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

3. Legal systems and operational issues

Effectiveness and technical compliance

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3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings

The Belgian law enforcement authorities have ample powers and an adequate legal framework. However, structural problems prevent them from being fully effective; the Belgian judicial authorities have insufficient human and technological resources, and this has an impact on AML activities.

Use of Financial Intelligence

- The CTIF is a financial intelligence unit (FIU) with broad access to useful AML information which it exploits systematically. The CTIF produces high quality operational and strategic analyses. Its reports contain financial information and important analyses that are able to trigger criminal investigations into ML/TF.
- The law enforcement authorities have a wide variety of measures available for their investigations. These can be used to obtain all the information necessary for seizing assets and identifying the perpetrators of offences with a view to their prosecution. However, they do not make the most effective use of all the data placed at their disposal because of a lack of resources.

AML Strategy of the Prosecution authorities

- The general level of awareness, knowledge, and understanding of ML risks for the Belgian judicial authorities is good. However, at national level the prosecution authorities have no clearly defined overall strategy for combatting ML. Nor is there co-ordination between judges at national level as regards the prioritisation of prosecutions.
- Offences and their perpetrators which are reported to prosecution authorities are based in part on STRs, mainly submitted by credit institutions, but also by foreign FIUs. Other ML cases are detected mainly by the police, customs, the tax authorities and through the investigation of predicate offences.
- The number of STRs coming from certain of the obligated non-financial sectors (particularly lawyers and diamond traders) does not seem commensurate with the identified risks. Some ML offences therefore seem to evade prosecution through a failure to detect them. The possibility of seizure or confiscation of property is an important factor in determining whether a criminal investigation will be initiated. Prosecutions are primarily oriented towards predicate offences, particularly fraud, offences related to bankruptcy, tax fraud and narcotics trafficking. In these contexts, ML prosecutions are principally oriented towards the perpetrator of the predicate offence ('self-laundering'); cases of third-party ML are less common.
- If prosecution for the predicate offence is not possible, this does not in practice prevent prosecution for ML as a standalone offence, particularly in cases of cross-border transportation of currency.

- The system for detecting cross-border currency movements works well in Belgium, but the declarations/disclosures stemming from it are not subject to follow-up, prosecution, or confiscation in proportion to the level of risk cited by the competent authorities. The low priority given to these cases is linked to a lack of human resources within the public prosecutor's office.

Criminal Sanctions

- The sanctions regime is satisfactory. However, the law enforcement authorities' lack of resources slows down proceedings, significantly reducing the effectiveness and deterrent effect of sanctions, because the length of the proceedings affects the length of sentences handed down by the court. The [failure to meet the] statute of limitations for offences and proceedings leads to the risk that no conviction will be handed down. The success rate for ML in big cases, particularly for international cases, is low, most notably because of difficulties related to international co-operation and the lack of resources.
- The legal framework for prosecuting legal persons poses problems as regards application. Moreover, because complex ML cases are uncommon and proceedings focussed on the physical persons, convictions are limited as a result.

3.1 Background and Context

3.1. The legal basis for the criminalisation of ML in Belgium has, since 1990, been set out in Art. 505 PC. The law was judged compliant with FATF standards during the last mutual evaluation. However, the Belgian parliament has since amended Art. 505 to make the Article's scope more specific and thus improve its effectiveness and legal certainty (Law of 10 May 2007[1]).

3.2. All crimes (*crimes et délits*) under Belgian law may be predicate offences for ML (including serious tax fraud offences, whether or not organised). Because ML covers the laundering of assets that are the proceeds of any offence, all the designated categories of offences defined by FATF are covered.

3.3. Art. 42ff. PC establishes the legal basis for the confiscation of the instrumentalities and proceeds of offences. These measures can be applied to all crimes (*crimes et délits*), including ML and TF. Since amendment of the law in 2007, it has been possible to order confiscation in respect of all perpetrators, co-perpetrators or accomplices in ML cases, even if the person convicted is not the owner of the assets to be confiscated (this closed a loophole concerning confiscation of a corresponding value). The 2007 amendment PC was also designed to close a loophole concerning criminal seizures.

3.4. ML investigations and prosecutions are led by the public prosecutor's office, which can refer more complex cases and cases requiring special investigative powers to an investigating judge (*juge d'instruction*). The public prosecutor's office and investigating judges receive assistance from the judicial police and contributions from CTIF. Cases are then judged by courts of first instance (for less serious crimes [*délits*]; and by assize courts for more serious crimes [*crimes*]), appeals go before appeal courts, and the parties to a case can refer the case to the court of final appeal (*Cour de cassation*) (to rule on points of law rather than to appeal again on the merits of the case).

3.2 Technical Compliance (R.3, R.4, R.29-32)

Money Laundering and Confiscation

Recommendation 3 – ML Offence

3.5. **Belgium is compliant with R 3** – The criminalisation of ML (Art. 505 PC) lists the elements constituting the offence of ML as defined in the Vienna and Palermo Conventions. According to consistent case-law (and the spirit of the law), prosecution for ML is not dependent upon conviction for the predicate offence. All legal persons are criminally liable for ML offences linked to accomplishing the purpose for which they were created or the defence of their interests, or that are committed on their behalf.

Recommendation 4 – Confiscation and provisional measures

3.6. **Belgium is compliant with R 4 –** Belgium has a comprehensive legislative framework for seizure and confiscation. Art. 42ff. PC defines a special regime for confiscation (as an ancillary order to a main sentence); confiscation is thus linked to a criminal conviction. Various types of provisional measures aimed at blocking transactions involving property that could be subject to confiscation are available in Belgium. Seizure allows property, instrumentalities, and proceeds of crime and financial benefits arising directly from offences to be withheld. This is complemented by freezing measures that are available to administrative authorities (including CTIF).

1 For an explanation of the reasons for this change, see the draft law of 11 February 2005 (51-1603/001).

Operational and Law Enforcement Authorities

Recommendation 29 – Financial intelligence units

3.7. **Belgium is compliant with R 29** – Belgium's FIU, the CTIF, is an independent and autonomous authority responsible for the processing and disseminating of information linked to AML/CFT, and for analysing information received in the context of ML investigations, the associated predicate offences and TF (AML/CFT Law).

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

3.8. **Belgium is compliant with R 30** – Belgium's law enforcement authorities are responsible for leading and carrying out investigations into ML, predicate offences, and TF. These tasks are shared between the Federal Prosecutor's Office, the regional prosecutor's offices, investigating judges and the judicial police.

Recommendation 31 – Powers of law enforcement and investigative authorities

3.9. **Belgium is compliant with R 31** – Law enforcement authorities have all the classic investigative methods as laid down by the Code of Criminal Procedure (CCP) available to them for AML/CFT operations and for the investigation of the predicate offences. These authorities are in particular able to obtain banking information linked to natural and legal persons.

Recommendation 32 – Cash couriers

3.10. **Belgium is compliant with R 32** – Control of cross-border movements of currency and bearer negotiable instruments relies on a dual regulatory system (Reg. 1889/2005 and RD of 26 January 2014 (national)). It consists of a *declaration* system (for money movements into, or out of, the EU) and a system of *disclosure* on request (for money movements within the EU).

3.3 Effectiveness: Immediate Outcome 6 (Financial Intelligence)

3.11. The Belgian authorities have access to a wide variety of financial and other intelligence, particularly tax-related, which is useful and necessary for investigating ML, the predicate offences and TF. This information is contained mainly in public records such as the land registry and the BCE (the register of information on all legal persons under Belgian law, see Section 7) and is supplemented by exchanges between relevant authorities (see point d). Searching for and using this intelligence is common practice of the Belgian authorities, particularly of the CTIF and the law enforcement authorities. The assessors noted a variety of examples of this, confirming access to and use of this information for ML and TF investigations.

