

FATF



Anti-money laundering and  
counter-terrorist financing  
measures

# Belgium

3rd Enhanced Follow-up Report &  
Technical Compliance Re-Rating

September 2018

Follow-up report





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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## BELGIUM: 3rd ENHANCED FOLLOW-UP REPORT

### 1. INTRODUCTION

The Mutual Evaluation Report (MER) on Belgium was adopted in April 2015. This follow-up report assesses the progress made by Belgium to resolve the technical compliance shortcomings identified in its MER. New ratings are given when sufficient progress has been made. This report also assesses the progress made in implementing the new requirements of the FATF Recommendations that have been updated since adoption of the MER: Recommendations 5, 7, 8, 18 and 21. In general, countries are expected to have corrected most or all of their technical compliance shortcomings by the end of the third year of follow-up at the latest. This report does not cover the progress made by Belgium in improving its effectiveness. Progress in this area will be assessed as part of a subsequent follow-up assessment. If sufficient progress has been made, the Immediate Outcome ratings may be reviewed.

### 2. KEY FINDINGS OF THE MUTUAL EVALUATION REPORT

The MER gave Belgium the following technical compliance ratings:

**Table 1. Technical compliance ratings, April 2015**

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	LC	C	C	LC	PC	PC	PC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	PC	PC	LC	LC	PC	PC	PC	LC	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	LC	LC	LC	PC	LC	PC	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
C	C	PC	LC	LC	C	LC	LC	LC	LC

*Note:* Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

*Source:* Mutual Evaluation Report (MER) on Belgium, April 2015, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Belgium-2015.pdf>.

In the light of these results, Belgium was placed in the enhanced follow-up process.<sup>1</sup> The following experts assessed Belgium's technical compliance rating review requests and prepared this report:

- Mr Diego BARTOLOZZI, Head Administrator, Financial Information Unit, Bank of Italy (financial expert);
- Mr Patrick LAMON, Chief Federal Prosecutor with responsibility in the area of money laundering and economic crimes, Public Ministry of the Swiss Confederation (legal expert); and
- Mrs Priscille MERLE, Deputy Head of the financial crime prevention and international sanctions office, Treasury Department, Ministry of Economy and Finance, France (financial expert).

Part 3 of this report summarises the progress made by Belgium on technical compliance. Part 4 sets out conclusions and contains a table of Recommendations for which a new rating has been given.

### 3. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

This section of the report summarises the progress made by Belgium in improving technical compliance by:

- resolving the shortcomings identified in its MER, and
- implementing the new requirements associated with the changes made to FATF standards since adoption of the MER (R.5, 7, 8, 18 and 21).

#### 3.1. Progress in resolving the technical compliance shortcomings identified in the MER

Belgium has made progress in resolving the technical compliance shortcomings identified in the MER for the following Recommendations:

- R.6, R.7, R.8, R.12, R.13, R.16, R.17, R.18, R.26, R.28 and R.33, which had all received a PC rating; and
- R.1, R.2, R.5, R.10, R.14, R.19, R.23, R.27, R.34, R.35 and R.40, which had all received an LC rating.

Given the progress made, Belgium's rating has been revised for the following Recommendations: R.1, R.2, R.5, R.8, R.10, R.12, R.16, R.17, R.18, R.19, R.26, R.27, R.28, R.33 and R.35. The FATF warmly welcomes the progress made by Belgium to improve its technical compliance with regard to R.6, R.7, R.13, R.14, R.23, R.34 and R.40. However, it is not considered to have made sufficient progress to justify upgrading the rating for these Recommendations.

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<sup>1</sup> Enhanced follow-up is based on the traditional FATF policy for members with significant shortcomings (in technical compliance or effectiveness) in their AML/CFT systems, and involves a more intense follow-up process.

### **3.1.1. Recommendation 1 (Originally rated LC – re-rated to C)**

The main shortcomings identified in the MER were as follows: a) no formal mechanism for disclosing the non-confidential results of the risk assessment to the competent authorities and self-regulatory bodies as well as to the businesses and professions subject to the obligations; b) no assessments showing low risk when exemptions from AML/CFT obligations are allowed, and for which simplified measures can be applied; and c) need for progress in ensuring that all supervisory authorities are able to ensure that obligated entities implement their AML/CFT obligations, taking risk into account.

Since the MER in 2015, the Belgian authorities have updated the first national money laundering risk assessment. It was updated in two stages, and finalised in March 2017. The CCLBC (*Collège de coordination de la lutte contre le blanchiment de capitaux d'origine illicite*) made a number of proposals to the relevant ministerial committee for adapting the current AML policy. The national TF risk assessment was also updated. Its conclusion contains a set of priority actions to be implemented with regard to national TF policies and activities.

The Act of 18 September 2017 on the prevention of money laundering and terrorist financing and restriction of the use of cash came into force on 6 October 2017. This new Act transposed the Fourth EU Anti-Money Laundering Directive into Belgian law, and superseded the Act of 11 January 1993 pertaining to the prevention of the use of the financial system for money laundering and terrorist financing, taking into account the observations of the 2015 MER.

This new Act introduces measures that aim to meet the requirements of R.1. In particular, it provides a mechanism for disclosing the appropriate information to obligated entities. The authorities have sent a letter containing the non-confidential parts of the assessment to the supervisory authorities so that they can use them for their supervisory activities, and make them available to obligated entities.

The Act also changes the basis on which exemptions to the enforcement of ML/TF obligations are allowed, i.e. through an appropriate risk assessment.

The new Act requires obligated entities to perform risk assessments. This requirement takes into account the factors set out under criterion 1.10. It includes the requirement for obligated entities to have policies, procedures and internal controls for managing and mitigating identified risks, monitoring implementation of controls and implementing enhanced due diligence when higher risks are identified. It authorises obligated entities to apply simplified due diligence measures when they identify low risks via their individual risk assessment and the assessment report performed by the coordinating bodies. It stipulates that the coordinating bodies should identify the areas in which obligated entities must apply enhanced due diligence measures, and that the supervisory authorities must check that provisions regarding risk assessment and adoption of policies, procedures and internal controls are complied with by these entities.

