2013, mainly in response to cases forwarded by the CTIF, which concerned transactions worth huge amounts (over EUR 1 billion) that involved purchases of old gold.

5.22. **Security companies, external tax consultants and court bailiffs** are not among the professions covered by the FATF Recommendations. However, since the Law of 10 August 1998, Belgium has deemed it necessary to include these businesses and professions in the AML/CFT system on account of their exposure to the risks of tax fraud (tax consultants) and the handling of cash (security companies and bailiffs).¹⁴

5.2 Technical compliance (R 9 to R 23)

Recommendation 9 – Financial institution secrecy laws

5.23. **Belgium is compliant with R 9** – The contractual duty of discretion between the customer and the financial institution is lifted when information must be forwarded to the judicial, tax and prudential supervision authorities, or to the CTIF.

Customer due diligence and record keeping

Recommendation 10 – Customer due diligence

5.24. **Belgium is largely compliant with R 10** – The measures provided in the AML/CFT Law meet the main requirements of R 10. Beneficial owners must be identified and their identity must be verified by taking appropriate risk-based measures defined by the financial institutions in their internal procedures. If

13 Certain lots of diamonds transiting through the Antwerp marketplace have market values of millions of euros. In 2012, the value of trade amounted to USD 51.9 billion, which represents a value of USD 200 million passing through Antwerp every day. Risk analysis of the Antwerp diamond sector, AWDC, November 2013.

14 This report did not analyse the compliance of the measures applicable to these businesses and professions, insofar as they were excluded from the scope of the Recommendations (para. 591). Even so, the new version of the Recommendations is risk-based. Insofar as Belgium considers that these sectors present a risk that it should try to avert and mitigate by applying AML/CFT measures, they are included in the sectors examined as part of this mutual evaluation.

supporting documents cannot be furnished, the financial institutions can access the National Register (of physical persons) through their industry trade group. If the information cannot be verified, the financial institution should keep a written record of the measures taken, as documentary evidence that they were appropriate for the risk involved. The limitation of the system is that the provisions applicable do not specify whether the financial institution should, by default, consider the company's senior managing official as the beneficial owner when no natural person can be identified as such in the case when the function of member of the board of directors is separate from that of 'senior managing official'. Moreover, there is no explicit provision that obliges financial institutions to systematically consider the beneficiary of a life insurance contract as a relevant risk factor when they determine whether enhanced due diligence measures should be applied.

Recommendation 11 – Record keeping

5.25. **Belgium is compliant with R 11** – All documents concerning transactions must be kept by the financial institutions for five years from the time the transactions were carried out, and the data used to verify the customer's identity must be kept for five years after the termination of the business relationship with the customer.

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Additional measures for specific customers and activities

Recommendation 12 – Politically exposed persons (PEPs)

5.26. **Belgium is partially compliant with R 12** – Several deficiencies are observed: The definition of PEPs in the AML/CFT Law is limited insofar as only persons who exercise or have exercised important public functions and who live abroad can be considered PEPs. The criterion of residence abroad excludes, as such, foreign PEPs residing in Belgium and domestic PEPs or persons exercising or who have exercised an important function within or on behalf of an international organisation. Moreover, Belgian law provides a restrictive list of persons who are to be considered direct family members or close associates of PEPs, which is too restrictive compared with the open approach of R 12. The definition of PEPs also stipulates that, one year after PEPs have ceased their functions, they should no longer be considered PEPs. Finally, there are no specific provisions in Belgium requiring financial institutions to verify whether the beneficiary of a life insurance contract or its ultimate beneficiary is a PEP. These deficiencies can be attenuated in practice – however not in a systematic manner since it is based on an analysis of the risks under which financial institutions operate – by the general requirements to determine the risk profile of the customer and enhanced due diligence needed for higher risk situations. This series of gaps is considered to be a moderate shortcoming, given their scope with regard to the FATF requirements and their importance in an area calling for enhanced due diligence.

Recommendation 13 – Correspondent banking

5.27. **Belgium is partially compliant with R 13** – The law lays down the principle of applying enhanced due diligence measures for cross-border correspondent operations with financial institutions located in third countries considered as high risk, under the conditions provided for by R 13. Nevertheless and pursuant to Art. 12§4 of the law which applies 'without prejudice ... the exemptions referred to in Art.11 §1 1^o', the measures do not apply in relations with financial institutions originating in another EEA State or a third country that imposes control obligations equivalent to those set out in the 3rd AML/CFT Directive. Given the open and cross-border nature of the Belgian banking sector and the fact that the Recommendations consider cross-border correspondent banking as a high-risk activity, the deficiencies observed are moderate.

Recommendation 14 – Money or value transfer services

5.28. **Belgium is largely compliant with R 14** – The provision of money or value transfer services (MVTs) meets the conditions of R 14, including when they are provided through agents. However, there is no clear policy on the sanctions applicable to persons who provide MVTs without a license or registration, which would make it possible to judge whether such sanctions are proportional.

Recommendation 15 – New technologies

5.29. **Belgium is largely compliant with R 15** – Belgium has not developed a specific analysis of the ML/TF risks to which the financial system is exposed as a result of using new technologies. However, even though the law does not expressly provide for it, the general AML/CFT framework takes these risks into account to some extent, either by applying the enhanced due diligence rules applicable when contracts are concluded remotely, or by determining ‘specific risk criteria’ as grounds for the risk-based approach and the initial determination of the customer’s risk profile.

Recommendation 16 – Wire transfers

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5.30. **Belgium is partially compliant with R 16** – Belgian law is based on EC Regulation 1781/2006, which does not contain all of the requirements in R 16. More specifically, it does stipulate any obligation to include information on the beneficiary of the wire transfer. Provisions on the obligations of intermediary financial institutions are also limited. The regulation is currently being revised to allow for these requirements to be included.

Reliance on third parties, controls and financial groups

Recommendation 17 – Reliance on third parties

5.31. **Belgium is partially compliant with R 17** – The conditions set out by R 17 for reliance on third parties to introduce business are not fulfilled with respect to the country in which these third parties are established. On the one hand, the exception set out in the RD of 19 July 2013 exempts the financial institution from ensuring that AML/CFT measures of a third country situated in an EEA State or in an equivalent third country are adequate. On the other hand, inclusion on the list of equivalent third countries takes into account risk-related information, without this analysis being targeted on ML/TF risks. These shortcomings are considered moderate, particularly in the Belgian context because the financial institutions are very open to European and international relations.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

5.32. **Belgium is partially compliant with R 18** – Financial institutions are required to implement AML/CFT programmes as set out in R 18, except for the requirements regarding the audit function for certain small entities (intermediaries in banking and insurance services, bureaux de change) and thus has a limited impact. The legislation imposes the development of a co-ordinated AML/CFT programme only for financial groups headed by a credit institution or an investment firm. Moreover, the actual content of the obligations to be implemented in this programme is not specified in the legislation or regulation, nor is the need for group subsidiaries and branches to follow AML/CFT rules compatible with the level required in the home country. This deficiency is considered to be moderate in the Belgian context which is characterised by a significant proportion of financial institutions that are part of financial groups, a number of them operating throughout Europe, and for which it would be important that AML/CFT programmes be co-ordinated and clarified at group level.

Recommendation 19 – Higher-risk countries

5.33. **Belgium is largely compliant with R 19** – Transactions with higher-risk countries are covered under the conditions required by R 19. However, Belgium does not have instruments allowing it to apply countermeasures to these countries independently of any call by the FATF to do so.

Reporting of suspicious transactions

Recommendation 20 – Reporting of suspicious transactions

5.34. **Belgium is compliant with R 20** – The AML/CFT Law provides that, when persons or institutions covered by the law know or suspect that a transaction to be carried out is related to ML or TF, they are to inform the CTIF. Criminal law covers the financial benefits (*avantages patrimoniaux*) of any criminal offence, whereas the AML/CFT Law covers a list of offences (covering all of the FATF designated categories of offences), but those covered do not have to determine which offence is concerned, so the difference between the two laws has no impact on those covered by the law.

Recommendation 21 – Tipping-off and confidentiality

5.35. **Belgium is compliant with R 21** – Financial institutions, their directors, officers and employees are protected by law from criminal and civil liability if they report their suspicions in good faith to the CTIF. The law also protects them from any threat, hostile act or intimidation. Additionally, the reports are not included in the files forwarded by the CTIF to the prosecutor's office or its foreign counterparts, in order to protect the anonymity of the source of the reports. Likewise, the persons or organisations that submitted a report cannot, under any circumstances, inform the customer concerned or any third parties that the information has been submitted to the CTIF.

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Designated non-financial businesses and professions (DNFBPs)

Recommendation 22 – DNFBPs: customer due diligence

5.36. **Belgium is largely compliant with R 22** – Company service providers are not covered by Belgian AML/CFT measures. The CDD obligations set out in the AML/CFT Law, and the measures with regard to record keeping, PEPs, new technologies and reliance on third parties, apply to DNFBPs, who are accordingly affected by the limitations identified in R 10, R 12, R 15 and R 17. CDD requirements (R 10 rated LC) are central for R 22, but the shortcomings observed are only minor. Moreover, the failings with regard to reliance on third parties (R 17 rated PC) have less impact on the activities of DNFBPs.

Recommendation 23 – DNFBPs: Other measures

5.37. **Belgium is largely compliant with R 23** – The AML/CFT Law's measures on STRs, internal controls, higher-risk countries, and tipping-off/confidentiality apply to DNFBPs, with a number of adjustments for STRs and internal controls. DNFBPs are affected by the limitations identified in R 18, R 19 and R 20. More specifically, it should be noted that there is no independent audit function to check the AML/CFT system for any of the DNFBPs. It seems that, in this area, the characteristics of the DNFBPs must be taken into account, and in particular the small size of the entities to which these measures would have to be applied. The impact of this shortcoming is therefore limited.

5.3 Effectiveness: Immediate Outcome 4 (Preventive Measures)

(a) Understanding of AML/CFT risks and obligations

5.38. **Financial institutions – On the whole, a sound understanding was observed of ML/TF risks by the financial sector interviewed**, with regard to both activities (e.g. wealth management) or products (e.g. insurance products with a single premium, or associated tax benefits) and customers' characteristics (e.g. offshore companies, customer's geographic location/residence criterion) or business sectors (e.g. sectors that still make heavy use of cash, or the sectors dealing in diamonds, real estate, construction, and second-hand cars).

5.39. The new players in the financial sector (payment and electronic money institutions) demonstrated their understanding of the risks, especially those associated with cash refunds/withdrawals of electronic money, or the use of prepaid cards. Money remittance service providers also understood the risk of TF and the possibilities of being used for that purpose.

5.40. There was also a **sound understanding of ML/TF risks by the diamond banks** interviewed (which represent around 70% of the sector). **Bpost also has a sound understanding of ML/TF risks**, both for the financial services provided in its own name (electronic money, postal remittances and postal money orders) and for the money remittance service provided as agent of a market-leading EEA payment institution.

5.41. **The financial sector generally has a sound understanding of AML/CFT obligations**, except for certain bureaux de change, whose activities are at risk for ML/TF. Some confusion was noted, particularly concerning the notions of beneficial owners and PEPs, and the requirements pertaining to them in terms of determination/identification.

5.42. *DNFBPs* – **The understanding of ML/TF risks is patchy among DNFBPs**. Notaries, for example, have a sound understanding of the specific risks they have to address (company formations, real estate transactions, misuse of third-party accounts). Various sectors have identified the types of transactions or customers that represent a risk in their activities, which are described in the rules for applying the AML/CFT Law (e.g. notaries, real estate agents) or in circulars relating to these rules (accounting/tax professions, diamond merchants, secure cash transportation firms).

5.43. **Some sectors underestimate their exposure to ML/TF**. An example is **diamond traders**, whose sector-specific risk assessment by the industry trade group presents an unbalanced image of the sector (see Section 1). The same holds for **casinos**. Even though they are at risk because they handle cash and because of the growth of online gambling, they place their ML/TF risks in the broader perspective of the development of illegal casinos and the differences in neighbouring countries' legislations.