(a) Access to and use of financial intelligence and other relevant information

3.12. **The CTIF has overall effective access to financial intelligence and a large amount of other information,** particularly tax-related, which it needs for analyses and for preparing its reports, through contacts established with all public authorities (particularly the police and judicial authorities, SE, SGRS, the tax authorities, and the National Social Security Office). Not only does it receive a large amount of unsolicited intelligence, but it also requests and obtains intelligence it needs. Furthermore, memoranda of understanding (MOUs) have been signed between the CTIF, SE and the SGRS in order to ensure good information exchange among them. The CTIF is also able to supplement this information by sending queries to the financial sector and DNFBPs, as well as foreign counterparts. Research and entering information into the police database is facilitated by the secondment of a Federal Police liaison officer to CTIF. The names of persons appearing in suspicious transactions are systematically checked against the population register, national criminal records, the BCE and the CTIF database. They are also systematically checked against police databases. In cases of suspicions linked to serious tax fraud offences or to violations of laws under the responsibility of AGDA, following the transmission of the file to the prosecutor's office, the CTIF provides to SPF Finance (CAF)

relevant information resulting from the submission of the file to the prosecutor. CTIF's research is facilitated by the secondment of liaison officers to CTIF from the tax authorities.

3.13. During the 2009-2013 period, CTIF disseminated 6 298 case files on potential ML or TF transactions worth a total of EUR 8.4 billion (these cases were based on 25 979 suspicious transaction reports, with some cases linked to more than one STR). **In 2012, 75% of case files on ML as an indicator of a predicate offence came from CTIF.** The remaining 25% came from investigations by the police, the tax authorities, crime reports, etc. Nearly half of all case files sent to the public prosecutor's office are not followed up with police or judicial investigations (*informations judiciaires ou instructions*) for reasons of expediency, or for technical reasons (see IO 7). This results from the fact that the CTIF is obliged to transmit all serious suspicions of ML, regardless of how important the offence is, while the public prosecutor has the discretion to open a case or not. CTIF is nonetheless an important source of information justifying the initiation of ML proceedings. The crimes pursued through the courts are as a general rule the predicate offences identified by CTIF (fraud, fraud linked to bankruptcy, illegal drug or goods trafficking and serious tax fraud).

3.14. When CTIF notices in a case file it is sending to the judicial authorities that large sums could still be seized, it immediately notifies the OCSC (see IO 8). Between 2009 and 2012, CTIF sent 284 such notifications to the OCSC; in 2013 it sent 83.

3.15. Law enforcement authorities have available and use a wide range of financial research measures in their investigations of ML, predicate offences, and TF. In practice this research consists of establishing and consolidating the reported facts, and identifying and tracing the assets related to the offences, including any held abroad. The authorities can also do all this research through international mutual legal assistance (see Section 8). They also have a privileged access to the BCE. Criminal prosecution authorities work closely with the police, who also have a broad access to records and databases.

3.16. In order to reinforce the investigations of the prosecutors (RD of 21 January 2007) and the police (RD of 23 January 2007), employees of the tax authorities are seconded to and work with these authorities so as to assist in combatting ML, as well as economic and financial crime. These tax assistants, who operate independently of their home agency, have the status of expert-assistant to the prosecutor or officer of the judicial police. Their tasks consist of providing assistance in criminal proceedings, in particular regarding contacts with the tax authorities. There is a particular focus on tax in criminal investigations of ML.

3.17. **In regard to obtaining banking information**, according to the Public Prosecutor, for the years 2010 to 2012, the number of information requests to banks relating to all offences came to approximately 2 300 per year, and the number of requests to freeze bank accounts came to about 170 per year (with an upward trend of 50% per year). It is impossible to know the number of these requests that are related to ML, but this information indicates at any rate that requests are made directly to banks and that the institutions comply with the requests. There are no statistics for investigating judges; however, one of the investigating judges interviewed during the on-site visit indicated that he made requests for banking information on a daily basis. Prosecutors and the police use a system called FUSE for transmitting their requests to all credit institutions in Belgium. According to information provided by Belgian authorities, this system was used just under 2 000 times per year in the totality of investigations conducted by law enforcement.

3.18. It is difficult to know the extent to which the authorities find and use all the financial intelligence and other information available for investigations of ML and TF and for tracing assets that could be confiscated. The statistics and data are inadequate. For example, there are no statistics available concerning financial and asset investigations solely for the ML offence (see TC Annex, R.33). The database held by the public prosecutor's office does not make the internal exchange of information between the law enforcement authorities very easy, mainly because of an inadequate IT system and imprecise input criteria.

3.19. Nor do the data provided by the Belgian authorities reveal the extent to which the law enforcement authorities seek financial information from abroad in the context of mutual legal assistance, to provide further evidence in proceedings concerning ML and TF (see Section 8).

3.20. The information provided nevertheless tends to show that, in criminal prosecutions, **the available information and databases are not searched and used in the most effective way.** The Public Prosecutor

explained that the complexity of ML cases often requires using a number of investigative actions such as international rogatory commissions, banking investigations, asset tracing or technical investigations such as wiretapping. It follows that long and costly investigations therefore need to have both specialised judges and investigators, and this can have an impact on investigative capacity in this area.

3.21. One investigating judge indicated that he only carried out full **asset investigations on rare occasions** because they took up significant amounts of investigators' time, which was a problem given the shortage of manpower, so the tendency was to focus on assets that were readily available (see IO 7). However, in a number of cases it seemed that investigators had managed to trace back along a series of transactions and locate the proceeds of offences, and investments made using these proceeds, including abroad (e.g. ruling of the Final Court of Appeal [*Cassation*], 17 December 2013). The research was often more detailed when there were victims to be compensated (e.g. in the case of ML linked to fraud).

3.22. The CTIF noted that during the past few years, several large cases had been transmitted to the judicial authorities and dealing with significant amounts of ML. However, the cases did not end successfully because the acts fell beyond the statute of limitations and violated rules on reasonable delay. To this should be added that a not insignificant number of cases were simply closed on expediency (*principle of opportunity*). **This finding reinforces the conclusion that the use of financial information by judicial authorities is not done systematically or appropriately** (even if this shortcoming is not the only one that would explain the problem with delays, see IO 7).

(b) Types of Reports Received

3.23. **CTIF acts as a central agency for receiving communications from the reporting entities concerning ML and TF and as a filter between these reporting agencies and the judicial authorities.** Reports are issued by many entities, particularly in the financial sector and the designated non-financial professions (see table in Section 5), as well as many State agencies, particularly the police (for a detailed analysis of relations between CTIF and the financial institutions and designated non-financial businesses and professions, see Section 5.3).