On this basis, R.1 is re-rated to C.

### **3.1.2. Recommendation 2 (Originally rated LC – re-rated to C)**

The principle of a national AML/CFT policy had been institutionalised at the time of the MER, but it had not yet been put into effect. Furthermore, some authorities responsible for freezing assets in the context of proliferation financing were not directly involved in the activities of the competent decision-making body.

Since the adoption of the MER, and in the light of the increasing terrorist threat, Belgium has developed and implemented a comprehensive national AML/CFT policy based around 5 themes:

- Implementation of the Action Plan to resolve MER observations and to implement measures commensurate with the evolution of risks ;
- Launch of a risk-based approach involving rewriting the AML/CFT Act and reviewing ML/TF risk assessments again;
- Prioritisation of the efforts to combat money laundering and terrorist financing;
- Improvement of transparency and disclosure; and
- Implementation of the action plan to improve the enforcement of financial penalties.

In accordance with the AML/CFT Act, the Ministerial Committee for co-ordinating measures against laundering money from illegal sources (ML) and the National Security Council (TF) are responsible for coordinating anti-money laundering efforts. Based on the findings of the national ML/TF risk assessments and the recommended priority actions, this committee and council are updating the national policy and implementing national AML/CFT policies and activities in order to reduce the risks identified.

With regard to cooperation on the prevention of proliferation financing plan, an Intelligence and Security Coordination Committee with responsibility for coordinating efforts to combat the proliferation of weapons of mass destruction was created by Royal Decree on 2 June 2015. The Decree provides for the participation of permanent and non-permanent members, some of which are explicitly mentioned. Even if SPF Finance, the Treasury department responsible for implementing the freezing of assets, is not, explicitly included in the non-exhaustive list of permanent or non-permanent members, the non-exhaustive aspect of this list has allowed for its participation, particularly on the different working groups that deal with matters of its competencies.

On the basis of this progress, R.2 is re-rated to C.

### **3.1.3. Recommendation 6 (Originally rated PC – no re-rating)**

The main shortcomings related to the fact that Belgium was not yet able to apply the targeted financial sanctions of UNSCRs 1267/1989 and 1988 without delay, which thereby compromised the application of sanctions without notice to the entities sanctioned. There was also no formal mechanism at EU level or in Belgian legislation to request that other countries give effect to freezing actions undertaken according to UNSCR 1373.

On the first issue, the Act of 11 May 1995 pertaining to the implementation of UN Security Council decisions was amended in 2015. The new legislative measures provide a procedure for freezing the assets of persons targeted by UN Resolutions with a view to immediate enforcement of financial sanctions. The Minister of Finance is responsible for issuing a ministerial order on each decision to freeze assets. The law states that the decision shall be taken after consultation with the competent legal authority and that the Minister of Finance may decide to freeze some or all assets. Belgium explains that the potential restrictions under the law (“possibility” of freezing assets) are basically theoretical, and that in practice, they have had no effect on the application of UN Security Council decisions “without delay”. Belgium adds that as soon as such a decision is known, an email is sent to the relevant entities on the distribution list to communicate the information to them and invite them to immediately take the necessary measures.

The process is as follows:

- When a decision to freeze assets is made by the UN, the Treasury immediately sends out an email to inform the supervisory authorities and other entities on the distribution list that they must immediately implement asset-freezing measures because a Ministerial Order with retroactive effect will be issued as soon as possible.
- At the same time, an email is sent to inform the Federal Prosecutor’s Office. The Federal Prosecutor’s Office almost always responds quickly, i.e. the same day.
- The Ministerial Order is issued and published within a few days and constitutes the decisive instrument since it obliges to implement without delay the freezing measures of the UN.

The decision-making process takes two to four days. It therefore cannot be said that the decision is made without delay. The email sent by the Treasury on the same day or the day after publication of the UN decision is not enforceable until after the decree is issued and does not guarantee an immediate decision to freeze assets by obliged entities, even if the decree has retroactive effect. Furthermore, the distribution list is not comprehensive and does not guarantee the effectiveness of this means of communication.

With regard to the capacity to request that other countries enforce freezing actions undertaken according to UNSCR 1373, Belgium has set up a mechanism described in the “TF Handbook to assist practitioners in their implementation of UNSCR 1373.” Requests follow the same decision-making procedure and mechanism as for when a person or entity is entered on the list, de-listed, or kept on it. This procedure was approved by the National Security Council in 2017.

Although a mechanism has been implemented to enforce freezing actions undertaken according to UNSCR 1373, Belgium is still not able to apply targeted financial sanctions under UNSCR 1267/1989 and 1988 without delay. Given this shortcoming, Belgium’s R.6 compliance rating therefore remains PC.

#### **3.1.4. Recommendation 10 (Originally rated LC – re-rated to C)**

The 2015 MER states that applicable provisions for determining beneficial ownership did not specify whether the financial institution must automatically consider the senior managing official as the beneficial owner when no natural person can be identified as such.

With the adoption of the new AML/CFT Act in Belgium, the notion of beneficial owner is defined as “the natural person or persons who have ultimate possession or control of the client, client agent or the beneficiary of life insurance policies, and/or the natural persons on behalf of whom an operation is performed or a business relationship formed.” The provisions of the Act state that, once the financial institution has exhausted all possible means, and there is no reason for suspicion, it must identify the company's senior executive as the beneficial owner when no natural person can be identified. The new legislative provisions therefore enable the senior executive of a company to be considered as beneficial owner when the control criterion cannot be applied.

The 2015 assessment also revealed that there was no explicit provision requiring financial institutions to systematically consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced due diligence measures apply.