5.44. Certain sectors, including casinos, diamond traders, lawyers and accounting/tax professions, firmly believe that the regulations and supervision imposed on them are such that ML/TF risks are greatly reduced for those working in compliance with the rules of the profession. According to them, any risks would therefore be caused essentially by persons outside the regulated profession, or professionals violating their own rules. This is especially true for the actions involved in setting up and running companies. It is interesting to note though, that sector-specific risk analyses are in progress for lawyers and accounting/tax professions¹⁵, mainly in response to the national ML risk assessment, which identified vulnerabilities in their sector (see Section 1), in relation to which they have expressed reservations.

(b) Implementation of measures commensurate with the risks

5.45. *Financial institutions* - The assessment team met with a broad range of financial institutions and asked them very wide-ranging questions about all of the AML/CFT obligations. The replies were as expected from professionals in the matter: they gave the assessors insights into the implemented preventive measures, and highlighted the difficulties encountered through various examples. **Even so, the competent authorities should tighten AML/CFT controls to ensure that the obligations of all those covered by the system are properly applied** (see Section 6).¹⁶

5.46. **The financial sector institutions interviewed (banks and insurance companies) indicated they implement AML/CFT measures that are commensurate with and appropriate to the risks** (particularly regarding classification of customer risks). They implement these measures in two ways. The first is through their customer acceptance policy (based on criteria such as residence in Belgium or not, structure when the customer is a legal person, the expected value of the transactions, the declared or known business activity

15 The assessment for the accounting/tax profession was completed after the on-site visit.

16 This preliminary remark should also be taken into account for points (c) and (d).

or occupation, the country risk, etc.), updated on the basis of changes in the risks and the results of ongoing supervision of the transactions. The second way is by applying suitable due diligence.

5.47. Some of the payment institutions interviewed indicated that, when they are acting in their own name or as agent for a major EEA institution in the money remittance sector, they employ a policy of thresholds for managing transactions, based on the risks. These are thresholds above which the transaction is declined, or warning thresholds above which an additional due diligence is performed (predetermined amounts per transaction and over a number of transactions, with a reference code assigned to customers to monitor developments in their transactions).

5.48. Concerning country risk, the financial institutions indicated that they reassess the risk for certain countries on the list of equivalent third countries (RD of 19 July 2013) and do not automatically apply simplified measures, if they believe the country presents risks.

5.49. Nevertheless, **difficulties were observed in evaluating risk situations, and the proportionate, appropriate nature of the measures taken to effectively address them, particularly among certain bureaux de change.** For example, at a bureau de change acting in its own name, inadequate due diligence measures were noted in circumstances that clearly called for additional due diligence measures (e.g. accepting exchange transactions for large amounts with embassy employees, or with the embassy itself, with the only due diligence measure being to ask the embassy for a document certifying that it knew the source of the funds). The controls carried out by the FSMA detected the inadequacy of the measures taken and the case of the bureau de change in question was forwarded to the FSMA auditor in charge of examining the case in view of imposing an administrative fine, if relevant. The case is being investigated. Likewise, at a bureau de change acting as an agent for an EEA payment institution (and thus under the supervision of the BNB), the transaction monitoring thresholds applied consistently to all customers are inappropriate because they are too high for private individual customers (e.g. USD 4 500 per transaction).

5.50. *DNFBPs* – The assessors met with representatives of DNFBPs and, based on the interviews conducted and the documentation provided, observed the manner in which AML/CFT obligations were understood and applied, and the difficulties encountered. However, the competent authorities should tighten ML/TF controls to ensure that the obligations of all those covered by the system are properly applied (see Section 6).

5.51. **The basic AML/CFT obligations were generally understood by the DNFBPs interviewed, but applied mechanically without taking into account the potential risks** and with a view to meeting compliance objectives more than mitigating any ML/TF risks. A number of DNFBPs, including real estate agents, notaries, accounting/tax professions and casinos, operate with a repeat, local customer base whose habits and type of transactions are known. When an aspect of the intended transaction departs from this 'model', the professional adopts a more cautious approach and asks the (potential) customer more questions before proceeding with the transaction. It is only when they find themselves in the higher-risk situations described in their regulations, if applicable (notaries, real estate agents), that they will apply additional measures after having accepted the customer.

(c) Customer due diligence (CDD) measures and record keeping

5.52. *Financial institutions* – **Know-your-customer and ongoing due diligence measures form the foundation of the AML/CFT system for the financial sector.** This is true, for instance, for money remittance institutions (e.g. collecting information about the profession, questions about the connection with the beneficiary to prove the economic purpose of the transfer). A number of bureaux de change interviewed identify their customers (generally walk-in customers) whatever the value of the intended transaction, or starting at a threshold below that laid down by the legislation (EUR 10 000 - Art. 7 §1 2° of the AML/CFT Law).

5.53. The diamond banks indicated they sometimes had difficulty collecting know-your-customer information or information justifying certain transactions. In any case, they stated that they apply enhanced due diligence measures in this area, which they deem to be high-risk, and can eventually decline transactions or even, on rare occasions, break off or decline to enter into a business relationship.

5.54. **To carry out the determination/identification of beneficial owners**, the banking and insurance institutions interviewed apply a system based firstly, and sometimes primarily, on a signed statement by the customer or the customer's representative (e.g. the trustee of a legal arrangement), which is subsequently verified. In the event of difficulties, especially in situations with a foreign connection, these institutions indicated that they applied additional due diligence measures. If there is still doubt as to the determination/identification of the beneficial owner even after taking 'reasonable' steps (Art. 14, Regulation of 16 March 2010) (e.g. to understand the legal arrangements, in connection with taxation considerations), the institutions indicated that they submit an STR. Information from the supervisors as to what can be considered 'reasonable steps' in this area would give financial institutions guidance or practical solutions to help them more effectively conduct their search for beneficial owners.

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5.55. The obligation to decline to enter into a business relationship or carry out a transaction once a business relationship has been established, for lack of sufficient information (knowledge of the purpose of the business relationship, the customer or the source of the funds involved in a transaction) or because identification cannot be established, seems to be met. An STR is generally submitted in these cases.

5.56. However, the obligation to break off the business relationship or not carry out a transaction during the business relationship, because of it is not possible to apply the required due diligence measures, more specifically to identify the beneficial owner, does not always appear to be met. The banking and insurance sector emphasised the commercial, technical and/or legal difficulties sometimes encountered in complying with this requirement. The question was raised, for example, in relation to the updating of beneficial owner identification data, which was the subject of a horizontal check by the BNB in 2012/2013. Life insurance companies mentioned legal considerations associated with insurance law that were difficult to reconcile with the obligation to terminate a business relationship (e.g. term insurance or life insurance tied to mortgage credits). To offset these difficulties, measures were taken to restrict the services available and prohibit any further transactions on the contracts in question (the contract was 'frozen', and it was impossible to pay the premium to the beneficiary at the end of the contract without proper identification of the beneficial owner).

5.57. The interviewed payment institutions that provide money remittance services decline transactions in the absence of identification and verification of the customer's identity, which is carried out in Belgium regardless of the amount. A European payment institution operating through agents in Belgium keeps and distributes to all of its agents a 'black list' of persons banned from business relationships and/or any further transactions, unless these persons provide the additional information required. This list is without prejudice to the implementation of asset-freezing screening obligations and the taking into account of FATF lists (see Section 4).

5.58. **Bpost indicated that it carried out identification and identity-verification due diligence measures for its own services** (postal remittances and postal money orders). It believed that there was a heightened risk of ML/TF because it was required to accept cash deposits and payments without any limit on the amount because of its public service mission. It also mentioned that there were situations in which it detected unusual transactions (a significant amount, an amount split into smaller amounts, etc.), which it would like to decline because of the risks. In that case, it submits an STR. **Bpost would like to be able to simply decline cash transactions in excess of EUR 3 000** (the threshold set by the AML/CFT Law, see above).

5.59. **No particular difficulty was noted in relation to** keeping records of transactions and of information obtained through due diligence measures.

5.60. *DNFBP* - **DNFBPs generally seem to comply with the customer identification requirement**, even if this requirement and the need to regularly update the information was hard to accept in sectors marked by long-standing business relationships and close ties with the customer (diamond traders and notaries in particular).

5.61. Because diamond merchants need to carry out their transactions quickly, identification is generally (in 70% of cases) limited to obtaining the customer's identity document - natural person, acting on behalf of a legal person if applicable - before the transaction, while the information received is verified and the documents concerning the legal person are obtained afterwards. This practice can be problematic, especially

as the diamond traders' customers are often from geographic zones considered to be high risk, in particular taking into account the origin of the rough diamonds, and it can be difficult to verify the information about them. This raises the question of whether (enhanced) due diligence measures can effectively be applied in these situations.

5.62. **There are also concerns about identifying online gamblers on authorised websites.** They are supposed to fill in an online form and attach a copy of an identity document. They are then assigned a unique 'player token', but there is no verification of their identity document. The Belgian Gaming Commission would like to be granted direct access to the National Register (of physical persons) (see R 10) for verification purposes, to prevent a customer from being assigned more than one *token* and also to apply the measures limiting the sums that can be played.

5.63. The area that represents the greatest difficulties for all non-financial stakeholders, especially in situations with foreign connections, is identifying the beneficial owner. Some professions use tools provided by specialised information service providers, but the great majority rely on the customers to forward the statements they made to the bank about their beneficial owners. Concerning the verifications required, it can be problematic that certain professions, such as diamond traders or real estate agents, stated that they systematically rely on the controls implemented by other stakeholders, respectively banks and notaries.

5.64. In general, the obligation to refuse to carry out a transaction if the due diligence obligations cannot be met seems to be sufficiently understood but seems to be applied only in cases of highly unusual transactions. In spite of everything, stakeholders only rarely consider submitting an STR. A number of DNFBPs reported the potential difficulties of continuing a business relationship with a customer for whom an STR was submitted.

5.65. **No particular difficulty was noted in relation to keeping records** of transactions and information obtained during due diligence measures.

(d) Enhanced due diligence measures

5.66. **Financial institutions - The financial sector, in general, implements enhanced due diligence measures in situations** recognised as high-risk situations by the FATF and the AML/CFT Law.

5.67. **The implementation of measures to detect/identify non-domestic PEPs can, in some cases, pose a problem.** Customers are generally invited first to sign a statement about whether or not they are a PEP. The institutions indicated that they refuse to enter into a business relationship if the prospective customer will not sign the statement. Further checks are carried as far as is reasonable (using search tools or lists drawn up by major outside service providers), but problems remain in some cases, such as false positives, difficulties regarding names or homonyms, and links with certain countries. The institutions regularly run checks for PEPs in their customer databases. Monitoring of the customer relationship with PEPs is adjusted to the risk (type of transactions, country, amounts, etc.). The institutions interviewed stated they were also already careful about domestic PEPs, and were anticipating the 4th AML/CFT Directive, specifically in situations that might present risks of influence peddling or national level corruption.

5.68. **For correspondent banking, enhanced due diligence measures are implemented on a risk-based approach,** with increased attention, for example, when the correspondent is located in an offshore centre or in certain countries where the supervision system is deemed less mature. When the financial institution is part of a group and the prospective correspondent is already in contact with the group, information about the institution may be exchanged within the group. Anti-corruption aspects are also examined. Less use is made of enhanced due diligence measures in the SEPA area,¹⁷ except for certain countries such as Switzerland. There are two main reasons for this. The first is the existence of the SEPA: a standardised means of payment

17 Single Euro Payments Area – There are 33 countries in the SEPA area: the 28 EU Member States plus Iceland, Liechtenstein, Norway, Switzerland and Monaco.

harmonises the processing of national and international orders,¹⁸ and the area can use the same payment systems and common BIC and IBAN identification codes. The second reason is the possibility of implementing simplified measures for relations with financial institutions in an equivalent third country (see R 13).