Table 3.1. Suspicious Transaction Reports (STRs) and Cases

	2009	2010	2011	2012	2013
Number of STRs received	17 170	18 673	20 001	21 000	22 966
Number of new cases	3 201	3 220	3 323	4 002	5 063

Source: CTIF

3.24. While the number of STRs received is large, not all of the STRs have the same importance or require the same amount of attention. Thus 30% of STRs are based on 'subjective' criteria (suspicion), while 70% are based on 'objective' or automatic criteria (exceeding thresholds: e.g. RD of 1999 for casinos; Art.20 of the AML/CFT Law for real estate transactions; Art.21 for limitations on payments in cash). This latter category requires less analysis. The financial sector has generally accepted the practice of reporting suspicious transactions (STRs), which are overall of a high standard, clear and complete, thus permitting analysis of suspicious transactions. In the money exchange sector and, to a certain degree, for money transmitters, a practice of 'defensive' or automatic STRs was noted. These are not supplemental or follow-up STRs and are submitted automatically and without any suspicion for any new transactions carried out by a customer who has already been the subject of one or more STRs (see Section 5). To deal with the number of STRs and process them efficiently, the CTIF has, through its strategic analysis department, put into place a tool that identifies suspicious transactions and determines priorities. ML indicators are studied whilst taking into account identified criminal phenomena, modus operandi, frequency, and links to data recorded in the CTIF database. As well, the CTIF has contact with the reporting institutions, in particular to request supplemental information for analysis and processing of STRs. To improve the quality of STRs, the CTIF issued guidelines in December 2013 (also available on the CTIF website) that enable reporting institutions to fill in a standard STR form, which contains all elements needed by CTIF to conduct its analysis. Furthermore, based on the first

national ML risk analysis, **the CTIF developed in 2014 a risk-based approach** to the operational processing of ML cases based on STRs.

3.25. Since January 2010 CTIF has been able to receive STRs from the Federal Public Prosecutor's Office in the context of police or judicial investigations into TF, and from the European Anti-Fraud Office (OLAF) where there is a suspicion of fraud against the financial interests of the EU. This capacity was extended in March 2012 to officials working in State administrative agencies, where there is a suspicion of ML and TF. Based on this information, public authorities appear to be increasingly inclined to report suspected ML to CTIF. This is shown by the following table, even though it would be expected to see more reporting from enforcement authorities (police and public prosecutors) (see also the discussion of the lack of feedback from the public prosecutor's offices to CTIF above). As an example, FPS Finance drafted an internal circular to raise the awareness of its officials on the subject in October 2014 and to specify the various practical means of transmitting information between CTIF and FPS Finance.

Table 3.2. Spontaneous Reporting to CTIF by the Public Authorities

	2009	2010	2011	2012	2013	Total
Police	10	11	17	49	41	128
Judicial authorities – public prosecutors	5	3	6	5	13	32
State administrative agencies	14	17	30	7	14	82
Officials in State administrative agencies	-	-	-	31	66	97
Federal prosecutor's office (TF)	-	0	0	0	0	0
OLAF (fraud against the financial interests of the EU)	-	0	0	0	0	0
TOTAL						**339**

Source: CTIF

3.26. All information relating to cross-border cash movements is automatically sent to the central information management service of AGDA. This service forwards it to CTIF, which processes the information. Reports, drawn up if ML or TF offences are committed or suspected, are sent to the public prosecutor's office and to CTIF.

(c) FIU Analysis and Dissemination

3.27. **CTIF has an analysis department** with 25 to 30 staff, which has adequate human and material resources, and uses all the powers at its disposal to analyse and enrich the information it receives on reported transactions and facts, for the purposes of both prosecuting for offences and identifying and tracing assets that could be confiscated.

3.28. **CTIF manages its own databases for all intelligence received.** Although it enjoys extensive access to other databases for the purpose of adding information to its reports, CTIF cannot however access the register held by the BNB giving the identities of bank customers and their account numbers (register created by the Law of 14 April 2011). It therefore has to send requests to every bank operating in Belgium's financial sector when it needs details concerning a bank account, which is an onerous process for both the banks and CTIF and can pose problems as regards data protection.

3.29. If there is a sufficient level of suspicion, CTIF sends to the prosecution authorities an analytical report containing:

- the details of the persons concerned,
- a detailed description of the suspicious transactions, intelligence concerning the previous police records of the persons concerned (from the federal and local police), and

- intelligence gathered from various other public authorities (tax, social security, etc.) where appropriate,
- information obtained from the intelligence services,
- any publicly available information (from the internet) and
- a description of the ML or TF indicators.
- Identity documents, bank account application documents, account histories and supporting documents are sent with the reports.

3.30. Over the last five years (2009 to 2013), around 40% of reports based on suspicions of ML/TF (i.e. based on 'subjective' criteria) received by the CTIF were transmitted to judicial authorities, and 25% of reports based on fixed criteria or thresholds (i.e. 'objective' or 'automatic') were submitted. In spite of the number of files opened by CTIF, the number of files transmitted to judicial authorities went down in 2013, since the increase in suspicious reports occurred in the last months of 2013.

3.31. In the context of dissemination of its reports and to meet the requirement for confidentiality, CTIF works with many partners not only to add to its own information but also to strengthen action to combat ML and the predicate offences (in particularly the federal judicial police, local police, judicial authorities, tax authorities, intelligence services [SE, SGRS], National Social Security Office and customs [AGDA]). So for example, between the end of 2009 and the end of 2013, some 827 items of information from CTIF were received by the Anti-Fraud Co-ordination Service (CAF) at FPS Finance. This information enabled tax corrections to be made for this period worth a total of EUR 157 million.

3.32. **The reports and analyses produced by CTIF meet the operational needs and expectations of the competent authorities.** The prosecutors and judges met by the assessors feel that these reports and analyses are of a high standard, enable proceedings to be initiated, and point investigations in the right direction.

3.33. The average time taken by CTIF to process suspicious transaction reports and send a report to the prosecution authorities is approximately three months. All the authorities concerned feel that this is a reasonable amount of time.

3.34. Since 2009, CTIF has had its own strategic analysis department (with around four staff) which helps to provide a better understanding of ML/TF trends and to put the indicators and suspicions reported by the reporting entities into context. In particular CTIF keeps statistics, which it uses as the basis for the analyses it publishes, for example, in its annual reports, based on its own information, as well as on exchanges with other public authorities. CTIF provides training to its staff and participates in other training, for example, for the financial and insurance sectors.

3.35. **This type of analysis also enables CTIF to play a preventive awareness-raising role**, particularly by sending out information and indicators concerning suspicious financial transactions to the sectors concerned (e.g. on VAT carousels). It publishes and updates the guidelines to be used by the organisations and professions covered by the AML/CFT system. On its website (www.ctif-cfi.be), it disseminates typologies information and analyses. A number of strategic analyses (around 38 since 2009) have been produced for the authorities and reporting entities (e.g. *Money Laundering and the Use of Limited Companies*, *The Proliferation of Weapons of Mass Destruction*, *Terrorist Financing – Yemen, Money Laundering and Football*). CTIF also regularly takes part in working groups, in fields that could be useful for gathering further information to enrich its operational analyses (e.g. the CTIF/State Security working group on proliferation, Working group on the diamond trade and Working group on fraud in sport (*Transparency International*, Brussels)).

(d) Co-operation and exchange of information

3.36. As indicated above, the CTIF works with a number of public authorities in its work to gather and analyse information.

3.37. To carry out judicial investigations (*informations judiciaires*), **prosecutors and investigating judges** make requests to police, tax authorities, the BCE, banks, etc. For ML cases, the number averages 4 200 requests per year for the last eight years (not including the requests made by investigating judges, who are responsible for the largest ML cases). In this context, the judicial police also have access to a number of databases and work with various government agencies and foreign colleagues. The police generally have sufficient resources to carry out its mission.