The new provisions of the AML/CFT Act require obligated entities to identify and check the identity of the beneficiaries or beneficial owners of life insurance policies since they are considered to be a relevant risk factor when they determine if enhanced due diligence measures should be applied. They also require the identification of beneficial owners, and an identity check, before the start of any business relationship or the performance of occasional operations. Based on this progress, the R.10 compliance rating is revised to C.

#### **3.1.5. Recommendation 12 (Originally rated PC – re-rated to C)**

The 2015 report indicates a shortcoming with regard to the one-year time limit, after which a politically exposed person (PEP) no longer exercising a prominent function should no longer be considered a PEP, which means that only the general principle applies, by which enhanced measures must be implemented if called for by the level of risk. The report also notes that the legal definition of a PEP did not include domestic PEPs or persons holding or having held a prominent post within or on behalf of an international organisation. Another shortcoming is the restrictive legislative approach regarding the determination of direct family members and close associates of PEPs. Finally, the report states that there was no specific provision requiring the verification of whether the beneficiary of a life insurance contract or its beneficial owner are PEPs.

The new AML/CFT Act defines PEPs in accordance with FATF standards, including domestic and foreign PEPs and persons holding or having held a prominent post within or on behalf of an international organisation. It also states that once a PEP has left a prominent public post, obligated entities must take into account, for at least twelve months, the risk that the person continues to present, and apply the appropriate measures, based on assessment of this risk, until he/she no longer presents the risks associated with politically exposed persons. There is therefore a minimum period of one year during which obligated entities must apply measures appropriate to the risk, it being stated that enhanced due diligence measures must be applied beyond this period for as long as the person presents the risks associated with PEPs.

The new definitions of “family member” and “close associates” are broad enough to comply with R12.



New provisions require identifying and verifying the identity of beneficiaries of life insurance contracts and their beneficial owners. For PEPs, in addition to customer due diligence (CDD), obligated entities must take measures that involve informing a member of senior management before payment of insurance benefits and enhanced monitoring of the business relationship on a continuous basis.

Based on this progress, the compliance rating of R.12 is revised to C.

### **3.1.6. Recommendation 13 (Originally rated PC – no re-rating)**

The main shortcoming is that the specific due diligence measures for cross-border correspondent banking do not extend to relations with financial institutions of the European Economic Area (EEA) or an equivalent third country.

The new AML/CFT Act promulgated on 18 September 2017 removed the concept of equivalent third country. Article 40 provides that with respect to cross-border correspondent relationships with a third-country institution (meaning an institution outside of the EEA), it is required to take the additional measures required by R.13. Those specific due diligence measures required for cross-border correspondent banking do not extend to relations with financial institutions from the EEA. While the law contains a general provision for applying enhanced due diligence measures in cases of higher risk, there is no explicit obligation to apply the measures required by R.13 for cross-border correspondent relationships within the EEA. On that basis, the rating for R.13 remains PC.

### **3.1.7. Recommendation 14 (Originally rated LC – no re-rating)**

The main shortcoming is that there was no clear policy on sanctions applying to persons who provide money or value transfer services without being certified or registered, so the proportionality of these sanctions could not be determined.

The new AML/CFT Act promulgated on 18 September 2017 provides for a sanctions regime applicable to breaches of EU Directive 2015/849. This regime fits with the legislative provisions of the Financial Services and Markets Authority (FSMA) (Act of 2 August 2002) and the provisions of the Act of 21 December 2009 pertaining to the status of payment institutions and electronic money institutions and access to business as a payment service provider and electronic money issuer and access to payment systems. The regime gives jurisdiction to the FSMA to investigate and sanction persons who provide money or value transfer services without being approved or registered. Generally, the sanction regime remains unchanged since the 2015 MER as the applicable sanctions are still derived from the laws of 2002 and 2009. A regime of monitoring and sanctions is therefore in place. However, the proportional and dissuasive nature of sanctions could not be established. Belgium's compliance rating for R.14 therefore remains LC.

### **3.1.8. Recommendation 16 (Originally rated PC – re-rated to C)**

At the time of the MER, the EC Reg. 1781/2006 applied to wire transfers. It did not stipulate the obligation of including information on the beneficiary of the transfer, and contained limited requirements for the obligations applying to intermediate financial institutions.

Since then, EU Regulation 2015/847 of 20 May 2015 has been published. It contains requirements regarding information on the initiator (payer) and beneficiary (payee) to be maintained with the wire transfer, amongst other things. This regulation came into force on

26 June 2017, and resolved the identified shortcomings. On this basis, Belgium's R.16 compliance rating is revised to C.

### **3.1.9. Recommendation 17 (Originally rated PC – re-rated to LC)**

The main shortcomings identified in 2015 related to the existence of exemptions for third party from the EEA or third country equivalents. This did not allow verification of whether the AML/CFT measures applied by such institutions were adequate. It should also be underlined that the inclusion of a country on the list of third country equivalents covered risk-related elements, but this analysis was not focused on ML/TF risks.

The new AML/CFT Act promulgated on 18 September 2017 establishes a framework applying to the use of third party introducers by obligated entities. It restates the requirements set out in the previous system, but removes the concept of third country equivalents. Obligated entities that rely on a third party subject to the law of a third country must determine whether the legal and regulatory provisions and the supervision to which the third party is subject meet the required equivalence conditions. The Act also states that obligated entities may not rely on third party based in high-risk countries. However, there are still exemptions for EEA countries which are not considered third countries. Belgium's compliance rating for R.17 is therefore revised to LC.

### **3.1.10. Recommendation 19 (Originally rated LC- re-rated to C)**

Belgium did not have mechanism to take counter-measures against higher risk countries, independently of any call by the FATF.