5.69. **Less use is made of enhanced due diligence measures on wire transfers within the EU** because the originator information required is simpler and there is no obligation to provide information on the beneficiary (Regulation 1781/2006, see R 16). In practice, full information on the originator is not always shown in the messages accompanying wire transfers when there is an intermediary institution between the originator's institution and the beneficiary's institution.¹⁹The same holds for information on the beneficiary. This can make it more difficult to implement certain due diligence measures. In SEPA formats, the name of the wire transfer's originator is required information. Information on the beneficiary of the wire transfer also exists,²⁰ but is not required information as described in Regulation 1781/2006 and does not include information on the beneficiary's name as described in R 16. In practice, this information is usually mentioned or requested by financial institutions, mainly so that it can be checked against OFAC and European lists. The banking sector representatives interviewed stated that, for domestic wire transfers, screening was carried out on the customer and the beneficiary. For intra-European transfers or transfers with third countries, asset-freezing screening is also carried out on the originator customer and on the beneficiary, within the limits of Regulation 1781/2006 for transfers within the EU, and on the financial flows. To identify persons who may be concerned by restrictive measures, the institutions interviewed implement screening measures using OFAC then EU lists; they also use commercial lists. This screening is carried out on entering into the business relationship and on receiving transaction requests. The institutions indicated there was good co-operation with the CTIF, the prosecutor's office and FPS Foreign Affairs in these matters concerning international sanctions for TF (see Section 4).

5.70. Outside the banking and insurance sector, it was not clear whether the financial sector representatives interviewed do indeed implement the enhanced due diligence measures required with regard to certain obligations, especially given their sometimes hazy understanding of the notions of beneficial owners and PEPs. For online banking activities, the financial institutions implement basic know-your-customer requirements and endeavour to establish a personalised contact with the customer, either by telephone or face-to-face. In particular, the procedures for verifying customers' identities are more difficult to carry out.

5.71. Examples of enhanced due diligence measures in cases other than those stipulated by the law were cited by the banking institutions interviewed. For example, in the case of anonymous donations to customers set up as religious associations (non-profit associations, ASBLs), a bailiff was asked to certify that the deposits did indeed correspond to the proceeds of the ASBL's fund-raising. The transaction was accordingly accepted under these conditions, with increased due diligence measures on these cash deposits, especially if they were followed by wire transfers.

5.72. **DNFBPs - No specific measures seem to be implemented by DNFBPs to detect PEPs.** They rely almost exclusively on the customer's statement on a form. Only certain professionals use PEP lists provided by specialised websites and if they do, they rely solely on the information contained in these lists. The

18 An additional transition period up to 1 August 2014 had been accepted, even though European wire transfers and direct debits came into general use on 1 February 2014, as per Reg.260/2012 (the 'SEPA Regulation').

19 Even if, in principle, an 'MT 202 COV' SWIFT message applies and gives the intermediary institutions full details of the originator.

20 Reg.260/2012 states 'where available, the payee's name' in relations between the payer and the payer's payment service provider (PSP) (Annex 2 a) iv); in relations between the payer's PSP and the payee's PSP, the payee's name is not required, but instead 'any payee identification code' and 'the name of any payee reference party' (Annex 2 b) vi) and vii) of Reg.260/2012).

EPIS²¹ database developed by the Belgian Gaming Commission, and used by casinos to check whether their customers are banned from gaming, does not contain information about this.

5.73. Regarding relationships with customers from countries considered high risk by the FATF, the majority of the professionals and businesses interviewed on site indicated they are familiar with the list, which is accessible through the CTIF website, and refer to it when they are dealing with a foreign (non-EU) customer. In that case, enhanced due diligence measures would be applied.

5.74. There is confusion in some sectors between this list of high-risk countries and the lists of persons and organisations subject to targeted financial sanctions, and also regarding the measures to adopt when dealing with customers from these countries or shown on these lists. Notaries, however, seem to have made a clear distinction between the two, and apply the necessary measures. The other sectors, because the customers they deal with are mostly national or even local, give only relative importance to these requirements.

(e) Suspicious transaction reports (STRs)

5.75. It is important to distinguish between 1) 'subjective' STRs based on suspicions of ML/TF, 2) 'objective' reporting based on criteria or thresholds fixed by legislative or regulatory provisions and submitted without any suspicion, and concerning mainly DNFBPs (e.g. Art.21 of the AML/CFT Law, RD of 1999 for casinos) and 3) 'automatic' reports that are not based on an ML/TF analysis or suspicion but are submitted systematically for a customer or type of transaction that has already been reported.

5.76. *Financial institutions - The financial sector has generally adopted the practice of suspicious transaction reports (STRs)*, even if diamond banks' reporting policy should be tightened, given the risks associated with this sector. In the bureau de change sector, it was noted that one establishment alone has been submitting over 97% of the sector's STRs over the last few years. A significant share of the STRs made by this bureau de change were automatic reports, based on the amounts involved, and these were not follow-up STRs, that is, additional STRs on a customer for whom one or more STRs had previously been submitted and which would be useful for continuing to follow the flow of transactions. This bureau de change was moreover one of the Belgian agents of a European payment institution, and similar practices on the part of other agents acting for this institution were also observed. This practice is similar to 'defensive' reporting, i.e. reports are submitted systematically for all further transactions carried out by a customer for whom a report had previously been submitted (for example, more than 70 STRs for the same customer). The large numbers of automatic STRs submitted can impair the effectiveness of the AML/CFT system. Awareness raising by FSMA and CTIF should be carried out jointly in order to inform the bureaux de change about the approach to take in repeat reporting on the same customer and the distinction between a follow-up report and an automatic one.

5.77. The banking and insurance sector interviewed spoke of difficulties in **detecting transactions that might be involved in laundering the proceeds of tax fraud**, and hence in the STRs to be submitted on the basis of such suspicions. The question of defining the new legal notion of 'serious tax fraud, organised or not', which was introduced by the Law of 15 July 2013, is said to contribute to legal uncertainty.²² For the Belgian authorities, though, financial institutions should submit an STR whenever there is suspicion of serious tax fraud. This question is currently the subject of an appeal before the Constitutional Court. Investigations by the police or the prosecutor's office were mentioned, along with BNB on-site inspections conducted at the request of these authorities to check for failures to submit a STR, or delayed STRs. Sanctions had been imposed in connection with this point (based on the regime preceding the Law of 15 July 2013, which nevertheless covered 'serious, organised tax fraud using complex mechanisms or procedures with an international dimension').

21 Created by the RD of 15 December 2004 (Ministry of Justice, 2005), EPIS (Excluded Persons Information System) is an information processing system containing the names of persons banned from gaming establishments. People on the EPIS list will not be allowed to enter these establishments.

22 Febelfin (2014b).

PREVENTIVE MEASURES

Table 5.2. Number of STRs submitted to the CTIF by financial institutions and DNFBPs

	2010	2011	2012	2013	% 2013
Bureaux de change and payment institutions (money remittance) ¹	11 491	12 364	11 716	11 657	50.76
Credit institutions	3 870	3 831	4 768	5 690	24.78
Casino operators	912	952	916	919	4.00
Bpost	471	634	800	1 085	4.72
Notaries	163	319	587	967	4.21
Accounting and tax professions ²	46	52	99	139	0.61
Life insurance companies	76	81	84	196	0.85
Statutory auditors	28	18	23	48	0.21
Real estate agents	26	28	22	67	0.29
Brokerage firms	25	23	20	22	0.10
Mortgage companies	42	37	17	12	0.05
Insurance intermediaries	18	13	10	18	0.08
Lawyers	0	1	10	9	0.04
Management companies for collective investment schemes	1	1	5	20	0.09
Bailiffs	3	5	4	8	0.03
Banking and investment service brokers	0	1	2	5	0.02
Diamond traders	1	6	1	1	-
Consumer credit companies	5	4	1	22	0.10
Finance leasing companies	0	1	1	0	-
Security companies	0	0	1	2	0.01
Payment institutions operating as credit card issuer and manager ³	0	4	7	6	0.03
Others ⁴	18	1	14	1	-

Source: CTIF

- 1 Since entry into force of RD of 2 June 2012 amending the list of organisations covered by the AML/CFT Law.
- 2 Outside chartered accountants, outside tax consultants, outside certified accountants, outside certified tax accountants.
- 3 Since the entry into force of the RD of 6 May 2010 amending the AML/CFT Law (Ministry of Justice and Ministry of Finance (2010)).
- 4 Clearing entities, investment management and investment advisory companies, branch offices of EEA financial institutions, collective investment funds, *Caisse des dépôts & consignations*, and market operators.

5.78. The institutions interviewed did not mention any problems in relation to the non-disclosure and confidentiality requirements concerning STRs.

5.79. *DNFBPs* – **The commitment to suspicious transaction reporting varies widely from one DNFBP to another.** The practice of STRs grounded on subjective criteria has been taken on by notaries and, to a certain extent, by the accounting/tax professions, even if the number of reports, which has risen steeply in recent years, tends to remain limited. This upturn in the quantity and quality of reports can be attributed to the awareness-raising initiatives conducted in these sectors. **The number of STRs submitted by casinos seems extremely high, but corresponds to automatic reports** based on objective indicators contained in the RD of 1999 (e.g. when a customer purchases chips to the value of EUR 10 000 or higher and pays in cash or using a bank or credit card; note that this threshold is checked only when the chips are exchanged at the end, not as the gaming operations are carried out, and that this can undermine the effectiveness of the measure). It seems that real estate agents also rely almost exclusively on objective factors to submit a report (cash payments are prohibited for real estate transactions under Art. 20 of the AML/CFT Law).

5.80. For other professions identified as particularly vulnerable to ML/TF, such as **lawyers and diamond traders, virtually no reports are submitted to the CTIF.** In the case of lawyers, STRs have to first go through the filter of the president of the bar (*bâtonnier*), who does not check the substance (the ‘appropriateness’ or *opportunité* of the report) but verifies that the criteria required by the AML/CFT Law are met. Lawyers are subject to AML/CFT measures only for a limited series of operations, most of which have to do with real estate and financial transactions, and administering companies (Art. 3 5° AML/CFT Law). Their interpretation of the activities that should be reported as suspicious further narrows the scope of the obligation in that the suspected ‘criminal source of the money’ is not always linked to ML/TF, so does not prompt an STR. It seems that notaries share the same interpretation. Additionally, lawyers tend to have a broad interpretation of ‘the assessment of their client’s legal position’ (Art. 26 §3 2° of the AML/CFT Law), which would seem to exempt them from making a STR for information received from their client in this context.²³ A question arises as to the grounds for filtering reports through the president of the bar, a measure introduced when the system was established, to ensure that reports effectively lay within the scope of the law. Today it would appear that the conditions required by the law have been clarified and that lawyers are familiar with them. Allowing lawyers to report directly to the CTIF could help make STRs more transparent and provide better visibility into the suspicious transactions with which lawyers are confronted, for the CTIF and the profession as a whole.

5.81. Diamond traders also show great reluctance to report suspicious transactions, as can be seen by the small number of STRs and the amounts involved, which seem excessively small compared with the volumes handled by the profession. This attitude can be attributed to cultural factors, more specifically the tradition of discretion that unites diamond traders. The diamond traders indicated that they rely on their banks to decide whether or not to make reports.

(f) Internal controls

5.82. *Financial institutions* – **Internal controls and procedures designed to ensure compliance with AML/CFT obligations are in place in the financial sector.** There are first and second-level controls, including for Bpost (which operates on the same model and with the same compliance officer as Bpost Banque) and diamond banks. The latter indicated that internal audit is a key component of their preventive system, considered during discussions with the BNB. This organisation of internal controls is not necessarily as structured in small establishments, such as small bureaux de change (principle of proportionality).

23 Art. 4.72 last para. of the Code of professional conduct of the Order of the French-speaking Bar and the German-speaking Bar states that ‘When a lawyer dissuades his/her client from carrying out a transaction that could prompt a suspicious transaction report, the lawyer should not submit a suspicious transaction report to his/her president of the bar’ (Moniteur Belge / Belgisch Staatsblad, 2013).

5.83. *DNFBPs* – Internal controls and procedures designed to ensure compliance with AML/CFT obligations are in place in non-financial professions' larger organisations. Because of the small size of most non-financial stakeholders, this observation does not call for particular attention.

(g) Limitation on cash payments

5.84. **The limitations on cash payments** (10% of the total price of goods or services up to EUR 3 000, Art. 21 of the AML/CFT Law) **raise interpretation issues that have an impact on their application in practice.** They are intended to apply only to the sale by a merchant or a service provider, with the exception of precious metal purchases. However, both the seller and the buyer commit an offence and both can be prosecuted. The current wording and the competent authorities' interpretation of it do not however clearly delimit the scope of application. This impairs the legal certainty of the transactions carried out by certain merchants and control of cash movements. Moreover, clarification is needed concerning the way in which the measures in the AML/CFT Law connect with and are applied in conjunction with the other provisions applicable in this area,²⁴ and specifically the ban on cash purchases²⁴ of copper and the measures applicable to precious metals.