3.38. Nevertheless, **the relations and the dialogue between the CTIF and the prosecution authorities should be reinforced, particularly in operational cases.** Although the CTIF and the public prosecutor's office meet regularly to discuss typologies (e.g. in 2011 there was a meeting with the Federal Prosecutor's Office on fraud via the internet), as well as terrorism and TF, co-operation on specific ML cases is poor. The public prosecutor's office has access to part of CTIF's database (concerning the files transmitted) through the judge points of contact, but little use has been made of this access (the database has been consulted 54 times since 2010). Apart from the legal obligation to inform CTIF of final decisions in cases originating with suspicious transaction reports (an obligation that is not always observed), the public prosecutor's office passes on little information to CTIF spontaneously about the follow-up given to its reports, particularly concerning asset freezing. Because final decisions in ML cases can come years after the facts were originally reported, the added value of receiving this information is diminished. CTIF and the public prosecutor's office both agree that the contact between the two has long been insufficient. Horizontal co-operation needs to be improved generally: It is important that CTIF receive feedback from the prosecution authorities on the initiation of any proceedings and on any asset seizures made, well before the final court judgment. CTIF may request this information on a case-by-case basis consistent with the needs of a case through the liaison officers of the Federal Police seconded to CTIF. However, without regular and appropriate feedback, it is more difficult for CTIF to do an effective job of analysing new evidence, which could be compared with cases already sent to the public prosecutor's office. Some improvements have recently been made (in October 2013) so that cases opened on the basis of information supplied by CTIF are identified as such, and this should increase the amount of feedback given.

3.39. **Likewise, the relationship between CTIF and the OCSC could also be strengthened.** CTIF, which examines STRs and knows of the assets that could be involved in ML or predicate offences, **does not have direct access to the OCSC database** and must make requests for such information as needed. Knowledge, in a timely manner, of a possible link between assets entered in the database and the suspect assets about which it receives information could improve tracing of assets with a view to their confiscation. The Belgian authorities indicated that, besides the ability to request information from the OCSC on specific cases, the CTIF and the OSCS both have liaison officers assigned to the Federal Police, who meet annually to exchange information on the seizures that have taken place in relation to urgent CTIF cases (2- to 5-day freezes, cases with significant amount of money to freeze). There as well, the communication of information on a case-by-case basis does not provide for optimal conduct of asset tracing, given the dynamic of seizures and confiscation. During the on-site visit, it was found that the various authorities had no common viewpoint on the number and amounts of seizures and confiscations, in particular among the OCSC, the CTIF, the public prosecutors and the investigating judges. This means that financial information is not optimally sought out and exploited.

3.40. **CTIF is working on an action plan** that would establish a monitoring system, and on strengthening co-ordination between the various partners in the fight against ML, TF and their prevention.

3.41. The figures given in Table 3.3 below show the number of requests made by CTIF to the reporting entities in the context of its analyses (not counting the databases to which CTIF has direct access).

3.42. **The CTIF is particularly careful in practice to protect the confidentiality** of the financial and other intelligence it gathers, and an IT security policy has been drawn up. CTIF's offices, where the STRs are processed and which can initiate requests and communications with other authorities, are also separate from other agencies. Exchanges of intelligence with foreign FIUs also take place across secure networks, FIU.NET

and Egmont Secure Web.2 However, it should be pointed out that CTIF's reports are not sent to the public prosecutor's office via dedicated channels (they are generally sent by courier or registered post).

Table 3.3. Sources of information

Public authority	2010	2011	2012	2013	Total
Foreign counterparts	2 457	1 376*	1 639	1 319	6 791
Tax authorities	211	337	328	317	1193
FPS Social Security	157	299	272	248	976
State Security	73	116	105	118	412
Fraud pattern monitoring centre	91	76	74	51	292
SGRS	56	82	53	62	253
OCAM	18	47	35	47	147
OLAF	14	16	18	13	61
National Employment Office		2		1	3

Source: CTIF

* Until 2010, intelligence requests sent via FIU.NET (between EU FIUs) were counted in terms of the number of people involved. Since 2011, the requests submitted have been counted in terms of the number of cases (there can be several people involved in a single case).

3.43. **Regarding international co-operation, CTIF has extensive mutual assistance relationships** with its foreign counterparts (see above table on CTIF's sources of information; CTIF also receives 450 requests per year on average). The FIU's co-operation with its foreign counterparts appears to be adequate and effective (see Section 8).

3.44. ***In conclusion,* Belgium's legislative framework provides the competent authorities with a very broad selection of measures for searching for financial intelligence** and any other relevant information in the context of ML/TF investigations, for the purpose of both demonstrating that offences have been committed and for tracing the associated assets.

3.45. **The CTIF gathers a large amount of information on ML and TF**, and its research is of a high standard. CTIF uses a large number of databases and maintains co-operative relationships with any national and international authority capable of contributing or adding value to its work. CTIF also performs vulnerability analyses of the sectors covered by the law, and these are sent to all the authorities and persons concerned. Its reports are appreciated and found to be useful by law enforcement authorities.

3.46. Law enforcement authorities make use of and research information, both to initiate an investigation and to carry out proceedings; however, they do not do so in an optimal manner. Limited human resources do not allow prosecution authorities to use the information received correctly or to fill in the gaps so as to reveal ML cases, particularly large ones or those with international implications.

3.47. **Belgium has achieved a substantial level of effectiveness for Immediate Outcome 6.**

2 FIU.NET is a decentralised computer network that assists EU FIUs in their efforts to combat ML/FT. The system is decentralised in the sense that there is no central database where all the exchanges are recorded. When intelligence is sent from one FIU to another, it is stored securely but only in the FIU.NET databases of the parties involved. Egmont Secure Web is a secure internet system that allows members of the Egmont Group to communicate with one another using a secure electronic messaging service and to request and share information about cases, patterns, analysis tools, etc.

3.4 Effectiveness: Immediate Outcome 7 (ML Investigation and Prosecution)

3.48. ML investigations are carried out by the **Belgian public prosecutor's office and the investigating judges**, and prosecutions by the public prosecutor's office. The legislative framework places a broad range of investigative measures at their disposal, enabling them to carry out detailed investigations so that all those involved in offences (perpetrators, co-perpetrators, accomplices, etc.) can be prosecuted (see TC Annex, R 30 and R 31). Investigations can be opened by an investigating judge once a pre-trial investigation has been ordered, since judges have greater enforcement powers at their disposal: 100 ML cases on average are subject to judicial investigation every year.

3.49. **The public prosecutor's office and investigating judges are responsible for prosecutions of offences.**

3.50. The public prosecutor's office and investigating judges can seek assistance with conducting proceedings from the **Federal Judicial Police** (in big cases) and the other police services. They have the power to investigate multiple aspects of offences (administrative, tax, etc.). The federal police also carry out ML detection, for example by detecting and intercepting currency movements (Cash Watch[3]) or as part of a project to detect suspicious capital increases in the context of the involvement of legal persons in ML schemes (see Section 7). The police also have a special section dealing with the diamond trade.

3.51. The ML offence is well accepted by Belgian law enforcement: it is frequently prosecuted, particularly in association with economic offences that generate significant profits to be traced because they facilitate confiscation (fraud, offences linked bankruptcy, benefits and tax fraud), especially in cases of self-laundering.

(a) Launch of investigations and prosecutions

3.52. **In practice it is mainly the public prosecutor's offices in Brussels and Antwerp that handle major ML cases** (by way of an indication, these Offices receive around 37% and 15% respectively of STRs submitted by CTIF).[4] Although the other public prosecutor's offices also handle ML cases, there is no consensus among the different offices and investigating authorities as to the criteria for launching and conducting an investigation. The Brussels public prosecutor's office, which has a very large workload, has set criteria (below) to focus the available investigative means on certain cases so as to avoid the dispersal of its resources. The information and statistics provided by the public prosecutor's office tend to show nonetheless that the prosecution authorities have a very large workload.