Article 54 of the Act of 18 September 2017 on the prevention of money laundering and terrorist financing and restriction of the use of cash introduced measures which give the King the power to use Royal Decrees to take counter-measures against countries or territories whose legislation is recognised as inadequate and whose practices are considered to present an obstacle to the prevention of ML/TF, regardless of any FATF call to do so. These counter-measures are based on the national risk assessment or the decisions of a consultation or coordination body with jurisdiction at an international or European level. The counter-measures involve extending the reporting obligations of obligated entities. Other counter-measures proportionate to the relevant country risks may also be taken. On this basis, Belgium's R.19 is re-rated to C.

### **3.1.11. Recommendation 23 (Originally rated LC- no re-rating)**

The limits identified in the MER under R.18 and R.19 affected the application of measures for designated non-financial businesses and professions (DNFBPs). In particular, there was no independent audit function for testing the AML/CFT systems for any DNFBPs. However, because of the small size of the DNFBPs involved, this shortcoming had a limited impact.

The new AML/CFT Act resolved the majority of the deficiencies regarding Recommendations 18 and 19. The activities and professions referred to by Recommendation 23 are all covered by the law, except for trust and company service providers (TCSPs). These are covered by reference to their registration. However, the legislation that provides for their registration has not yet come into effect. This category therefore remains uncovered by the law.

The new AML/CFT Act also requires that the policies, procedures and internal control measures of obligated entities include an independent audit function responsible for testing

policies, procedures and internal control measures where appropriate with regard to the nature and size of the obligated entity.

With regard to the protection of DNFBPs against any liability for the disclosure of information in the event of the sending of suspicious transaction reports (STRs) to the FIU, the new law does not provide for protection for lawyers who inform the Bar Association, which ultimately transmits the STR to CTIF.

Belgium has resolved the majority of shortcomings identified for R.23. However, TCSPs are not yet covered by the law. On this basis, Belgium's R.23 compliance rating remains LC.

### **3.1.12. Recommendation 26 (Originally rated PC – re-rated to C)**

The shortcomings identified relate to the fact that the supervisory authorities for some fund transmission services supplied in Belgium, for consumer loan companies and direct financing lease providers, did not specify the applied method of supervision. The ML/TF risk component was also not well-established in the BNB process and tools. For the FSMA, with the exception of *bureaux de change*, the scope and frequency of ML/TF controls were not determined according to the type and level of risk identified for each institution. Finally, the extent to which ML/TF risk affects the review of the risk profile of institutions regulated by the BNB and the FSMS was not clearly established.

The new AML/CFT Act gives powers to FPS Finance and FPS Economy to supervise the institutions under their jurisdiction for compliance with AML/CFT obligations. Article 87 of the Act also states that obligated entities should be supervised on the basis of a risk assessment that takes into account the national ML/TF risk assessment and the supranational risk assessment developed at the European level. The frequency and scope of on-site and off-site controls should be based on the entity's risk profile. This profile is the result of the combination of (1) an assessment of the ML/TF risks to which the obligated entity is exposed, given the characteristics of its business sector, the geographical areas in which it performs its activities and its distribution channels and (2) an assessment of its management of these risks, including an assessment of the measures that it has taken to identify and mitigate these risks and an assessment of its level of compliance with the applicable legal and regulatory obligations. Article 87 specifies that the supervisory authorities must periodically review the risk profile of obligated entities, at a frequency appropriate to the business sector and previous risk profile, but also when significant events occur that may affect the entity's level of ML/TF risks or its management of these risks.

The shortcomings identified in the MER have all been resolved and Belgium's compliance rating for R.26 is revised to C.

### **3.1.13. Recommendation 27 (Originally rated LC – re-rated to C)**

The MER indicated that the sanctions imposed by FPS Economy and FPS Finance were limited to publicity measures and administrative sanctions contained in its AML/CFT law.

The AML/CFT Act of 18 September 2017 introduced additional measures which include the following powers:

- issuing an injunction to order a natural or legal person to cease the incriminated conduct and prohibit it from repeating it;

- when an obligated entity is subject to approval, withdrawing or suspending approval;
- imposing a temporary ban on any person with executive responsibility within an obligated entity or any other natural person held to be responsible for the offence holding executive posts in obligated entities.

Financial sanctions are also provided, in addition to publicity measures and administrative sanctions. On this basis, Belgium's R.27 compliance rating is revised to C.

#### **3.1.14. Recommendation 28 (Originally rated PC – re-rated to LC)**

The MER stated that there were no “fit and proper” provisions that apply to diamond dealers and real estate agents, and that, as a general rule, when supervision programmes existed, they had been established without assessing the individual risk for the different professionals and without referring to the risk in the sector.

Article 87 of the new AML/CFT Acts sets out supervision methods to be used by supervisory authorities for all obligated entities. The analysis for Recommendation 26 therefore applies to this Recommendation, and specifies that the supervisory authorities must exercise supervision on the basis of a risk assessment which determines the scope and frequency of controls.

With regard to “fit and proper” provisions for diamond dealers, the Royal Decree that will introduce this requirement in the registration conditions is ready, but will not be published before the summer of 2018. For real estate agents, Articles 178 and 179 of the new AML/CFT Act amend the Act of 11 February 2013 which organises the real estate profession by setting out conditions of integrity and honourability, including the absence of conviction for financial misconducts or crimes.

As the Royal Decree introducing the “fit and proper” requirement is not published yet, R.28 is re-rated to LC.

#### **3.1.15. Recommendation 33 (Originally rated PC- re-rated to LC)**

Belgium received a PC rating for R.33 because statistics on prosecutions and convictions were not up to date, the data on property seized and confiscated was fragmented and unreliable and the statistics on international judicial co-operation were almost non-existent, even though Belgium was exposed to international ML/TF risks.

The AML/CFT Act of 18 September 2017 now requires comprehensive, practical and consistent statistics to be held, in order to assess the effectiveness of the AML/CFT system. Data must be published annually and consolidated. The Royal Decree establishing the specific statistics that will be kept and their characteristics is being drafted.