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5.85. **In conclusion**, financial institutions seem to have a good understanding of the risks. Not all *DNFBPs* appear to have grasped the full extent of the ML/TF risks to which they are exposed, nor the need to protect themselves against potential ML/TF misuse.

5.86. Financial institutions generally have a sound understanding of AML/CFT obligations, and the AML/CFT measures implemented are generally commensurate with and appropriate to the risks. There are, however, shortcomings for certain payment institutions and certain bureaux de change, particularly in their understanding of the requirements regarding beneficial owners and PEPs. The financial sector also seems to apply enhanced due diligence measures in recognised high-risk situations, though to a lesser extent for correspondent banking relationships and wire transfers within the EU.

5.87. Efforts have been made in recent years by a large number of *DNFBPs* to engage professionals and raise their awareness of AML/CFT concerns. These initiatives should be continued to ensure satisfactory implementation of the measures. The enhanced measures applied by *DNFBPs*, for example, seem limited for situations that require sustained attention. When *DNFBPs* are unable to meet CDD requirements, they say that they refuse the business relationship or the transaction, even if they do not send in a STR. The implementation of AML/CFT measures by diamond traders does not seem to be of a sufficient level to ensure that the sector's high risks are addressed.

5.88. The financial sector has, on the whole, adopted the practice of STRs. Even so, bureaux de change and certain payment institutions operating through a network of agents also carry out a significant proportion of automatic STRs, which do not provide additional information on the transactions of a customer that has already been reported. *DNFBPs* that are under obligation to report on the basis of thresholds/criteria often limit themselves to this type of 'objective' reporting and do not try to report on the basis of an assessment of whether or not a particular transaction is suspicious. There are still virtually no STRs from lawyers and diamond traders. Tighter AML/CFT controls by the competent authorities are necessary to ensure that *DNFBPs* adequately fulfil their obligations.

5.89. **Belgium has achieved a moderate level of effectiveness for Immediate Outcome 4.**

24 For example, the law of 29 December 2010, amended in July 2013, prohibits cash purchases of copper, and places sellers of old or precious metals under an obligation to identify customers who pay cash for amounts over EUR 500 (Chancellerie du Premier Ministre, 2010).

5.4 Recommendations on Preventive Measures

The AML/CFT legal framework

- Belgium should adapt its legislation to the 2012 FATF Recommendations, in particular with regard to reinforcing the risk-based approach, situations for which simplified due diligence measures may be applied, PEPs, correspondent banking, higher-risk countries, wire transfers, and new technologies.
- Belgium should clarify and simplify the legislation on cash payment limitations, concerning both its scope and the interaction with the various applicable measures.

ML/TF risks

- Belgium should ensure that supervisors and the persons and institutions covered by the law take into account the findings of the national ML and TF risk assessments in the risk analyses they develop at sector level, and at individual institution level, when appropriate. The persons and institutions covered by the law should also help update the national analyses, based on the risk situations encountered.
- Belgium should encourage the circulation of information on risk (sector assessments, typologies, thematic studies, inspection reports, etc.) between the public authorities (CTIF, BNB, FSMA, Police, etc.) and the private sector.

Understanding of and information on AML/CFT

- The supervisors and industry trade groups of DNFBBs should take initiatives to promote and explain the applicable AML/CFT rules, to increase the effectiveness of their implementation.
- Supervisors should put into place targeted, tailored educational initiatives, based on the guidelines, for certain financial institutions (bureaux de change, payment institutions, electronic money institutions) and the DNFBBs, concerning the notions of beneficial ownership and PEP.
- Belgium should increase consultation and dialogue with the private sector to explain AML/CFT obligations when necessary and clarify what is expected of those persons and institutions covered by the law (e.g. guidelines, reviews of initiatives by the FIU and the supervisors).

Implementation of the risk-based approach

- The Belgian authorities should guide and support the DNFBBs in their process of assessing ML/TF risks at sector level.
- Belgium should support the determination of priorities by the various non-financial sectors, to address these risks and to put proportionate preventive measures into place.

Suspicious transaction reports (STRs)

- Belgium should revise the procedure for STRs to be submitted by lawyers and its merits in the light of the experience gained.
- For diamond traders, Belgium should pursue awareness-raising and educational initiatives on reporting obligations. Suitable initiatives, likely to bring about a change in professionals' motivation and involvement, should also be organised with the industry trade group.
- For casinos, Belgium should revise and update the RD of 1999, which sets out the transactions that should be reported to the CTIF.

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Recommendation 9 – Financial institution secrecy laws

a5.1. Belgium was rated compliant in its third assessment (FATF, 2005, para. 399ff).

a5.2. **Criterion 9.1** – There is no ‘banking secrecy’ *per se* but a contractual duty of confidence between the customer and the financial institution. This duty no longer applies where information must be transmitted to the judicial (see C.31.1.) and fiscal authorities, and to other organisations such as the monetary authorities, the prudential supervisory authorities and the CTIF, within the framework of their mission. Lastly, the privacy protection provided by law gives way when personal data must be processed in order for person responsible for handling that information to comply by or pursuant to the provisions of laws or regulations, which is the case when information is required in AML/CFT matters (e.g. Art.3 §5, 4° of the law of 8 December 1992).

Weighting and conclusion

a5.3. **Belgium is compliant with R 9.**

Customer Due Diligence and Record-Keeping

Recommendation 10 – Customer Due Diligence

a5.4. Belgium was rated largely compliant in the third evaluation (para. 383ff. MER 2005). Some desirable improvements were noted concerning, in particular, the application of due diligence measures by consumer credit and leasing companies, and the need for a binding instrument specifying that the exemption from customer identification did not apply in the case of transactions presenting a connection with non-cooperative countries.¹ It should be noted that no regulatory provision has yet been adopted for consumer credit and leasing companies (see C.26.1). This shortcoming should be taken into account in the assessment of preventive measures, given the risks involved in these activities.

a5.5. **Criterion 10.1** – Belgian provisions prohibit the opening of anonymous accounts or accounts under obviously fictitious names (Art. 5 of the Regulation of 23 February 2010 [‘the Regulation’] applying the AML/CFT Law to financial institutions, and Art. 7 of the MD of 10 January 2014 applying the AML/CFT Law to Bpost as regards postal financial services).

a5.6. **Criterion 10.2** – The due diligence obligation incumbent for financial institutions is included in legislation (Art. 7 §1 sub-para. 1 1° to 4° of the AML/CFT Law).² It applies in the situations provided for by R 10, with a threshold of EUR 10 000 for occasional transactions.

a5.7. **Criterion 10.3** – The documentary evidence required for identification and identity verification are specified by regulations for both natural and legal person customers. In general, official documents are required. For natural persons, these are valid identity documents, issued by a public authority (Art. 7 §1 of the Regulation and 9 of the MO). Certain documents require certification in the case of non-face-to-face transactions. These transactions also require additional verification measures (Art. 16 §3 of the Law, Art. 7 §2 of the Regulation and 8 §2 of the MO). Regarding legal person customers, the regulations refer to

1 The other shortcoming noted relative to beneficial owners is not mentioned here as it relates to the implementation of existing measures.

2 Requirement under R 10, footnote 30 (FATF, 2012).

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documents which, under Belgian law, establish the existence and main characteristics of these legal persons, or to equivalent documents required by the foreign law to which the customer is subject (Art. 8 of the Regulation and 10 of the MO). Reliability of sources used is improved where a notary is involved in preparing the documents relative to legal person identification and has checked the information provided.

a5.8. **Criterion 10.4** – The AML/CFT law requires identification and verification of the customer’s representatives, i.e. persons acting in any capacity whatsoever for him and on his behalf, using documentary evidence (Art. 7 §2). Financial institutions must also examine the powers of representation of the person acting on the customer’s behalf and verify such powers with supporting documents of which they take copies (Art. 13 para. 2 of the Regulation and 11 of the MO).

a5.9. **Criterion 10.5** – The AML/CFT law requires financial institutions to identify the beneficial ownership of the customer, and to take adequate risk-based measures to verify their identity (Art. 8 §1 sub-para. 1). The definition of beneficial owner refers to the identification of a natural person (Art. 8 §2). In order to determine the beneficial owner’s identity, in addition to information provided by the customer, the financial institution may refer to the company’s register of units/shares, to which the customer must provide access, or to the public register of companies (BCE) (C.24.6.). Such sources are not available for customers that are legal arrangements. Financial institutions must define adequate risk-based measures in their internal procedures to verify the identity of beneficial owners (Art. 14 para. 1 of the Regulation and 6 of the MO). If the beneficial owners’ identity cannot be verified by means of a conclusive document, the financial institutions specify in internal procedures the other documents or information sources that they rely on and use for the verification, such as indirect access to the National Register³ for example, which allows the beneficial owner’s identity to be verified, without concerning the prior requirement of determining his existence and identity. Where the measures stipulated in the internal procedures are implemented but did not enable the identity of a customer’s beneficial owners to be verified, the institution should keep written records of the measures effectively taken, to be able to subsequently prove that they were adequate and risk-based.

a5.10. **Criterion 10.6** – The AML/CFT Law provides that customer identification also includes the purpose and intended nature of the business relationship (Art. 7 §1-5). Financial institutions should therefore obtain information about the customer’s intentions as regards the type of business relationship it wishes to establish and the kind of transactions it wishes to perform within the framework of that relationship, as well as all useful and relevant information revealing the ultimate purpose of this relationship from the customer’s standpoint.

a5.11. **Criterion 10.7** – *a)* The AML/CFT Law requires financial institutions to exercise ongoing due diligence with regard to the business relationship and scrutinise transactions undertaken and, where necessary, the source of funds (Art. 14 §1 sub-para. 1). In addition, financial institutions must pay particular attention to any transaction they regard as particularly likely to be connected with ML/TF (‘unusual transactions’⁴) (Art. 14 §1 sub-para. 2). *b)* Ongoing due diligence is also required in respect of the business relationship by verifying and, where necessary, updating customer identification data and information in the financial institutions’ possession, where they are informed that such data is no longer up-to-date (Art. 30 of the Regulation). This obligation also applies in respect of information concerning customers’ beneficial owners (Art. 8 §2 of the law). In the case of companies, legal persons and arrangements, information about beneficial owners is updated at the financial institution’s request (Art. 8 §3).

a5.12. **Criterion 10.8** – There is no explicit requirement for financial institutions to understand the nature of the customer’s business or be aware of its control and ownership structure in the case of legal

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3 The National Register is a data processing system which records, stores and communicates information about the identification of natural persons. Persons entered in the population registers or registers of foreign persons kept in the communes and persons entered in the registers kept in Belgian diplomatic missions and consular posts abroad are included in the register. Each person is given an ID number when first registered. The data entered and kept in the Register for each person includes: their first and last name; plate and date of birth; main residence; occupation.