3.53. **There is no general criminal policy guidance for AML action** covering the whole of Belgium, which would allow clear priorities to be set for ML investigations. Nor is there any national circular concerning ML, despite the work done on this by the Ecofin Network of the public prosecutor's offices since 2009.[5] In particular, there is no strategy or co-ordination between the different public prosecutor's offices and investigating judges responsible for ML investigations. Practices differ from one district to the next, and even between different judges, signifying a lack of methodology. Finally, it is impossible to make an overall assessment of whether ML activities are actually investigated and prosecuted commensurate with the level of risk.

3.54. According to the Brussels public prosecutor's office, **the main criteria for initiating** proceedings are all of the following: the current or future possibility of seizing sums of money, the seriousness of the

3 See FATF (2005), para. 51, 292, 467.

4 In an attempt to make the judicial system more rational, the number of judicial districts was cut from 27 to 12 (Law of 1 December 2013). The Public Prosecutor's Offices serving them also receive ML cases.

5 The work that this network of experts on combating economic and financial crime does with the law enforcement authorities on ML is limited and does not make up for a lack of guidance (the organisation was set up by legislation and has been operating officially since 2003 and informally since 1997).

predicate offence (terrorist financing, trafficking of property or drugs, fraud, serious and organised tax fraud, people trafficking, organised crime, exploitation of prostitution), the ability to investigate and prosecute (the Public Prosecutor and the police must have sufficient resources to see the case through) and the existence of a significant amount of laundered money. **These criteria do not take any account of the sectors identified as having a high risk of ML** or the difficulties of ML investigations. The criteria have been mainly due to the workload and lack of staff with the public prosecutor's office, particularly in the francophone section of the Brussels public prosecutor's office.

3.55. **The number of cases related to precious metals or diamonds is limited**, which is surprising given the size of these markets in Belgium and the risks they pose: The Belgian authorities cited around ten sentences related to the diamond sector since 2003 (certain of these were linked to human being and narcotics trafficking; others with tax fraud); one case led to a plea bargain of EUR 10 million with tax fraud as the predicate offence . The Belgian authorities also mentioned two significant cases that are in progress (one of these for ten years), involving suspected organised ML. The observation is the same both for cross-border transportation of cash, for which the number of proceedings does not appear to be commensurate with the number of indictments made, and for legal persons and legal and/or financial professions, for which the activities and risk are considered to be significant, according to a study by the Federal Police (see *Security 2011: the Police View* incorporated into the development of the National Security Plan 2012-2015).

3.56. The deficiencies identified in the national risk assessments, including the lack of any method for determining the biggest threats and the most vulnerable sectors, coupled with the lack of statistics for investigations, make it difficult to determine whether the level of investigation of ML activities is commensurate with the level of risk.

3.57. Despite having limited criteria for launching investigations and proceedings, the public prosecutor's offices still initiate a **large number of proceedings for ML**, either alone or in conjunction with predicate offences. **For 2013, the total number of registered ML cases was 1 762 for all the public prosecutor's offices in Belgium** (2 105 in 2012, 1 866 in 2011) (this represents 0.24% of new cases on average and 0.6% of cases sent for judicial investigation). For the years 2005-2013, the public prosecutor's office estimated that about half of the cases had received or were to receive 'criminal follow-up'[6] (and half were to be closed). Therefore, it is estimated that the number of judicial investigations (*informations et instructions*) opened each year relating to ML amounted to a little less than 800 for this period. This is evidence of significant activity in the area of criminal ML investigations.

Table 3.4. Number of ML Cases Received by Public Prosecutor's Offices from 2005 to 2012

2005	2006	2007	2008	2009	2010	2011	2012
1 128	1 311	1 716	1 409	1 376	1 658	1 865	2 108

Source: Database of the College of Prosecutors General – statistical analysts.

6 The Belgian public prosecutor' office indicated that the possible legal outcomes in criminal cases include the following : plea bargain ; mediation ; summons, hearing and decision (after an investigation by the prosecution authority [*information*]; judicial or in chambers investigation(*instruction ou en chamber du conseil*); hearing and decision (after judicial investigation); closure with no further action but with a court supervised probation; or administrative fine. This does not take into account the decisions made by investigative and tribunals; cases where the proceedings were closed without trial or resulted in acquittal of the defendant are also possible legal outcomes in these cases.

(b) Success of investigations and prosecutions

3.58. Among their successes, the Belgian authorities mentioned the following ML cases:

Box 3.1. Successful money laundering cases

Co-operation between FIUs

The Belgian public prosecutor's office launched an investigation based on information received from CTIF, which was based on a report received from a foreign FIU (Guernsey). A sum of USD 10 million from an account in the name of a company in Dubai had been deposited in an account opened at a local bank by a company registered in the British Virgin Islands. One of the beneficial owners lived in Brussels and had already been convicted in Belgium of a very large VAT fraud.

The investigation by the public prosecutor's office could not establish the legal origin of the USD 10 million transferred to Guernsey. The good relationship between the Belgian investigators and the authorities in Guernsey prompted a quick reaction leading to the freezing of the funds pending letters rogatory and referral to the Belgian authorities. This referral will make the funds subject to confiscation orders issued by the Belgian courts and should enable the suspect's unpaid tax debts to be partially liquidated.

Money laundering without a predicate offence

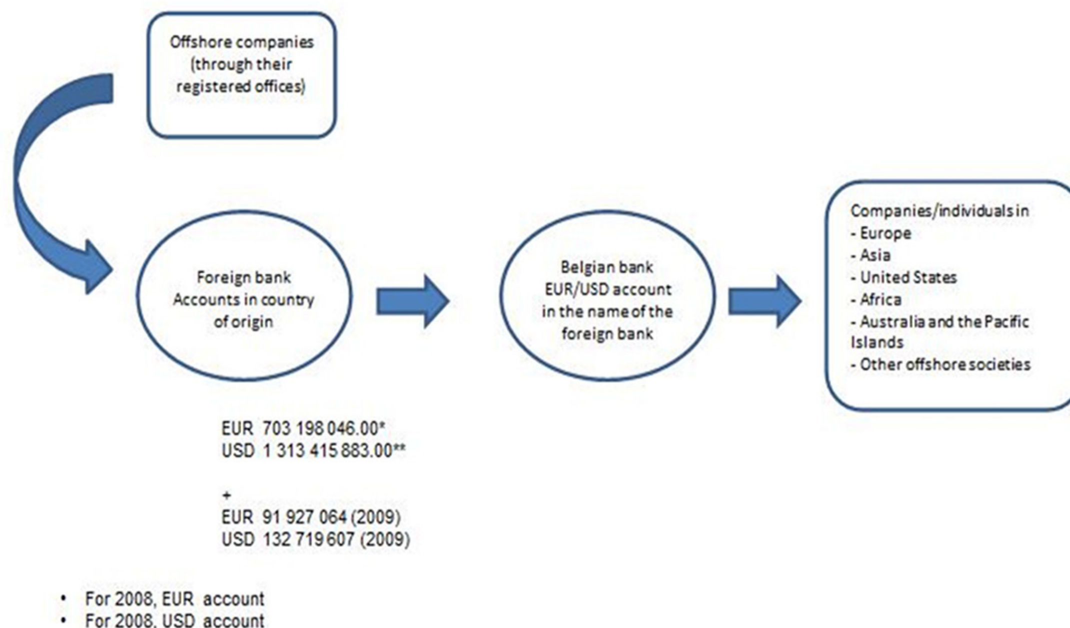
An appeal court confirmed the conviction for ML of a person even though the origin of the funds had not been ascertained. The judges considered that any lawful provenance for the funds used to buy the assets concerned could be ruled out. The funds in this case (nearly EUR 5 million), of unknown origin, were invested in companies and property in Romania and Canada. The judges observed that the funds subject to ML could not have come from the official personal incomes of the appellants, nor profits from their company, donations or inheritances, and nor could they have come from the activities that the appellants claimed they were from.