The statistics on convictions are based on the conviction report established for each convicted person. These documents contain information on offences committed, including ML and TF. Statistics on prosecutions are currently available in the database of the College of general prosecutors, which includes all statistical data from all prosecutors' offices, except the Eupen prosecutor's office, which covers the German-speaking region. A new system (MACH) is also used for storing procedural documents drafted by prosecutors. This new system is currently being rolled out and approximately half of prosecutor's offices use it.

Belgium has taken steps to reinforce the quality of statistics on property seized and confiscated. Data is entered manually into a database that is currently being modernised. Furthermore, a taskforce has been formed to develop a new electronic record-keeping system, which is currently being developed and implemented.

All types of mutual assistance are recorded in the international central authority database by type of offence. While data is not yet systematically encrypted, Belgium explains that assessment cycles will impose this obligation. A management module will provide statistics on international judicial and police cooperation, including Joint Investigative Teams involved in ML/TF investigations. However, it is not always possible to distinguish between assistance regarding terrorist financing and other terrorism-related offences. Moreover, the use of police data for statistical purposes is complex due to the restrictions under the Act of 8 December 1992 pertaining to privacy and personal data protection and Article 44/5 of the Act on Police Function.

The significant work undertaken by Belgium in this field is noted. Minor shortcomings still remain relating to the completion of this work. Based on the progress since adoption of MER, R.33 is re-rated to LC.

#### **3.1.16. Recommendation 34 (Originally rated LC- no re-rating)**

The 2015 MER reports that, although the competent authorities disseminated AML/CFT-related information and established guidelines for entities subject to the obligations, no specific measures had been taken by FPS Finance, FPS Economy or the authorities that regulate casinos, lawyers of the French-speaking Bars and German-speaking Bar, and bailiffs with regard to the guidelines. It was also reported that the supervisory authorities did not take part or take the initiative in providing sectoral feedback in relation to the implementation of reporting obligations, on the basis of observations made during their inspections.

Although progress has been observed, especially with regard to information feedback through the continuing professional development in various sectors of obligated entities, no specific measures has been taken with respect to the guidelines since the 2015 MER.

The legal framework for improving initiative-taking of the supervisory authorities regarding sectoral information feedback has been established. Article 83 of the AML/CFT law includes an exception to the CTIF secrecy rules for supervisory authorities. However, initiatives for sectoral information feedback relating to the implementation of reporting obligations do not seem to have been put in place yet. On this basis, R.34 remains LC.

#### **3.1.17. Recommendation 35 (Originally rated LC – re-rated to C)**

The MER states that Belgium could apply a fairly diverse range of sanctions, within the specific framework of AML/CFT supervision or in the course of prudential supervision. However, it was difficult to establish the proportionality of these sanctions given that it was unclear how the determination criteria were impacting the nature and scale of sanctions. It was also reported that for some DNFPBs, when sanctions are imposed on legal entities, a disciplinary penalty was required on the director.

Articles 132 to 139 of the new AML/CFT Act provide for ML/TF supervisory authorities to impose administrative sanctions (Articles 132-135) and criminal sanctions (Articles 136-138), including for the breach of financial embargoes (transposition of EU Directive 2015/849). The scope of application is broad. The range of sanctions is comprehensive and

hierarchical. Sanction thresholds and ceilings vary depending on whether a legal or natural person is concerned.

The criteria for defining the nature and proportionality of the sanction are defined in Article 132, section 3. They are:

- consideration of all relevant circumstances;
- severity and duration of the offence;
- degree of responsibility;
- the financial base of the person concerned;
- the benefits and profits obtained from the offence;
- any losses borne by third parties;
- the degree of cooperation from the implicated person; and
- any prior offences.

The application of these criteria ensures the imposition of proportionate and dissuasive sanctions. It should be noted that, with some exceptions, administrative sanctions are published on supervisory authority websites.

When a sanction is imposed on a legal entity, it is also possible to impose sanctions on natural persons who are either members of the legal management body or executive committee, or persons who, where no such committee exists, are involved in the effective management of the organisation and are liable for the reported offence.

The shortcomings identified for R.35 have been resolved by the introduction of criteria for defining the nature and proportionality of the sanction in the AML/CFT Act. R.35 is therefore re-rated to C.

### **3.1.18. Recommendation 40 (Originally rated LC- no re-rating)**

The shortcomings identified in the MER relate to the fact that Belgium did not have an organised system for the exchange of information between non-counterpart authorities. Furthermore, two of the supervisors (FPS Economy and FPS Finance) were not able to cooperate with foreign authorities with comparable responsibilities.

Articles 129 to 131 of the new AML/CFT Act set out rules for cooperation between supervisory authorities (Article 85, AML/CFT, especially FPS Economy and FPS Finance) with their foreign counterparts with comparable responsibilities. These new provisions provide for broad cooperation and information exchange by supervisory authorities with a view to strengthening supervision activities. Exchange and cooperation cover, in particular, regulatory prudential information, and information on AML/CFT policies. They also concern supervision of Belgian obligated entities that are branches or subsidiaries of foreign obligated entities.

The AML/CFT Act only provides expressly for exchange of information between non-counterpart authorities for the CTIF. However, in general, Belgium's efforts to encourage and strengthen these exchanges should be noted, for example amongst bailiffs and the bar association. The police also organises cooperation with non-police authorities via formal and informal mechanisms.

Belgium has made significant progress, in particular by adopting new legal provisions, which have corrected the majority of the reported shortcomings. The remaining shortcomings are minor and the R.40 rating remains LC.

### **3.2. Progress with regard to Recommendations updated since adoption of the MER**

Since the adoption of the MER on Belgium, Recommendations 5, 8, 18 and 21 have been updated. This section assesses Belgium's compliance with these new requirements.