4 Refer to the definition in Art. 1 of the Regulation and the MD.

persons or arrangements. However, this information is among some of the elements necessary to implement the customer acceptance policy and ongoing due diligence (Art. 12 of the Regulation⁵) and to identify the beneficial owners (Art. 8 of the Law).

a5.13. **Criterion 10.9** – The identification and verification of legal persons and arrangements concerns the required information (Art. 7 §1 sub-para. 4 of the AML/CFT law), including the identification and verification of the identity of the person (s) acting in any capacity whatsoever for and on behalf of the legal person or arrangement (Art. 7. §2 – see C.10.4).

a5.14. **Criterion 10.10** – The AML/CFT Law defines the beneficial owner of companies as including both *a)* persons which directly or indirectly control more than 25% of the shares or voting rights, and *b)* persons which otherwise exercise control over the management of the company, either where they exercise control without owning more than 25% of the voting rights, or where they are appointed to its administrative body (Art. 8 §1 sub-para. 3 1°). It does not specify whether the financial institution must identify the company's senior managing official where no natural person can be identified by applying *a)* and *b)* (insofar as the function of *member of the board of directors* is different from *senior managing official*). Customer companies are required to inform the financial institution of the identity of their beneficial owners (Art. 8 §3 sub-para. 1 and c. 10.5).

a5.15. **Criterion 10.11** – In the definition of beneficial owner of legal persons other than companies, the AML/CFT Law includes persons who own at least 25% of the legal person's or arrangement's assets, persons in whose main interest the legal person was formed or acts, and persons who exercise control over at least 25% of the assets (Art. 8 §1 sub-para. 3 2°). Under Art. 8 §3 of the law, the relevant legal persons or arrangements are required to disclose the identity of their beneficial owners to the financial institutions of which they are customers. Financial institutions are required to test this information for credibility and relevance (Art. 8 §3 sub-para. 2), see C.10.10.

a5.16. **Criterion 10.12** – Neither the law nor the regulation contain any specific provision concerning the identification of a beneficiary of a life-insurance policy. However, the general framework allows for due diligence to be exercised in respect of the beneficiary of such a policy (Art. 7 and 8 of the AML/CFT Law). The identification and verification of the beneficiary to whom the benefit will be paid under the life-insurance policy may be done at the latest when payment of the indemnity is claimed under the policy, and prior to payment thereof. This provision applies to the beneficiary of the policy, considered to be one of the beneficial owners (Art. 20 para. 1 of the Regulation).

a5.17. **Criterion 10.13** – There is no specific provision requiring financial institutions to consider the beneficiary of a life-insurance policy as a relevant risk factor when they determine whether enhanced due diligence should be applied. However, financial institutions have a general duty to implement enhanced due diligence in all situations that may present a high risk (Art. 12 §1 of the AML/CFT law). Where the characteristics of the beneficiary of the life-insurance policy (pursuant to the criteria of Art. 26 of the Regulation) suggest that the business relationship involves higher risks, enhanced due diligence, including identification of the beneficial owner, is required, see C.10.12.

a5.18. **Criterion 10.14** – Art.3 of the Regulation requires financial institutions not to enter into any business relationship or perform any occasional transactions until they have complied with their due diligence obligations in respect of potential customers and their beneficial owners. The general exemption from this requirement (Art. 3 para. 2) provides that the circumstances which warrant postponing the verification must be such that the activities between the financial institution and the customer must not be interrupted. In this case, the identity verification must be done as soon as possible after the first contact with the customer, and enhanced due diligence measures must be applied so that the ML/TF risks are effectively controlled.

a5.19. **Criterion 10.15** – Financial institutions wishing to defer verifying a customer's identity must first define the particular circumstances in their internal procedures and specify the precise conditions in

5 Also refer to point 4.2.6.2. CBFA circular "*information about the profession or the economic activity*".

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their customer acceptance policy, under the control and responsibility of the AML/CFT officer (Art. 3 of the Regulation). Enhanced due diligence must be applied until the identity of all the persons involved has been verified (see C.10.14).

a5.20. **Criterion 10.16** – The law of 18 January 2010 makes provision for transition measures so that the new provisions are implemented by financial institutions in respect of existing customers (Art. 44). The five-year period for financial institutions to record customers' date and place of birth information (Art. 44 para. 1) raises questions, even where there is no high risk and insofar as the financial institution already knew the information. For the identification of beneficial owners, the times allowed for compliance have been set on a risk-sensitive basis, such that they should be less than two years in the case of high risks (Art. 44 para. 2).

a5.21. **Criterion 10.17** – The law requires financial institutions to apply enhanced due diligence in respect of their customers on a risk-sensitive basis, in situations which, by nature, present a high ML/TF risk (Art. 12 §1). For certain particular situations (PEPs, correspondent banking), minimum enhanced measures are stipulated, including obtaining authorisation to establish the business relationship or to perform the transaction from an appropriate management level (Art. 12 §3 and 4). The provisions setting out the customer acceptance policy also require each financial institution to define a scale of risks based on which customers are allocated to different categories with different levels of requirements (Art. 26 of the Regulation), and which fully take higher-risk situations into account.

a5.22. **Criterion 10.18** – The Belgian authorities state that reduced due diligence measures apply for the customer categories referred to in Art. 11 §1 of the law. This provision should be read in combination with §3 sub-para. 1 which requires the person or institution to obtain sufficient information to be satisfied that the conditions laid down in §1 are met. The combination of these provisions inevitably requires identification and verification of the identity of the customer, albeit simplified. However, these situations are based on a presumption of relatively low risk, without a national or supranational analysis of risks associated with each category being produced, which would establish the lowest ML/TF risk.⁶ In any event, the provisions of Art. 11 §1 cannot be applied where ML/TF suspicions arise (Art. 11 §3 sub-para. 2).

a5.23. **Criterion 10.19** – The law provides that where financial institutions are unable to fulfil their obligation to identify the customer or the beneficial owner, they may not enter into or continue a business relationship, or perform any transaction with the customer (Art. 7 §4). In these cases, financial institutions must determine whether it is necessary to inform the CTIF (Art. 8 §4).

a5.24. **Criterion 10.20** – Belgian AML/CFT legislation does not contain any provision permitting financial institutions not to identify customers when they suspect that a transaction relates to ML/TF and have reason to believe that they would alert the customer by exercising their customer due diligence.

Weighting and conclusion

a5.25. **Belgium is largely compliant with R 10.**

Recommendation 11 – Record-keeping

a5.26. Belgian was rated compliant with the FATF requirements in the third evaluation (para. 404ff. MER 2005).

a5.27. **Criterion 11.1** – Record-keeping rules are established by the AML/CFT Law (Art. 15) and require that all financial institutions keep all documents necessary to reconstruct transactions for five years after

⁶ The Belgian authorities add that the Belgian law will be adapted, in accordance with the 4th Directive in development, in order to make it clearer that in the case of lower risks, simplified identification and verification obligations apply.

the transactions are carried out. This includes national and international transactions carried out by the customer.

a5.28. **Criterion 11.2** – The legislative framework requires keeping the supporting documentation that served to verify the identity of the customer, its representative and the beneficial owners for five years after the end of the relationship with the customer (Art. 13). One alternative consists in retaining records of the references of documentary evidence, provided that the documents can be produced immediately, and can neither be altered nor modified by the financial institution (Art. 38 §2; Art. 25 of the Regulation and 13 of the MO). Furthermore, there is a general requirement to keep all transaction records, forms and documents, including business correspondence, for five years after the transaction (Art. 15). Accounting law also requires companies, including financial institutions to keep supporting evidence of any accounting entry for seven years.

a5.29. **Criterion 11.3** – The data kept must enable customer transactions to be accurately reconstructed. All documents kept by a financial institution in connection with individual transactions may also serve as evidence in the event of prosecution (Art. 15).

a5.30. **Criterion 11.4** – Financial institutions must take the necessary measures to respond swiftly, and in a complete and adequate manner, to requests for information made by competent authorities (Art. 15).

Weighting and conclusion

a5.31. **Belgium is compliant with R 11.**

Additional measures in the case of specific customers and activities

Recommendation 12 – Politically exposed persons (PEP)

a5.32. Belgium was rated largely compliant in the third assessment (para. 387 MER 2005). The report emphasised that the more stringent acceptance measures applicable to PEPs should also apply to beneficial owners having PEP status. In addition, requirements to identify PEPs did not apply to consumer credit and leasing companies, even though they were subject to the AML/CFT Law. The new FATF requirements extend the applicable measures to domestic PEPs and to international organisation PEPs.

a5.33. **Criterion 12.1** – The definition of PEPs in the AML/CFT Law has limitations, insofar as it lays down a condition of territoriality: persons are only be considered PEPs when they are or have been entrusted with prominent public functions and they reside abroad (Art. 12 §3 sub-para. 1). Application of the FATF measures relating to foreign PEPs is therefore restricted. The definition also includes a one-year limitation after which a PEP who has ceased his functions should no longer be considered a PEP (Art. 12 §3 sub-para. 3). Thereafter, the general principle of enhanced measures applies in the event of higher risks (Art. 12 §1 sub-para. 1). The Belgian system requires a system to detect PEPs, reasonable measures to determine the origin of the customer's or its beneficial owner's funds and wealth, and ongoing monitoring of the business relationship (Art. 12 §3 sub-para. 6). The decision granting authorisation to enter into the business relationship must be made 'at an appropriate level of management'.

a5.34. **Criterion 12.2** – The definition of PEP and particularly the criterion tied to residence abroad does not directly include, *per se*, domestic PEPs or persons who are or have been entrusted with prominent public functions within and for an international organisation covered by the PEP measures.⁷ The Belgian authorities pointed out that as part of the general AML/CFT framework, enhanced due diligence measures

⁷ The Belgian authorities state their intention to adapt the PEP system via the transposition of the 4th AML/CFT Directive currently being prepared.

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can be applied in higher-risk situations (Art. 12 §1); this implies the determination of a risk profile and thus could be applied in situations involving domestic PEPs or persons who are or who have been entrusted with a prominent function within and for an international organisation. The customer risk profile is determined according to individual criteria at each financial institution, which may include – although there is no relevant obligation in the law – the customer’s profession or sector of activity, as well as his/her source(s) of income. The identification of domestic PEPs or PEPs from international organisations is therefore only indirect under these circumstances.

a5.35. **Criterion 12.3** – The Belgian law restrictively lists persons who must be considered immediate family members of PEPs and persons closely associated with them (Art. 12 §3 sub-paragraph 4 and 5). This approach is restrictive compared to the FATF’s open approach which covers all individual situations involving specific risks owing to their ties with a PEP. In addition, the same reservations as those expressed in C.12.1 and C.12.2 should be considered with respect to the scope of application of the legislative provisions and the due diligence measures to be adopted.

a5.36. **Criterion 12.4** – The Belgian system does not contain any specific provisions requiring financial institutions to verify whether the beneficiary of a life-insurance contract, or its beneficial owner, is a PEP. The system does, however, require enhanced due diligence in all situations which, by their nature, are a high ML/TF risk (Art. 12 §1), which may be the case if the financial institution determines that the beneficiary of a life-insurance policy, or its beneficial owner, is a PEP.⁸

Weighting and conclusion

a5.37. Several shortcomings are to be observed: The PEPs definition in the law does not include domestic PEPs or persons who are or have been entrusted with prominent functions in an international organisation. Furthermore, the law includes a limited list of persons who should be considered as a direct member of the family of a PEP and persons closely associated. The definition of a PEP of one year after which a PEP having stopped his/her functions should no longer be considered a PEP. Finally, there are no provisions in the Belgium system that specifically require financial institutions to verify that the beneficiary of a life-insurance policy or the beneficial owner thereof is a PEP. These shortcomings may be attenuated in practice – however not systematically, as the practice is based on the risk analysis carried out by financial institutions – by the general requirement to determine the customer’s risk profile and to apply enhanced due diligence in situations of higher risk. All of these gaps together are considered to be a moderate shortcoming, given their extent with regard to the FATF requirements and their importance in the area of enhanced due diligence.

Belgium is partially compliant with R 12.

Recommendation 13 – Correspondent banking

a5.38. Belgium was rated compliant in the third evaluation (para. 367ff. MER 2005). The new FATF Recommendation adds requirements relative to prohibiting business relationships with shell banks.

a5.39. **Criterion 13.1** – The law requires enhanced due diligence measures when entering into correspondent banking relationships (Art. 12 §4)^{9,10} with institutions from a third country in the manner specified by R 13. These measures do not apply to correspondent banking with financial institutions from another EEA Member State or a third country that imposes obligations and require monitoring equivalent to those stipulated by

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8 The Belgian authorities state their intention to introduce additional measures, when the adaptation of the system applicable to PEPs will be contemplated more generally as part of the transposition of the 4th AML/CFT Directive being prepared.