3.59. These cases illustrate the Belgian authorities' ability to handle ML cases by means of detailed investigations. However, an examination of some other cases presented by the Public Prosecutor (23) shows that most ML investigations relate to ML offences committed in Belgium in association with predicate offences also committed in Belgium. **Most prosecutions for ML are for self-laundering**. The patterns that appear most frequently are cases of fraud, tax fraud and drug trafficking in Belgium where the proceeds are laundered in Belgium. Where legal persons are involved, they are actually instrumentalities created by natural persons, and where they are prosecuted they tend to end up being acquitted (in the examples supplied).

3.60. The Belgian authorities reported a few cases where organised ML schemes, and third parties were involved in the predicate offences. In the first case, two payable-through accounts were opened in Belgium in the context of correspondent banking activities by a bank established in an Eastern European country, for the purpose of paying through funds belonging to multiple offshore companies (customers of the bank) to various counterparties all over the world. The case was closed without being followed up because court proceedings had already been initiated in the country where the bank was established, and the evidence had therefore been sent officially to the authorities in the other country in application of the EU Convention on Mutual Assistance in Criminal Matters.

3.61. Two other cases involving organised ML schemes and 3rd party ML with predicate offences linked to the diamond trade sector are in progress (one for a number of years); however, these were not discussed (see below on technical problems).

Chart 3.1. Money laundering through offshore companies



3.62. **The law enforcement authorities each have their own databases** (public prosecutor's office, investigating judges, courts) **but they are not linked together.** Only the Federal Prosecutor's Office was able to provide statistics, though these were prepared using manual counting methods because of the small number of cases it handles. The database shared by all the public prosecutor's offices is out-of-date and was designed not for statistical purposes but for administrative ones, and therefore cannot provide a break down by crime. It indicates the stage in proceedings of a case and what the main charge was when the case was first entered in the system, but this information is of no use for a qualitative analysis. This problem had already been identified in the 2005 MER (paragraph 49). CTIF also has for its part, statistical data on criminal proceedings, including on the number of convictions of persons charged and confiscations, as far as the cases are based on CTIF reports. Nevertheless, the statistics do not distinguish between ML cases and those involving other offences. They use different criteria and were created for different purposes. Based on this observation, the statistical data of the prosecution authorities and the CTIF cannot be compared or used appropriately.

3.63. **There are a number of factors that lessen the chances of success of ML investigations and prosecutions in Belgium.** As indicated in IO 6, the data supplied do not reveal the existence, still less the number, of **parallel financial investigations** for the purpose of sanctioning potential criminals effectively. Nor is it possible to find out how many cross-border ML investigations are conducted or investigative measures are taken by the Belgian authorities in this context (reports of predicate offences committed in Belgium with ML abroad and vice versa), though examples of this do exist[7] and the public prosecutors and investigating judges met by the assessors say that they often make use of mutual assistance. This is an important matter given the identified risks of cross-border cases.

3.64. ML cases, particularly cases where the assets are of high value, and cross-border cases, are not a clearly defined priority.

7 *Cassation*, 20 November 2013, concerning a conviction in Belgium for laundering the proceeds of and offence committed abroad (but subsequently closed); and conversely Antwerp Court of Appeal, 19 December 2013, for the laundering in Belgium of the proceeds of offences committed abroad by a Belgian resident.

3.65. The consequence of this is that the number of cases closed without being followed up, for expediency or criminal policy reasons (insufficient means of investigation, other priorities), is high and is increasing.[8]

- 2010: 46.4%, of which 14.5% because of insufficient investigative means and 31.9% because of other priorities;
- 2011: 42.9%, of which 14.6% because of insufficient investigative means and 28.3% because of other priorities;
- 2012: 55.9%, of which 17% because of insufficient investigative means and 38.9% because of other priorities.

3.66. This finding reveals that **the Belgian law enforcement authorities have insufficient resources** for investigating ML. Moreover, it is not possible to find out what proportion of cases are closed without follow-up once the judicial investigation has begun. The number of ML cases where the case is dismissed is not known either.

3.67. **The statistics provided by Belgium for convictions** for ML show not the number of people convicted but the number of offences judged to have been established, with the consequence that the same person is often convicted for several ML offences (Art. 505(1)(2), (3) and/or (4)). If a person has committed three types of ML offence, the statistics count three occurrences. The figures do not show the number of people convicted because it is common for a person to have committed multiple ML offences and the number of convictions per offence is much higher than the number of people convicted.

Table 3.5. Number of convictions for each type of ML offence

	2006	2007	2008	2009	2010	2011	2012	2013 (nov.)
505(1)(2) illegal transactions using the proceeds of offences	157	197	141	102	115	154	138	70
505(1)(3) conversion or transfer	87	99	95	130	92	97	82	33
505(1)(4) concealment of origin	51	61	50	52	28	41	48	20

Source: FPS Justice - Criminal Policy Department

3.68. These figures, though high for the size of the country, should be examined in conjunction with the information received about quality: once again, **a large number of these convictions are secured in domestic cases for self-laundering.** Convictions of third parties for ML appear to be rare. Comparing the data for the number of investigations launched by the public prosecutor's office and the number of convictions is impossible and the success rate can therefore not be determined. According to a CTIF study relating to the period 2005 to June 2014, for the cases sent by CTIF to the public prosecutor's office and for which a sentence had been handed down, the following observation can be made: 550 persons out of 2 332 persons involved were not prosecuted or convicted for ML. In these CTIF cases, 1 483 persons received a prison term, 1 240 received a fine and 589 were subject to confiscation (whether for ML or not). Moreover, for all verdicts: 51 cases were considered to be beyond the statute of limitations; 50 cases resulted in sentences of community service; 153 cases were acquittals; for 70 cases the sentence was deferred; 37 cases were simple guilty verdicts; 15 cases were declared inadmissible; for 1 case the court was determined not to have territorial jurisdiction. This observation illustrates the difficulty encountered by Belgian authorities in the effectiveness of their criminal prosecutions.

8 CTIF likewise indicated that in the last 10 years, 62% of cases sent to the public prosecutor's offices have been closed without being followed up.

3.69. On the other hand, Belgium has a number of recorded cases of **ML convictions without a conviction for the predicate offence**, as shown by a CTIF study of the court judgments it was able to gather (see table below). This is possible chiefly because of Art.43 *quater* PC, which also provides for confiscation with division of the burden of proof between the public prosecutor's office and the accused as regards the origin of the assets to be confiscated (see IO 8).