#### **3.2.1. Recommendation 5 (Originally rated LC- re-rated to C)**

In February 2016, a new obligation was added to R.5, requiring countries to criminalise the financing of foreign terrorist fighters. The MER also highlighted the fact that the offence of terrorist financing did not seem to apply to supplying funds to one or two persons without proof of a connection to a specific terrorist offence.

The shortcoming identified in the MER was resolved by an amendment to Article 141 of the Belgium Criminal Code that came into force on 1 January 2017. It also addresses the changes made to R.5 (i.e. c.5.2 bis). This new provision covers a person who supplies material resources (including financial resources) to any person, with the intent or with the knowledge that this person is committing or going to commit a terrorist offence, as defined under Article 137. It is not therefore necessary to prove a connection with a specific terrorist offence. Furthermore, the financing of terrorist offences covers the act of directly or indirectly supplying material resources, including financial resources, with the intention or knowledge that they will be used to commit or contribute to:

- a terrorist act as defined under Article 137;
- the preparation of a terrorist offence (Article 140 septies);
- the travel (entering or leaving national territory) of a person seeking to commit a terrorist offence in Belgium or abroad (Article 140 sexies);
- receiving or giving training in methods or techniques for perpetrating a terrorist offence (Article 140 quiquies and quarter);
- the recruitment of persons with a view to perpetration of a terrorist offence (Article 140 ter);
- the dissemination of information inciting the perpetration of a terrorist offence (Article 140 bis); and
- the participation in the activity of a terrorist group (Article 140).

The scope is therefore very broad and covers any material action undertaken with a view to committing or contributing to a terrorist offence

Belgium has implemented the new requirements of R.5 and resolved the technical shortcoming identified in the MER. Belgium's compliance rating for R.5 is therefore re-rated to C.

#### **3.2.2. Recommendation 7 (Originally rated PC - no re-rating)**

In June 2017, the FATF adopted revisions to the Interpretive Note to R.7 and the Glossary to reflect amendments to the UN Security Council Resolutions (UNSCR) associated with

proliferation financing since the publication of the FATF Recommendations in February 2012.

Furthermore, the shortcomings identified in the MER showed that Belgium was not able to apply the targeted financial sanctions of UNSCRs 1718 and 1737 without delay, which also compromised the application of sanctions without notice to the entities concerned. Neither was the application of sanctions guaranteed in the event of failure to comply with asset-freezing obligations.

All UNSCRs that impose targeted financial sanctions associated with financing the proliferation of weapons of mass destruction are transposed into European law and apply directly in Belgium. This rule also applies to UNSCRs adopted in the future. The Minister of Finance has the power to impose asset freezing via ministerial orders. These orders enter into force with retroactive effect from the time of the UN Security Council Decision. FPS Finance publishes the full and up-to-date list of international sanctions on its website. UNSCRs currently in force are Resolution 1718 pertaining to the Democratic People's Republic of Korea (DPRK) and subsequent Resolutions 1874, 2087, 2094, 2270, 2321 and 2356. Belgium applied UNSCR 2231 approving the JCPOA that came into force on 16 January and ended all provisions related to Iran and proliferation financing.

However, as mentioned above for R.6, the decision-making process takes between two and four days. Belgium has made significant efforts since the MER to enable quick decision-making. However, it cannot be said that the decision is made "without delay" (ideally within a matter of hours). Finally, the use of an email on the same day or the day after publication of the UN decision to publicize the upcoming publication of a decree – regardless of the value and scope of this kind of communication – does not guarantee immediate decisions, given that the distribution list is not exhaustive.

The EU Best Practices Document sets out the procedures concerning de-listing requests for designated persons or entities which, in the opinion of the country concerned, do not or no longer meet the designation criteria. The Treasury is the competent authority for:

- granting exemptions to financial sanctions on request; and
- performing the checks required in the event of mistaken identity, in discussions with the Police and State Security forces.

The Treasury website presents information and links for understanding the way the procedures work. It contains:

- a link to the procedures pertaining to the Focal Point for De-listing created in accordance with UNSCR 1730;
- the procedure for mistaken identity;
- the procedure for exemptions to financial sanctions; and
- information enabling all persons or entities to understand decisions and take action if they are affected.



The European regulations, and its Best Practices Document, expressly mention the requirements regarding the DPRK and Iran sanctions regimes:

- interest and other remuneration from accounts frozen under the DPRK sanctions regime may be added to the frozen accounts, provided that they are also frozen;
- the sanctions regime against Iran authorises financial or credit institutions to credit frozen accounts when they receive wire transfers to the account of a natural or legal person, entity or body on the list, provided that the additional sum transferred into the accounts is also frozen;
- payments owed under any contracts, agreements or obligations that were signed or agreed before the date on which the person or entity whose funds are frozen was designated for sanctions are authorised, provided that the interest and other remuneration are frozen under the DPRK and Iran sanctions regimes;
- the competent authorities of Member States may, under conditions which they deem appropriate, allow the unblocking of some frozen funds or assets, provided that they have established that the contract does not relate to any of the targeted articles, operations or services, and that the payment has not been directly or indirectly received by a person, entity or body listed under the DPRK and Iran sanctions regimes.

Although a mechanism has been implemented to enforce freezing actions, Belgium is still unable to apply targeted financial sanctions against proliferation financing without delay. Given this shortcoming, Belgium's R.7 compliance rating therefore remains PC.