9 Bpost does not open accounts for foreign financial institutions to which it offers correspondent banking services.

10 The Belgian authorities state their intention to examine the possibility of adapting the applicable system overall, based on the new European framework being defined.

the third AML/CFT Directive. In addition, the measures provide for an exemption from identification and verification of the client and of the beneficial owner (Art. 11 §1 1°). The RD that sets out the list of third-country equivalents (RD of 19 July 2013) specifies, in a recital which cannot be considered to be legally binding, that this exemption does not apply in situations considered to be high risk.

a5.40. **Criterion 13.2** – Where a correspondent banking relationship involves the maintenance of payable-through accounts, the AML/CFT Law requires Belgian financial institutions to be satisfied, firstly, that the foreign institution has verified the identity of and taken the required due diligence measures in respect of customers having direct access to the accounts opened with the Belgian institution, and secondly, that the foreign institution is able to immediately provide, on request from the Belgian institution, the relevant identification data of these customers (Art.12 §4 sub-para. 1 5°).

a5.41. **Criterion 13.3** – The law provides that financial institutions may not enter into or continue a correspondent banking relationship with a shell bank,¹¹ and must take appropriate measures to ensure that they do not enter into or continue a correspondent banking relationship with an institution that is known to permit its accounts to be used by a shell bank (Art. 12 §4-2).

Weighting and conclusion

a5.42. The specific diligence measures required in the area of correspondent banking apply in the case of business relationships with financial institutions located in a third country considered to be high risk. Nonetheless and pursuant to Art.12 § 4 of the law which applies ‘without prejudice... exemptions referred to in Art.11 § 1 1°’, they do not apply in relations with EEA institutions or in third-country equivalents. Given the open and cross-border nature of the Belgian banking sector and the fact that the Recommendations consider cross-border correspondent banking as a high risk activity, the shortcomings are moderate. **Belgium is partially compliant with R 13.**

Recommendation 14 – Money or value transfer services

a5.43. Belgium was rated compliant in the third evaluation (para. 578ff. MER 2005). The law of 21 December 2009 transposed Directives 2007/64 on payment services (PSD I) and 2009/110 on electronic money institutions, which directly impacted regulations applicable to money remittance services. R 14 lays down new requirements relating particularly to the identification of non-authorised or non-registered MVTS providers, and to the definition of sanctions for failure to comply with these requirements.

a5.44. **Criterion 14.1** – Payment services are listed in Annex I to the law of 21 December 2009 and include money transfers. BNB, the ECB, the Belgian federal, regional, community and local authorities when they are not acting as public authorities, and Bpost, are among the institutions authorised by law to provide payment services (Art. 5), without the need to obtain prior authorisation owing to their status. The other financial institutions offering money transfer services covered by Annex I to the law - credit institutions, electronic money institutions and payment institutions – are subject to a requirement to obtain authorisation from the BNB (R 26). Institutions that are ‘exempt’ from certain requirements, pursuant to Directives 2007/64 and 2009/110, based on their size or volume of business, may not however be exempt from the requirements under the AML/CFT Law (Art. 48 and 105 of the law of 21 December 2009). Annex I of the law also covers credit and electronic money institutions governed by the laws of another EEA Member State and which offer payment services in Belgium through branches, or under freedom to provide services (Art. 5 1° and 2°). Under the principle of mutual recognition, they are authorised to provide these services, where the authorisation granted in their original Member State so permits. The BNB is notified by the authority in the

11 The law does not explicitly define the notion of ‘shell bank’ but the presentation of the reasons for the draft law specifies that: *Pursuant to Article 3.10 of the Directive [2005/60/CE], ‘shell bank’ shall be understood as meaning: a credit institution or an institution engaged in equivalent activities incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is unaffiliated with a regulated financial group* - Chamber of Representatives (2009), p. 46.

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original Member State that such companies intend to carry on activities in Belgium (Art. 312 and 313 of the law of 25 April 2014, and 39 and 91 of the law of 21 December 2009).¹² Branches of institutions governed by the laws of a non-EEA country are also permitted to provide payment services in Belgium (Art. 5 1° and 2° of the law of 21 December 2009), by virtue of the banking licence they are granted by the BNB in Belgium (Art. 333 of the law of 25 April 2014, and 98ff. of the law of 21 December 2009).

a5.45. **Criterion 14.2** – The FSMA is responsible for contributing to compliance with rules aiming to protect users of financial products or services and borrowers from the unlawful supply of financial products or services and credits (Art. 45 §1 5° of the law of 2 August 2002). If, when analysing files within its remit, the CTIF identifies persons illegally performing MVTs activities, it may inform the FSMA. The FSMA conducts enquiries to identify and sanction non-registered or non-authorized MVTs providers. Provision is made for criminal sanctions (Art. 51 of the law of 21 December 2009) and administrative sanctions (Art. 86a, §1, 3° of the law of 2 August 2002) for natural or legal persons providing MVTs without being registered or authorised. As there is no clear policy regarding applicable sanctions, the proportional nature thereof cannot be determined.

a5.46. **Criterion 14.3** – Belgian credit institutions, electronic money institutions providing payment services, and payment institutions are under the supervisory authority of the BNB, including in AML/CFT matters, pursuant to the AML/CFT Law (see R 26). Payment institutions and electronic money institutions from another EEA Member State offering payment services in Belgium via agents based in Belgium are subject to the AML/CFT Law (Art. 2, §1 4°ter c and 4°quater e). They must appoint a person responsible for compliance with the Belgian AML/CFT Law, and that person must be based in Belgium (Art. 18 para. 3). The BNB then exercises its supervision through this person, the ‘central contact point’. Bpost acts as agent for a European payment institution for its money transfer operations. This payment institution is therefore subject to the AML/CFT requirements as regards the MVTs activities it performs in Belgium through Bpost. Bpost acts as central contact point for these specific transfer activities, for which it is placed under the supervision of FPS Finance (R 26).¹³ European payment institutions offering services in Belgium under freedom to provide services are subject to supervision by the authority in their original country.

a5.47. **Criterion 14.4** – The law requires payment and electronic money institutions to register their agents (which provide payment services) with the BNB (Art. 20 §1 of the law of 21 December 2009).¹⁴

a5.48. **Criterion 14.5** – The general requirements for organisation and internal control to which financial institutions are subject, as well as the requirements of the AML/CFT Law, cover all the activities that these institutions carry out, regardless of whether they use their own personnel or agents to do so. Agents are contractually required to comply with the rules applicable to their principal (the payment institution), including the AML/CFT policy of that payment institution. The AML/CFT Law (Art. 10 §1) and its implementing regulation (Art. 21) more specifically require the financial institution to monitor compliance with the identification and verification procedures prescribed, where they use the services of an agent.

Weighting and conclusion

a5.49. **Belgium is largely compliant with R 14.**

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12 BNB (nd a, b)

13 The same European payment institution has a second network of agents in Belgium for which it has appointed a separate central contact point and comes under BNB supervision.

14 BNB (nd c, d).

Recommendation 15 – New technologies

a5.50. Belgium was rated compliant in the third evaluation (para. 388 MER 2005). However, the new R 15 focuses on preventing risks involved in the use of new technologies in general and no longer specifically targets contracts concluded on a non-face-to-face basis.

a5.51. **Criterion 15.1** – Belgium has not developed any specific analysis of the ML risks to which the financial system is exposed as a result of the use of new technologies, except for the national risk assessments (see R 1). Financial institutions are not explicitly required to identify and assess risks involved in the development of new products and new business practices, including new delivery mechanisms, which use new technologies. However, the risks inherent in using these innovations are taken into account, particularly through the general requirement to take measures based on the eventual high nature of risks. However, consideration of these innovation-related risks cannot be considered fully satisfactory, as it is not an explicit and specific requirement for financial institutions as the legislation currently stands.¹⁵

a5.52. **Criterion 15.2** – a) Financial institutions are not explicitly required to assess risks prior to the launch or use of new products, practices and technologies. b) The general AML/CFT framework allows ML/TF risks involved in using new technologies to be taken into account, by application of the enhanced due diligence rules applicable when concluding contracts remotely, by the definition of ‘specific risk criteria’ underpinning the risk-based approach, and in the initial definition of the customer’s risk profile. This framework allows appropriate measures to be taken to mitigate and manage these risks.¹⁶

Weighting and conclusion

a5.53. **Belgium is largely compliant with R 15.**

Recommendation 16 – Wire transfers

a5.54. Belgium was rated largely compliant in the third evaluation (para. 578ff. MER 2005). The Belgian legislative framework changed substantially in 2006 with the application of the provisions of Regulation 1781/2006 on information relating to the originator which accompanies transfers of funds. The FATF Recommendation (R 16) has also undergone significant changes, and a new European Regulation is currently being prepared to take the new requirements into account, particularly the duty to include and send information about the beneficiary and the broader requirements for intermediate financial institutions. These limitations will be taken into account in all relevant criteria. It shall be noted that the MD for Bpost requires beneficiary identification for postal transfers (Art. 5), but this requirement will not affect ratings given the small volume of these transactions and the fact they are part of Bpost’s public services.

a5.55. R 16 does not apply to transfers carried out using a debit or credit card or a prepaid card for the purchase of goods or services, so long as the credit, debit or prepaid card number accompanies all transfers resulting from the transaction. Regulation 1781/2006 does not contain any explicit provision, but the approach is similar overall.

a5.56. **Criterion 16.1** – Pursuant to the Regulation, all transfers where the payment service provider of the beneficiary is located outside the EEA must be sent with complete information about the originator in the manner required by R 16 (Art. 4 and 7 para. 1). The payment service provider must verify the information

15 The Belgian authorities intend to clarify the current provisions when transposing into domestic law the 4th AML/CFT Directive currently in development.

16 The current legal and regulatory framework should be clarified to take the new FATF requirements into account, which the Belgian authorities intend to do as part of the transposition of the 4th AML/CFT Directive currently being developed.

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about the originator on the basis of documents, data or information obtained from a reliable and independent source (Art. 5 para. 2). The Regulation does not require the transfer of information about the beneficiary.¹⁷

a5.57. **Criterion 16.2** – For batch transfers carried out by a single originator where the payment service providers of the beneficiary are situated outside the EEA, the Regulation requires the batch file to contain complete information on the originator. Transfers must also include the beneficiary's account number or a unique identifier (Art. 7 para. 2). Neither the Regulation nor the Belgian law currently contains any specific provisions regarding the duty to enclose information about the beneficiary's identity with cross-border batch transfers.

a5.58. **Criterion 16.3** – All the provisions of the Regulation are mandatory and directly applicable in Belgium. Art. 5.4. sets a threshold for transfers that do not originate from an account, and only requires a verification of the originator's identity above EUR 1 000. Below that threshold, originator information, as described in C.16.1. must nonetheless be provided. The same reservations as those made in C.6.1 apply in respect of the requirement for transfers to include information about the originator.

a5.59. **Criterion 16.4** – The AML/CFT Law explicitly requires financial institutions to identify their customers and to verify their identity where there is any suspicion of ML or TF (Art 7 §1 sub-para. 1 3°). Art. 5.4. of the Regulation also states that the exemption from verifying the originator's identity does not apply if there is any suspicion of ML/TF.

a5.60. **Criterion 16.5** – For domestic transfers (within the EEA),¹⁸ the Regulation contains an exemption from the requirement to provide complete originator information (Art. 6.1.). However, the exemption may only apply where complete information about the originator can be made available to the beneficiary's financial institution by other means: at the request of the beneficiary's payment service provider, the originator's payment service provider must be able to furnish complete information about the originator (Art. 6.2.).

a5.61. **Criterion 16.6** – Under the exemption, the transfer may be accompanied solely by the originator's account number or unique identifier allowing the transaction to be traced back to the originator (Art. 6.1.). It must nonetheless be possible for full information about the originator to be sent to the beneficiary's institution within three working days of receiving any request (Art. 6.2.). The Regulation does not, however, currently contain the same requirement concerning information about the beneficiary. The BNB has general power to demand production of any relevant information by the institutions under its supervision and could therefore demand immediate production of information about the originator. Law enforcement authorities also have the power to demand production of information, provided that the conditions required by the criminal procedure, concerning judicial information in particular, are met (Art. 46 *quater* of the CPC).

a5.62. **Criterion 16.7** – The Regulation requires the originator's financial institution to keep the complete originator information which accompanies transfers for five years (Art. 5.5.). In addition, the AML/CFT Law contains a general requirement to retain all information relating to the customer's identification and the documentary evidence used to verify the same, for five years after termination of the contractual relationship or completion of the transaction (Art. 13). The Regulation does not contain any specific provision requiring the retention of beneficiary identification data, even if it has been obtained. The AML/CFT Law does, however,

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17 The provisions relating to the beneficiary contained in Reg.260/2012 (SEPA Regulation) are not mandatory and do not address the name of the beneficiary, as regards relations between the payment service provider and its originator-customer (Annex 2 a) iv 'if the information is available, the name of the beneficiary') and between the payment service provider of the originator and the beneficiary (Annex 2 b) vi) 'any identification code of the beneficiary' and vii 'the name of any reference to the beneficiary').