Table 3.6. Sample of 599 convictions between 2007 and 2014 stemming from CTIF reports forwarded to the Public Prosecutor's Office, of which CTIF received a copy

Convictions for ML only	167 offences
Convictions for ML linked to one or more crimes covered by AML/CFT Law	432 predicate offences
ML not accepted by the public prosecutor's office	157 verdicts
ML not accepted by the court	53 verdicts

Source: CTIF

3.70. The law enforcement authorities have identified certain technical difficulties:

- **Convictions of legal persons are difficult to secure** (Art. 5 PC), because the legislative framework is complex to apply (many criteria have to be met). The Belgian authorities explain that this is due to a number of factors: legal persons are often merely 'fronts' without any actual financial existence; legal persons have ceased to exist by the time the criminal case is brought; legal persons tend more to be victims of ML operations. Criminal prosecution authorities tend to focus more on the natural persons that set up the legal entities in order to launder money. However, the Federal Judicial Police are running a project to detect suspicious capital increases as part of ML schemes. In one example judgment provided, the legal person used to launder some of the misappropriated funds, was prosecuted for ML but was acquitted because the court decided it had no independent volition apart from the main defendant (who was convicted for producing fraudulent invoices; Brussels Court of Appeal, 10 October 2013). However, some cases of structured ML involving legal persons have been detected. In two other cases, some financial institutions entered into plea bargaining with the Public Prosecutor in 2013 and 2014 in cases of the laundering of tax fraud committed by customers, respectively for EUR 2.2 million and EUR 700 000. Legal persons account for less than 2.85% of all persons involved in ML cases opened by the public prosecutor's office (for the period 2005 to 2012).[9]

- **Plea bargaining (simple or extended)**: because the plea bargaining measure was inappropriate in the case of complex economic and financial crimes, particularly concerning ML, the scope of the procedure was amended in 2011 to include '**extended plea bargaining**' (Art. 216 *bis* CCP). This measure is the response of the public prosecutor's office to the risk of exceeding the statute of limitations or a 'reasonable time' for the proceedings.

  Example: In a case opened in 1996, principally for acts of ML dating back to 1992, an extended plea bargain was agreed in 2011 by the *Prosecutor General*, Brussels Court of Appeal, for the sum of EUR 22 million (in this agreement there was also the confiscation of property linked to these offences.)

- Extended plea bargaining was offered in 67 ML cases (mainly in Antwerp) and ordinary plea bargaining in 117 cases (the number of plea bargains concluded is unknown). Since August 2011, 17 extended plea bargains were agreed for cases of the local public prosecutors that had either

9 Source: Database of the College of Prosecutors General – statistical analysts.

ML as the sole offence or as accessory offence. The results are not consistent: while the financial benefits abandoned by persons seems to be above the amount of the suspected ML, certain amounts linked to plea bargains are less than 5% of the amount of suspected ML. Plea bargaining allows for proceedings to end with the agreement of all parties: amounts up to EUR 23 million have been collected; agreements deal with payment tax fines. The Federal Prosecutor's Office never cites ML prevention as justification for executing seizures abroad because certain countries require proof of the predicate offence. For this reason, there is no plea bargaining involving ML prevention for the Federal Prosecutor's Office. Although this measure has the advantage of ending up with the application of a fine and/or confiscation in cases that could otherwise have been struck off under the statute of limitations or might have failed due to a lack of investigative resources, **it leaves no trace on a person's criminal record** and can therefore pose problems, particularly in the event of repeat offenders (as well as concerning 'fit and proper' accreditation and checks carried out management and shareholders (see Section 6.3(a)).

- **The application of Belgian legislation** (the 'Franchimont' Law[10]) revealed the use of rights granted to the defendant **purely as delaying tactics** in ML cases. The use of certain rights tends to push the proceedings beyond the statute of limitations in criminal cases. The parties may, at any time after the investigation stage is finished, ask for certain additional procedural formalities to be completed, the execution of which can delay the proceedings by several months, and they can do this more than once. To remedy this, the Belgian parliament has moved to allow the statute of limitations to be suspended under certain conditions.[11]

3.71. CTIF has for some years been drawing politicians' attention in its annual reports (1996, 1999, 2000 and current) to the fact that the judicial follow-up of ML cases forwarded by CTIF to the judicial authorities is 'a problem that has been raised on numerous occasions and deserves particular attention'.[12]

3.72. These difficulties have an impact on the handing down of sentences. **It is impossible to say whether the sanctions applied are effective, proportionate and dissuasive** because most persons are convicted for several offences, including ML. Thus, the sanctions handed down sometimes exceed the legal minimum foreseen for ML (five years) as a result of the aggregation of offences. Conversely, certain persons are sentenced to lower fines (EUR 200-2 000) without imprisonment. On the basis of the verdicts for CTIF cases, it can be observed that the sentences of imprisonment (handed down for ML alone or along with other offences) are most often under one year (45%), and 62% are under two years. When deciding the severity of the sanction, the courts take into account the previous criminal record of the convicted person, the degree of involvement in the offence and the reasonableness of the proceedings (the dissuasiveness of the sanction). For further information on this, see the table below, which is based on the CTIF cases that have resulted in a verdict, whether for ML or other offences.

10 Law of 12 March 1998 on the improvement of criminal procedure at the police investigation and judicial investigation stages (police investigation is led by the public prosecutor's office, and judicial investigation by the investigating judge).

11 Law of 14 January 2013, which entered into force on 10 February 2013.

12 See also CTIF, *White Paper on Black Money.* CTIF (2013), page 35.

Table 3.7. Prison Terms Handed Down for CTIF Cases (ML or Other Offences)

Number of persons convicted	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total	%
≤1 year	158	95	86	63	70	49	82	40	23	666	45.15 %
1 - 2 years	67	51	38	49	49	31	33	20	17	355	24.06 %
2 - 3 years	53	17	36	36	21	24	12	13	6	218	14.8 %
3 - 4 years	28	9	16	14	12	15	10	3	8	115	7.80 %
4 - 5 years	9	2	14	9	22	9	2	4	6	77	5.20 %
≥ 5 years	19	0	3	6	2	9	2	2	1	44	2.99 %
Total	**334**	**174**	**193**	**177**	**176**	**137**	**141**	**82**	**61**	**1 475**	**100 %**

Source : CTIF

3.73. The court takes into account offences committed, the criminal record of the person and the reasonableness of the length of the proceedings, etc. On the basis of data provided by the Belgian authorities, it was not possible to determine with any accuracy the amount of fines incurred for ML cases. Finally, the 1999 law provided for the recording of convictions of legal persons in a legal persons' criminal record held at the court registry, but this system is not yet in place (see Section 7).

3.74. **The public prosecutor's office has stated that some of these deficiencies are due to a lack of human, material and documentary resources**; however, it tries to do its best with the limited resources allocated to criminal law authorities: Not all cases are entered into the computer system yet, resulting in a failure to follow them up and an increased risk of the case files or parts of them going astray or being misfiled. The fact that judgments are not classified and stored electronically also means that knowledge of them is lost and makes it more difficult to analyse the jurisprudence. The judges from the public prosecutor's office do not have full electronic versions of case files at hearings, which can cause difficulty in very big cases. The public prosecutor's office and the investigating judges are not given any special training on ML; however, many of them have a basic knowledge of accounting and expertise in economics. The public prosecutor's office is considering organising special training on ML and setting up a platform for sharing experiences.