### **3.2.3. Recommendation 8 (Originally rated PC – re-rated to LC)**

In June 2016, R.8 and its Interpretive Note were substantially revised, and the assessment of R.8 in the MER therefore needs to be reviewed. For the purposes of this report, Belgium has supplied information to demonstrate its compliance with the new requirements of R.8. Analysis of this information shows that:

1. Belgium has identified and continues to identify organisations that come under the FATF definition of non-profit organisations (NPOs). In identifying NPOs at risk, Belgium has also taken into account the 2017 national TF risk assessment which demonstrates the significant vulnerability of NPOs to terrorist financing. Belgium has set up two enhanced due diligence programmes (BELFI project and CANAL plan) which tighten the controls on NPOs at risk and enable better information gathering. It is also important to note that an update of the NPO sector risk assessment is in progress. All competent authorities with relevant information are taking part in this analysis. The relevance of measures, laws and regulations for managing the risks identified with NPOs is subject to continuous due diligence and any necessary changes or new measures are implemented when a change requires it.
2. Belgium has enhanced the transparency of NPOs and their obligations regarding accounting, authorisation, publication, approval, internal and external controls and storage and disclosure of documents. In 2016, an NPO

working group was set up within FPS Justice. This group serves as a regular contact point between the Ministry of Justice and the NPO sector and has launched an awareness-raising campaign on the role of NPOs and an information day on TF for professionals that work with the NPO sector (accountants, bankers, solicitors, etc.). Since late 2015, the FPS Justice website contains documents and information on NPO obligations and the potential dangers associated with TF. On this point, implementation of the BELFI project and CANAL plan increases awareness. However, further measures could be taken to develop new transparency measures for donations and encourage NPOs to use regulated financial systems for their operations whenever possible.

3. Under the CANAL Plan, detailed and systematic controls have been performed on NPOs at risk, and the information available has been systematically used. From February 2016 to March 2017, 1617 NPOs underwent in-depth controls, and 51 of them were suspected of links with radicalism and terrorism. Under this plan, the police undertake large-scale operations to monitor NPOs. Furthermore, the tax administration checked 1668 NPOs in 2016, and information was added to 1342 files in 2017.
4. Belgium has measures in place for monitoring compliance with the requirements of the Recommendation. Multi-disciplinary on-site controls were performed in 115 NPOs in the Brussels area between October 2014 and 2017. These controls highlighted shortcomings in the management of NPOs. Thirteen non-profits were investigated by the legal authorities, in particular for TF-related offences. Between September and December 2016, integrated controls targeted 23 suspicious NPOs and 13 other legal entities. The Belgian authorities can also impose sanctions on NPOs in the event that they breach requirements, from dissolution of the NPO to fines on their directors. However, the proportionate and dissuasive nature of sanctions has not been fully established as the sanctions imposed could not be analysed.
5. Under Article 83 of the AML/CFT Act of September 2017, the Belgian authorities have broad investigative powers to examine various aspects of NPOs suspected to be used for the purposes of TF. Furthermore, in February 2016, the secrecy rules creating a barrier between the CTIF and the intelligence services was removed, leading to a better flow of information between the two authorities. This facility was used 242 times between February 2016 and July 2017. The police regularly requests information on NPOs from the CTIF.
6. In terms of international cooperation, Articles 122 to 131 of the new AML/CFT Act provide mechanisms and procedures (beyond mutual legal assistance) to cover requests pertaining to NPOs. However, it has not set up other contact points or procedures for handling such requests between non-counterpart authorities. This is a very minor shortcoming in practice.

Belgium has resolved a number of shortcomings and substantially increased the attention paid to risks generated by NPOs. However, minor shortcomings remain. Belgium's compliance rating for R.8 is therefore re-rated to LC.

### **3.2.4. Recommendation 18 (originally rated PC – re-rated to LC)**

In November 2017, the Interpretive Note to Recommendation 18 was modified to clarify the information sharing requirements for unusual or suspicious transactions within financial groups, including providing this information to branches and subsidiaries when necessary for AML/CFT risk management.

The MER highlights shortcomings concerning the fact that the legislative measures requiring the development of a coordinated AML/CFT programme only applied to financial groups headed by a credit institution or investment firm. Furthermore, law and regulatory measures did not specify the effective content of the obligations to be imposed under this programme, nor did they stipulate that the branches and subsidiaries of groups are required to follow AML/CFT rules compatible with the level required in the home country.

The AML/CFT Act that came into force in October 2017 provides an AML/CFT system for all obligated entities, including branches and subsidiaries (Book II, Title I, Chapter 2).

These prevention policies and procedures implemented at group level include compliance control systems (including appointment of a Compliance Officer at senior management level), selection procedures ensuring “fit and proper” persons are appointed in view of the risks associated with the tasks and missions to be performed, ongoing training program for employees and an audit function for testing the system.

Article 13 of the same Act stipulates the obligation for obligated entities that are part of a group to implement group-wide ML/TF prevention policies and procedures, data protection policies, and policies and procedures for sharing information within the group in order to combat ML/TF. The obligations under article 13 were set out in detail by the BNB AML/CFT Regulations of 17 December 2017. However, the scope and extent of information to be shared by branches and subsidiaries are not specified.

It is stated that obligated entities established in a third country with less strict minimum obligations for combating ML/TF are required to ensure that their subsidiaries and branches apply the obligations of the AML/CFT Act, to the extent permitted by the law of the third country.

It is also stated that if the law of a third country does not allow the implementation of the required policies and procedures, the obligated entities must ensure that their branches or subsidiaries apply additional measures to effectively manage the ML/TF risk, and inform the competent supervisory authority to that end.

Minor shortcomings remain regarding the scope and extent of information to be shared by branches and subsidiaries. On this basis, Belgium’s R.18 compliance rating is re-rated to LC.

### **3.2.5. Recommendation 21 (initially rated C – no re-rating)**

In November 2017, Recommendation 21 was revised in order to clarify that the tipping-off requirements regarding an unusual or suspicious transaction report or related information does not intend to prevent the sharing of information under R.18.

Article 56 of the AML/CFT Act which came into force in October 2017 states that the tipping-off prohibition regarding the fact that information is, will be or has been sent to the financial intelligence unit does not apply within a financial group, meeting the new requirements of the Recommendation. On this basis, Belgium’s R.21 compliance rating remains C.