18 Transfers within the EEA covered by the Regulation cover a broader scope than R 16. R 16 requires that all service providers involved be located in the EEA. Art. 6.1. of the Regulation covers transfers for which the payer's and the payee's service providers are located in the EEA. In theory, according to the Regulation, a domestic transfer could therefore be forwarded by an intermediate institution located outside the EEA.

contain a general requirement to keep for five years the documents allowing the transactions performed by the customer to be reconstructed (Art. 15).

a5.63. **Criterion 16.8** – Any failure to comply with the requirements contained in the Regulation is liable for a sanction contained in the AML/CFT Law. The AML/CFT Law also provides that if a covered institution cannot meet its customer due diligence requirements, it may neither enter into nor continue a business relationship, or perform any transaction for the customer (Art.7 §4). However, this due diligence requirement only concerns the originator in the context of money transfers, not the beneficiary.

a5.64. **Criterion 16.9** – The Regulation requires all information received about the originator and accompanying the money transfer, whether domestic or cross-border, to be kept with this transfer by the intermediate service provider (Art. 12). There are no provisions relative to beneficiary information.

a5.65. **Criterion 16.10** – The Regulation provides that where the intermediary payment service provider, located in the EEA, uses a payment system with technical limitations, and where the beneficiary service provider is located outside the EEA, preventing transmission of the originator information with the money transfer, it must keep the information received for five years (Art. 13.5). It may not, however, use such a technical system if it finds that the transfer received has missing or incomplete information (Art. 13. 2 and 3). This requirement does not extend to beneficiary information.

a5.66. **Criterion 16.11** – The Regulation does not specifically require an intermediary financial institution to take reasonable measures to identify cross-border transfers having missing or incomplete information, which in any case only concern originator information in the provisions in force.

a5.67. **Criterion 16.12** – The Regulation does not specifically require an intermediary financial institution to implement a risk-based approach to define the steps to be taken if the required information is not sent with the transfer. However, (intermediary) financial institutions are subject to the general requirement to exercise enhanced due diligence in the case of a higher risk, particularly in the event of atypical transactions (see C.16.15).¹⁹

a5.68. **Criterion 16.13** – The Regulation requires the beneficiary payment service provider to detect whether the fields relating to the originator information have been completed (Art. 8). For cross-border transfers, effective procedures must be in place to detect whether the complete originator information, or, where applicable, the required information in the case of technical limitations, is missing. The Regulation does not contain any requirements regarding the measures to be taken to detect cross-border transfers which do not contain the required beneficiary information. However, as the obligation is incumbent upon the beneficiary's service provider, it can be considered that it will have access to this information and will be able to detect any missing or incomplete beneficiary information.

a5.69. **Criterion 16.14** – The Regulation does not contain any specific provision requiring the beneficiary's financial institution to verify information about the beneficiary's identity, if it has not already been done, and to keep such information. However, for the performance of a wire transfer, the identification of the customer – the beneficiary of the transfer – and the verification of his identity are required, regardless of the amount of the transaction, under the general provisions of the AML/CFT Law (Art. 7 §1). In addition, under the AML/CFT Law, covered financial institutions must keep their customers' identification data, and a copy of the documentary evidence used to verify their identity, for at least five years after termination of the business relationship or performance of the occasional transaction (Art. 15).

a5.70. **Criterion 16.15** – The Regulation does not contain any explicit requirement to adopt a risk-based approach to allow the beneficiary's financial institution to define the steps to be taken when the required information does not accompany the transfer. But in these circumstances, the Regulation requires the

¹⁹ The Belgian authorities specify that the new draft Regulation adapted by the European Commission on 5 February 2013 contains a provision that will in this respect complete the requirements imposed on intermediate beneficiary institutions.

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beneficiary's financial institution to reject the transfer or to request complete information about the originator (Art. 9.1). The Regulation also requires the beneficiary's payment service provider to consider missing or incomplete originator information as a factor of note in assessing the potentially suspicious nature of a money transfer or any transactions relating thereto, and if applicable, in deciding whether it must be reported to the authorities responsible for AML/CFT (Art. 9.2.). The Belgian regulatory measures adopted to implement the AML/CFT law further specify that a wire transfer received for a customer without being accompanied by information concerning the originator must be considered an 'unusual' transaction, which must prompt the financial institution to consider making an STR to the CTIF. These measures nonetheless target cases in which the missing information concerns the originator (Art. 32 of the Regulation, 18 para. 5 of the MO).

a5.71. **Criterion 16.16** – In Belgium, MVTs are provided by credit, payment or electronic money institutions, authorised to offer this kind of service, and by Bpost (see R 14). The Regulation also applies to money transfers sent or received by a payment service provider established in the EEA. Furthermore, the Regulation and the AML/CFT Law apply to payment service providers established in Belgium, regardless of their form, including when they act through intermediate agents, and whatever the service provider's original country.

a5.72. **Criterion 16.17 – a)** The Regulation does not contain any specific requirement relating to measures to be taken when the payment service provider acts both as the originating entity and beneficiary of the transfer. Where a payment service provider holds information concerning both the originator and the beneficiary, it must take all of this information into account as part of its due diligence in respect of the transaction with a view to determining whether the transaction should be considered 'unusual' and suspicious, and therefore reported to the CTIF. **b)** Given the principle of territoriality of AML/CFT Laws, when a given payment service provider is established in several countries, performs a money transfer between two of its entities, and the transaction proves to be suspicious, it may be required to submit an STR to the FIU in each of these countries pursuant to their respective domestic laws.

a5.73. **Criterion 16.18** – Belgian financial institutions are required to take freezing measures pursuant to UNSCR 1267/1999 and UNSCR 1373/2001 and their subsequent resolutions. This requirement arises both from EU regulations and from a body of domestic provisions. Although such a requirement exists, there are nonetheless serious gaps that could adversely affect the ability of financial institutions to meet their requirements in terms of implementation of targeted financial sanctions (conclusions with regard to R 6).

Weighting and conclusion

a5.74. The absence of any requirements in Regulation 1781/2006 relative to the transmission of beneficiary information is the main shortcoming for C.16.1.-3 and C.16.13 and C.16.15. The lack of requirements for intermediary financial institutions affects C.16.8 and C.16.9. **Belgium is partially compliant with R 16.**

Reliance on third parties, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

a5.75. Belgium was rated compliant in the third evaluation (para. 389ff. MER 2005). The Belgian legislative framework was modified by the law of 18 January 2010 as regards reliance on third-party business introducers, and the revised FATF requirements place the emphasis on the third party's country risk.

a5.76. **Criterion 17.1** – Financial institutions may use the services of third-party introducers in the manner specified in R 17 (Art. 10 §1 of the AML/CFT Law). The requirement that the third party be regulated and subject to AML/CFT supervision is considered to be met by reference to financial institutions in the EEA and equivalent third countries (RD of 19 July 2013). There is a presumption that these financial institutions are subject to regulation and to AML/CFT supervision, but the financial institution should be able to directly verify that the required measures are in place, and be satisfied that the third party effectively performs the

due diligence requirements, particularly those concerning record-keeping to which Art. 24 of the Regulation does not refer.

a5.77. **Criterion 17.2** – The third-party introducer may be based either in Belgium, or in another EEA Member State, or in an equivalent third country (Art. 10 §1 sub-para. 1 of the AML/CFT law). The reliance on financial institutions established in EEA Member States is not based on information relative to the country's ML/TF risks, but reflects the presumption that all EEA Member States implement harmonised AML/CFT provisions. Inclusion on the list of equivalent third countries takes into account the compliance of local legislation with the principal FATF Recommendations, and the degree of risk related to the scale of criminality to which the country is exposed. Account is therefore taken of risk-related factors, without focussing the analysis on ML/TF risks.

a5.78. **Criterion 17.3** – The Belgian framework does not contain any specific measure that changes the way in which a financial institution must meet its requirements when the third party introducer is part of the same financial group.

Weighting and conclusion

a5.79. Under the applicable exemption, the financial institution need not verify that the AML/CFT measures of a third party located in an EEA country or in an equivalent third country are satisfactory, which has an important impact on the rating, particularly as Belgian banking activity is considerably open to relationships with European partners or partners located in equivalent third countries. **Belgium is partially compliant with R 17.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

a5.80. Belgium was rated largely compliant in the third evaluation (para. 471ff. MER 2005). The problem identified was the fact that some elements of the requirements (hiring of staff for internal control measures; compliance with provisions equivalent to Belgian AML/CFT legislation by subsidiaries and branches of Belgian institutions established in non-EU or non-FATF member countries) were specified in a non-compulsory circular. R 18 introduces new requirements regarding the creation of an independent audit function for internal control and AML/CFT programmes for financial groups.

a5.81. **Criterion 18.1** – Financial institutions must implement AML/CFT programmes in the manner required by R 18, with a reservation for the independent internal audit function. Credit institutions, insurance companies, investment companies, electronic money institutions and payment institutions must take the measures necessary to have such a function²⁰ covering AML/CFT measure and procedures at all times. Collective investment schemes and management companies for collective investment schemes must also have an appropriate independent and ongoing audit function which particularly scrutinises risk management.²¹ No reference is made to audit or equivalent functions for the other financial institutions (intermediaries in banking and insurance services, bureaux de change).

a5.82. **Criterion 18.2** – The law requires credit institutions and investment firms to develop a co-ordinated programme and to introduce co-ordinated procedures and structures for the organisation they form with their subsidiaries and branches (Art. 16 §2).²² However, these requirements do not apply when the financial

20 Art. 21 §1 4; 35 §1 and 39 of the law of 25 April 2014, 14bis §3 sub-para. 2 of the law of 9 July 1975 and 62 §3 sub-para. 2 of the law of 6 April 1995, 14 §3 and 69 §3 of the law of 21 December 2009.

21 Art. 41 §4 and 201 §4 of the law of 3 August 2012 and 6 §4 of the RD of 12 November 2012.

22 Belgian legislation appears to consider the notion of group only when it involves institutions abroad (point 10.3.2. para. 1 of the CBFA Circular) but similar principles must also apply to financial groups having some or all of their institutions established in Belgium.

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group is not headed by a credit institution or an investment firm. The effective content of the requirements to be implemented in this co-ordinated programme is set out in the CBFA Circular which is not mandatory (Art. 19.3 of the law of 22 February 1998).²³ It recommends that the programme include measures concerning control and internal audit, as well as the compliance function, and training of personnel. The provisions relating to the exchange of information within groups do exist, but do not specify any requirements in terms of policies or procedures. On the other hand, requirements concerning the hiring of personnel are not included.

a5.83. **Criterion 18.3** – Measures concerning compliance by subsidiaries and branches with AML/CFT rules compatible with the level required in the original country do exist, but they are only contained in the non-mandatory CBFA circular.

Weighting and conclusion

a5.84. The small size of the institutions for which there is no requirement to create an audit function, reduces the impact of this shortcoming. However, measures organising co-ordination of AML/CFT programmes for groups should be completed insofar as they require the development of a co-ordinated AML/CFT programme only for financial groups which are headed by a credit institution or investment firm and must appear in legislation or regulation. These shortcomings are considered as moderate in the Belgian context which is characterised by a large proportion of financial institutions that are part of financial groups, at the European level for a certain number of them, and for which it is important that AML/CFT programmes be co-ordinated and specified at the group level. **Belgium is partially compliant with R 18.**

Recommendation 19 – Higher-risk countries

a5.85. Belgium was rated compliant in the third evaluation (para. 425 MER 2005). R 19 re-formulates the requirements and introduces new ones concerning the measures to be taken with respect to higher-risk countries.

a5.86. **Criterion 19.1** – Financial institutions are required to submit to a ‘close examination’ (understood to mean enhanced due diligence), with a power of decision at an adequate level of management, which in practice will be a high level (see c.10.17), when entering into business relationships or executing a transaction with customers that are residents in a country considered high risk and/or non-cooperative by FATF or in respect of which FATF recommends countermeasures or enhanced due diligence (Art. 27 of the Regulation and 16 of the MO). Such enhanced due diligence continues throughout the business relationship, under the requirement for ongoing due diligence (Art. 14 of the AML/CFT law, Art. 32 para. 3 of the Regulation). The Belgian authorities state that in the case of a transaction having a connection with a high-risk or non-cooperative country, Art. 11 §1 of the AML/CFT Law, which establishes an exception to the identification requirement for financial institutions established in the EEA or in an equivalent third country, would not apply, since this situation should be considered as involving a greater risk (Art. 27 of the Regulation, 16 of the MO) and thus Art. 12 §1 which requires that enhanced due diligence measures should then apply.

a5.87. **Criterion 19.2 – a)** Art. 27 of the law allows a specific countermeasure to be adopted by royal decree (duty to send information to the FIU), applicable to transactions concerning natural or legal persons domiciled, registered or established in countries for which FATF requires such countermeasures. No such RD has been adopted. The extent of the countermeasures thus imposed must therefore be determined on a risk-sensitive basis when preparing the RD, integrating the type of transaction and setting a minimum amount. Furthermore, Art. 19 restricts the possibility that financial institutions have of setting up in one of the countries referred to, or of entering into business partnerships with entities connected with such

23 Circular of 9 April 2010 which explains the provisions of the AML/CFT law and of the regulation to financial institutions covered – Following the 2010 reorganisation of financial sector supervision in Belgium, the powers of the CBFA (*Commission bancaire, financière et des assurances*) were divided between the BNB and the FSMA. Decisions previously made by the CBFA, particularly the circulars, are however still valid (Art. 329 to 331 of the RD of 3 March 2011) – See R 26.

countries. *b)* Belgium does not, however, have any instruments whereby a countermeasure may be decided independently of an FATF decision.

a5.88. **Criterion 19.3** – The CTIF systematically communicates information on its website for all persons and institutions subject to the AML/CFT Law about the latest decisions made by the FATF in respect of countries with strategic shortcomings in AML/CFT matters. It thus provides information on concerns about weaknesses of the AML/CFT systems of other countries, which are not publicly identified by FATF as a higher-risk country (e.g. Cyprus, Ukraine).

Weighting and conclusion

a5.89. **Belgium is largely compliant with R 19.**

Reporting of Suspicious Transactions

Recommendation 20 – Reporting of suspicious transactions

a5.90. In 2005, Belgium was rated largely compliant with the FATF standard which set out the requirement to report suspicious transactions (former R 13 and SR IV, owing to issues of effectiveness, not technical compliance).

a5.91. **Criterion 20.1** - The AML/CFT law provides that where covered institutions are aware or suspect that a transaction is connected specifically with ML or TF, they must inform the CTIF (Art. 23). Regarding the timing of STRs, in principle they must be made prior to performing the transaction. It may be done afterwards, if the transaction cannot be delayed due to its very nature, or if delaying it is likely to prevent action from being taken against the offenders. In these cases, the CTIF must be notified immediately after executing the transaction and be informed of the reason why the transaction was not reported before being executed.

a5.92. The law also states that where the institutions or persons covered are aware of a fact that could be an indicator of ML/TF, they are to immediately inform the CTIF (this may also be in connection with the intervention of judicial authorities or by the media). The authorities state that the fact that the judicial authorities are aware of the financial transactions in question does not lift the requirement to report them. The slightest suspicion is sufficient for the reporting requirement to apply, for example when the professional cannot rule out a possible connection with ML/TF.

a5.93. Under the AML/CFT Law, ML consists of actions (conversion, concealment, etc.) relating to money from illicit sources. Money from illicit sources is defined with reference to a list of serious offences laid down in Art.5 §3 of the law. Criminal law therefore covers financial benefits derived from any criminal offence (see R 3) whereas the preventive law contains a list of basic crimes which, although very broad and covering all offences punishable by a prison sentence of at least six months, is restrictive. The list of serious offences contained in Art.5 §3 covers all the predicate offences to ML set out in the Glossary of the *FATF Recommendations*. Particularly addressed are offences relating to terrorism and TF as well as serious tax fraud, whether or not organised. In addition, a CTIF guideline clarifies: *Covered institutions, persons and professions are not required to determine the predicate offences to the facts or transactions they detect and for which there is a suspicion of ML or TF. In most cases, reporting parties are not able to know the predicate offence to the transactions they detect. The CTIF is responsible for conducting an in-depth analysis to discover the connection between the reported transaction and one of the crimes covered by the law.* The existence of a list in the AML/CFT Law has no practical consequences.

a5.94. **Criterion 20.2** – The obligation to report suspicious transactions applies in Belgium, regardless of the amount of the transaction. In addition, the law explicitly states that attempts to commit one of the acts defined as constituting ML are acts of ML.

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Weighting and conclusion

a5.95. **Belgium is compliant with R 20.**

Recommendation 21 – Tipping-off and confidentiality

a5.96. In 2005, Belgium was rated compliant with the FATF standard which set out firstly, the protection of reporting entities when they report their suspicion in good faith to the FIU and, secondly, the duty of confidentiality incumbent upon those same entities (former R 14).

a5.97. **Criterion 21.1** – No civil, criminal or disciplinary action may be brought against and no professional sanction may be imposed on reporting entities or their senior executives, employees or representatives which have reported in good faith to the CTIF. The AML/CFT Law also provides for the protection of reporting parties against any threat, hostile act or intimidation. Lastly, when the CTIF makes a disclosure to the public prosecutor, the federal prosecutor or their foreign counterparts, the STRs (and supplemental STR additional reports) are not legally part of the information sent to the prosecutor so as to maintain the anonymity of the reporting entities.

a5.98. **Criterion 21.2** – Pursuant to Art.30 para. 1 of the AML/CFT Law, reporting entities or their senior executives, employees or representatives may not, under any circumstances, inform the customer in question or other third persons that information has been transmitted to the CTIF under their duty to report suspicious transactions or that a ML or TF investigation is being or may be carried out. Where a professional (notary, auditor, independent certified accountant, independent tax advisor, chartered accountant, licensed tax accountant or lawyer) attempts to dissuade a customer from engaging in illegal activity, this does not amount to tipping-off within the meaning of Art.30 para. 1 (see C.23.4).

Weighting and conclusion

a5.99. **Belgium is compliant with R 21.**

Designated non-financial Businesses and Professions

Recommendation 22 – DNFBPs: Customer due diligence

a5.100. Belgium was rated partially compliant in the third evaluation (para. 589ff. MER 2005). The main shortcomings related to the absence, firstly, of measures implementing the law for a majority of professions, be it the requirement to identify legal persons or PEPs, or specific measures in the event of non-face-to-face contracts, and secondly, of requirements for legal and accounting/tax professions to prepare written reports on unusual transactions.

a5.101. **Criterion 22.1** – Company service providers are not covered by the AML/CFT Law. This sector was identified as at risk, in particular domiciliation companies, and measures are therefore being developed to require licensing and compliance with AML/CFT preventive measures. The due diligence requirements of the AML/CFT Law are applicable to non-financial businesses and professions. The limits identified for financial institutions (see R 10) are thus found in the framework applicable to non-financial businesses and professions. In general, the due diligence measures required by the law are explained in the regulatory provisions applicable to each sector. There are a number of reservations concerning the measures in force. For online casinos, the technical resources currently available do not render verifications of the identity of gamblers totally reliable. A number of ambiguities are noted in the measures applicable to diamond traders,

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which must be resolved in order to clarify the applicable framework.²⁴ The regulations relative to real-estate agents (Art. 2 §3 of the Regulation) and to diamond traders (Art. 9 §2 of the Regulation) refer to tools and procedures developed in co-operation with professionals of the sector and approved by the Belgian authorities for the customer acceptance policy, and the use of which creates a presumption of compliance with legislative provisions. Owing to the complexity of the proposed decision processes, the expected 'appropriate use' (Art. 2 §3 for real-estate agents) or 'correct use' (Art. 9 §2 for diamond traders) should be defined to make the regulatory provisions applicable.

a5.102. **Criterion 22.2** – Art. 13 and 15 of the AML/CFT Law which govern record-keeping (see R 11) are applicable to non-financial businesses and professions. Notaries, accounting/tax professionals and diamond traders are also considering the possibility granted by Art. 38 §2 sub-para. 2 of the law of to keep the references of records in such a way that ensures they will be immediately able to produce the documents on request by the competent authorities, without the possibility that they have been altered or modified.

a5.103. **Criterion 22.3** – The shortcomings detected in respect of Art.12 of the law governing the due diligence measures to be taken in respect of PEPs are also found in the regulatory measures taken by the various professions (see R 12). The regulatory measures applicable to real-estate agents have already introduced the new requirements of R 12. There is some doubt as to the applicability of this approach as the definitions do not correspond to those contained in the law.

a5.104. **Criterion 22.4** – The law does not contain any measures concerning risk assessments to be carried out, in connection with the launch of products, business practices and new delivery means involving new technologies, even though, in practice, this assessment may be done under the general requirement to develop a risk-based customer acceptance policy, and to take enhanced measures where the transaction is carried out or the business relationship initiated remotely (see R 15).

a5.105. **Criterion 22.5** – The shortcomings noted for R 17 are found again in the measures applicable to non-financial businesses and professions, particularly with respect to reliance on institutions and persons established in an equivalent third country (see C.17. 2).

Weighting and conclusion

a5.106. Company service providers are not covered by the Belgian AML/CFT system. This sector was identified as at risk, in particular domiciliation companies, and measures are therefore being developed to require licensing and compliance with AML/CFT preventive measures. There are as well shortcomings as regards the customer due diligence requirements (R 10), which are one of the key components of R 22. There are also weaknesses for R 11, R 12, R 15 and R 17 which are not, however, specific to DNFBDs. In addition, the shortcomings relative to R 17 on reliance on third parties have a more minor impact regarding the activities of DNFBDs. **Belgium is largely compliant with R 22.**

Recommendation 23 – DNFBDs: other measures

a5.107. Belgium was rated largely compliant in the third evaluation (para. 623ff. MER 2005). The problem identified concerned the absence of requirements for legal and accounting professions to prepare written reports on transactions involving persons resident of non-cooperative countries when such transactions have no apparent economic or lawful basis.

a5.108. **Criterion 23.1** – The law requires non-financial businesses and professions to report suspicious transactions to the CTIF, with certain adaptations in relation to financial institutions (Art. 23 to 25).

24 Identification of the customer or the agent (Art. 3 §1 and §2, and 4 §3 of the Regulation of 4 October 2013); impossibility of performing 'certain' occasional transactions if the due diligence requirement could not be established (Art. 3 §3); taking of reasonable measures 'where possible' to verify the identity of the beneficial owners (Art. 5 §1).

PREVENTIVE MEASURES

a5.109. **Criterion 23.2** – The provisions of the law concerning internal controls and staff training and awareness also apply to non-financial businesses and professions, with some adaptations possible for appointing an AML/CFT officer, depending on the size of the organisation (Art. 18 para. 2). The regulatory measures on internal controls for lawyers, bailiffs, notaries and accounting/tax professionals introduce criteria for determining the size of the organisation that requires an AML/CFT officer. They also specify measures concerning training of personnel, and the integrity of personnel based on the risks involved in the tasks and duties to be performed. However, there is no independent audit function to test the AML/CFT system for any of the non-financial businesses and professions covered. Furthermore, the legislative provisions on AML/CFT programmes for groups (C.18.2) only apply to financial groups and do not apply to DNFBPs.

a5.110. **Criterion 23.3** – CTIF information on higher-risk countries is accessible to non-financial businesses and professions. The limits noted in respect of the framework in place (see R 19) are also found in respect of non-financial businesses and professions.

a5.111. **Criterion 23.4** – Art. 30 and 32 of the law apply to DNFBPs, with an adaptation for lawyers insofar as the president of the bar is responsible for reporting suspicious transactions. These provisions are repeated in the regulatory texts.

Weighting and conclusion

a5.112. The size of organisations for which there is no requirement to create an audit function reduces the impact of this shortcoming. **Belgium is largely compliant with R 23.**

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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