### 3.3. Overview of progress on other Recommendations rated LC

Belgium also reported progress on Recommendations 15, 22, 24, 25, 37 and 38:

**Recommendation 15 (rated LC):** The new AML/CFT law requires authorities and financial institutions to identify and assess ML/TF risks that may result from new products and new business practices. The most recent version of the national risk assessment addresses the financial technology sectors and more specifically the risks related to virtual currency and crowdfunding. Belgium is currently preparing legislation to regulate and supervise virtual currency exchange platforms.

**Recommendation 22 (rated LC):** A working group has been created under the chairmanship of the FPS Economy to carry out a risk analysis of the diamond sector. The recommendations of the risk analysis will be examined in the coming months in order to take targeted actions. The authorities also report that certain deficiencies or ambiguities relating to the regulatory and legislative framework applicable to diamond dealers have been addressed by the introduction of the new AML/CFT Law.

**Recommendation 24 (rated LC):** In June 2016, a full security framework note was published to define the Belgian security policy. This note provides for the implementation, within two years, of an access to beneficial ownership information recorded by the *Banque-Carrefour des Entreprises* (BCE) for the benefit of the Integrated Police. It also provides for the implementation of a communication procedure for data that BCE is invalidated during a police investigation. The authorities also report that the data and analysis available to the Federal Police on the cross-cutting risks of money laundering and terrorist financing associated with different categories of legal persons and legal constructions will be updated. In addition, a project to reform the registration of authentic deeds or private deeds relating to the life of companies is in progress.

**Recommendation 25 (rated LC):** The new AML / CFT law provides for the imposition of administrative fines where a breach of the quality of the data provided to the register of beneficial owners has been established.

**Recommendation 37 (rated LC):** The new law of 6 July 2017 on the simplification, harmonization, computerization and modernization of the provisions of the civil law, the notarial profession, and on various judicial measures allowed the establishment of a more flexible procedure for the execution of foreign requests for mutual legal assistance. The Act terminated the requirement to obtain prior authorization for the execution of a mutual assistance request that relates to searches and seizures and to obtain authorization for the transmission of evidence obtained. According to the Belgian authorities, this will reduce the execution time of requests for mutual assistance.

**Recommendation 38 (rated LC):** Belgium reports that, since terrorist financing is now fully criminalized in Belgium, there is no longer any obstacle to mutual assistance based on the dual-criminality requirement. In addition, a reform commission was set up by the Minister of Justice. It is currently rewriting the Penal Code and it is expected that the new text will allow the judge to pronounce the confiscation as the primary sentence when the offense carries a Level 1 correctional sentence. A prior criminal conviction will always be required.

#### 4. CONCLUSION

Belgium has made significant overall progress in resolving the technical compliance shortcomings identified in its MER and ratings for 15 Recommendations have been revised.

Recommendations 1, 2, 10, 12, 19, 26, 27 and 35 have been re-rated to C, and Recommendations 17 and 28 have been re-rated to LC, on the basis of the new obligations under the AML/CFT Act that came into force in October 2017. R.16 is re-rated to C on the basis of new EU Regulation 2015/847. R.33 is also re-rated to LC, since Belgium is capable of producing statistics for all categories required by the Methodology.

Recommendations 6 and 7 will remain PC, given that targeted financial sanctions can still not be applied without delay. R.13 remains PC because of the exemption for EEA countries. R.14 will remain at LC since the proportional and dissuasive nature of the sanctions could not be established on the basis of the information received. R.23 remains LC since TCSPs are still not included in the AML/CFT system. R.34 remains at LC as initiatives providing sectoral feedback on the implementation of the reporting requirements do not appear to have been put in place. Finally, minor deficiencies persist for R.40.

Belgium has also made progress in meeting the obligations of the updated Recommendations 5, 8, 18 and 21. R.5 is revised to C on the basis of the amendment to the Belgium Criminal Code that came into force on 1 January 2017. R.8 is revised to LC on the basis of the work undertaken on TF risk assessments for NPOs, on NPO supervision and awareness-raising, and on the investigations carried out in this sector. R.18 is revised to LC, and R.21 remains C on the basis of the new obligations brought in through the AML/CFT Act that came into force in October 2017.

Given the progress made since adoption of its MER, Belgium's technical compliance with the FATF Recommendations has been revised as shown in the table below:

**Table 2. Technical compliance following revision of ratings, June 2018**

<b>R 1</b>	<b>R 2</b>	<b>R 3</b>	<b>R 4</b>	<b>R 5</b>	<b>R 6</b>	<b>R 7</b>	<b>R 8</b>	<b>R 9</b>	<b>R 10</b>
C	C	C	C	C	PC	PC	LC	C	C
<b>R 11</b>	<b>R 12</b>	<b>R 13</b>	<b>R 14</b>	<b>R 15</b>	<b>R 16</b>	<b>R 17</b>	<b>R 18</b>	<b>R 19</b>	<b>R 20</b>
C	C	PC	LC	LC	C	LC	LC	C	C
<b>R 21</b>	<b>R 22</b>	<b>R 23</b>	<b>R 24</b>	<b>R 25</b>	<b>R 26</b>	<b>R 27</b>	<b>R 28</b>	<b>R 29</b>	<b>R 30</b>
C	LC	LC	LC	LC	C	C	LC	C	C
<b>R 31</b>	<b>R 32</b>	<b>R 33</b>	<b>R 34</b>	<b>R 35</b>	<b>R 36</b>	<b>R 37</b>	<b>R 38</b>	<b>R 39</b>	<b>R 40</b>
C	C	LC	LC	C	C	LC	LC	LC	LC

*Note:* Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Belgium will remain in enhanced follow-up and will continue to inform the FATF of the progress made in improving and implementing its AML/CFT measures.

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September 2018

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

### 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating

This report analyses Belgium's progress in addressing the technical compliance deficiencies identified in the FATF assessment of their measures to combat money laundering and terrorist financing of April 2015.

The report also looks at whether Belgium has implemented new measures to meet the requirements of FATF Recommendations that changed since the 2015 assessment.

Follow-up report