3.75. Several important case files that CTIF had sent to the judicial authorities concerning the laundering of significant sums of money were not followed up because **the acts were beyond the statute of limitations or a 'reasonable time' for the proceedings had been exceeded**. Some court judgments revealed cases of exceeding the statute of limitations and sentences shortened due to the length of the proceedings.[13] For the same reasons, a certain number of convicted persons received no sentence despite the guilty verdict handed down by the court. Such proceedings, which appear to be quite common according to those that the assessors met in Belgium, prevent effective and dissuasive sanctions from being handed down. This also has implications for confiscations since they are linked to convictions; this was also commented on by one of the sitting judges met by the assessors. The shortage of personnel at the public prosecutor's offices and courts of appeal does affect timescales, but certain technical issues (explained above) are also to blame. The OECD already indicated in 2005 – and noted with greater emphasis in 2013 –the lack of resources of the prosecution authorities and its effect on criminal proceedings in the area of transnational corruption.[14]

13 See in particular Judgment of the Brussels Court of Appeal, 21/10/2013 (not final because of an appeal to the *Cour de Cassation*), Judgment of the Brussels Court of first instance, 26/06/2012, Judgment of the Brussels Court of first instance, 15/05/2012 and Judgment of the Brussels Court of Appeal, 07/05/2013.

14 OECD: *Reports on Implementing the OECD Anti-Bribery Convention in Belgium* ; Phase 2 in July 2005, Phase 3 in October 2013.

3.76. ***In conclusion*, the Belgian authorities are imbued with the culture of combatting ML.** They also have the necessary investigative techniques. In consequence, there have been a significant number of convictions for ML in Belgium. Moreover, it is not unusual for convictions to be obtained without the predicate offence being proven due to the distribution of the burden of proof in certain cases of ML. **However,** prosecutions are most often focussed on the predicate offences where ML is an additional charge against the same person (self-laundering).

3.77. **The number of cases highlighting structured ML schemes where third parties assist with laundering of the proceeds from offences committed by the main offender are limited.** For some offences, particularly those involving the cross-border transportation of cash, precious metals and diamonds, the number of prosecutions is not commensurate with the level of risk cited by the Belgian authorities.

3.78. **The scope of actions to combat ML is limited** by the absence at the national level of an overall AML strategy and co-ordination among prosecutors responsible for ML cases. **A lack of resources,** material means, training and co-ordination among the law enforcement authorities reduces their effectiveness. **Too many cases are closed for reasons of expediency**, reducing the criminal justice response rate. In addition, the length of certain criminal proceedings results in the statute of limitations being exceeded or reduced severity of the sanctions.

3.79. However, in the context of the evaluation and its preparation, the Belgian authorities revealed the existence of deficiencies and expressed a desire to raising the priority of ML prosecutions, and gave examples to support this.

3.80. **Belgium has achieved a moderate level of effectiveness for Immediate Outcome 7.**

3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

(a) Priorities

3.81. The Belgian authorities see confiscation of the proceeds and instrumentalities of a crime, or property of a corresponding value, as being one of the main objectives of AML activity. So training in seizure and confiscation is mandatory for future judges. During these sessions, the OCSC passes on best practices and actions to be avoided, emphasising the need to make confiscations more effective. The legislative framework, which is sophisticated and comprehensive, allows the seizure and confiscation on a large scale of all assets that have been laundered or are the proceeds of predicate offences (see R 4). The system in place also allows the confiscation of assets of a corresponding value where the direct proceeds of offences are no longer available. However, it should be remembered that confiscation is an additional penalty (*peine accessoire*) tied to a criminal conviction.

3.82. The **Brussels public prosecutor's office**, which specialises in AML, **uses the possibility of seizing assets with a view to their confiscation as a criterion for prioritising cases**, because of the large number of cases to be processed. Investigating judges also recognise the importance of this criterion. However, the statistics presented are fragmented (see below). The police have been made aware of the need to direct their investigations towards the proceeds of crime: an indicator was introduced in 2013 to monitor the amounts seized, as part of a programme to recover illegally gained and laundered assets,[15] but its impact has not yet been evaluated.

3.83. **The prosecution authorities have the power to order detailed financial investigations** to detect any assets to be seized and subsequently confiscated, and not only those that are directly available (see IO 6). These investigations can cover assets held abroad as well as those held in Belgium. They can be linked both to

15 The police set up this programme in 2012 following the publication of the 2012-2015 National Security Plan, approved by the Justice and Interior Ministers, in application of Art. 95 of the integrated policing law.

the predicate offence and to ML. Information provided makes it difficult to determine whether the authorities use these measures systematically, regularly or just occasionally. Investigations aimed at obtaining the confiscation of additional assets may also be carried out where it can be presumed, on the basis of serious material indicators, that the assets were generated by ML or TF (this measure is available only for a few offences; Art.43 *quater* PC, see the 2005 MER, paragraph 155). An investigation of this kind may be requested by the public prosecutor's office or ordered by the judge who handed down the guilty verdict (Art. 524 *bis* CCP). The Belgian authorities were unable to provide statistics or examples of the use of this measure in ML cases.

3.84. Belgium strengthened its capacity to trace assets by passing, on 11 February 2014, the Law on various measures aimed at improving the **recovery of assets** and costs in criminal cases (I and II) (entry into force on 18 April 2014, inserting Art. 464/1 to 464/41 CCP). This law improves the effectiveness of confiscation ordered by the courts by creating an enforcement investigation in criminal cases (*enquête criminelle d'exécution*), defined as a set of actions aimed at identifying, tracing and seizing assets where a conviction requiring payment of a fine, a special confiscation, or payment of legal fees is to be enforced. Proceedings are organised at the direction of a specialist judge from the public prosecutor's office, by the OCSC, or with its support. The competent authority has extensive means of investigation for tracing assets so that asset-related sentences, particularly confiscation, can be enforced. Because the law is so recent, it is not possible to say at this stage how effective it is, but it shows the priority given by the Belgian authorities to depriving criminals of the proceeds of the offences they commit.

3.85. As far as provisional measures are concerned, **CTIF has the power to block financial transactions** (for up to five days) when a report has to be sent to the to the public prosecutor's office and there is a danger that it will no longer be possible to seize funds.

Table 3.8. Measures to block financial transactions

	2009	2010	2011	2012	2013	Total
Number of blocking measures	38	60	33	36	25	192
Amount (EUR millions)	10.47	135.84	183.59	11.81	12.34	354.05

Source: CTIF

(b) Central Office for Seizure and Confiscation (OCSC)

3.86. **The OCSC, a specialist unit** attached to the public prosecutor's office, has been operational since September 2003. This unit, which has around 37 staff, some of whom are liaison officers from the police and the tax authorities, is responsible for **maintaining the value of seized property and enforcing court confiscation orders.** In practice, the OCSC has observed a marked preference among judges for the rapid disposal (sale) of seized property that depreciates rapidly (goods, vehicles, buildings, etc.), enabling these to be replaced by a sum of money. In this task the OCSC works closely with FPS Finance.

Table 3.9. Amounts seized in OCSC cases (EUR)

	2011	2012
Organised crime	2 547 116	1 418 510
Misappropriation/embezzlement	3 732 420	6 387 482
Money laundering	91 192 415	23 127 457
Drugs	5 561 511	9 162 763
Tax fraud	5 014 613	3 287 444

Source: OCSC, Evaluation of the threat, risks and vulnerabilities in relation to ML, 16.12.2013; p. 149. Numbers for 2013 were not available.

Table 3.10. Number of sales of seized property (to avoid depreciation) all types of offences

Year	2006	2007	2008	2009	2010	2011	2012	2013
Number	327	259	541	947	1 691	1 481	2 230	2 059

Source: OCSC

Table 3.11. Number of confiscations of property of a corresponding value by the OCSC (all types of offence)

Year	2006	2007	2008	2009	2010	2011	2012	2013
Number	1 051	1 114	1 375	1 705	1 741	1 856	1 447	1 448

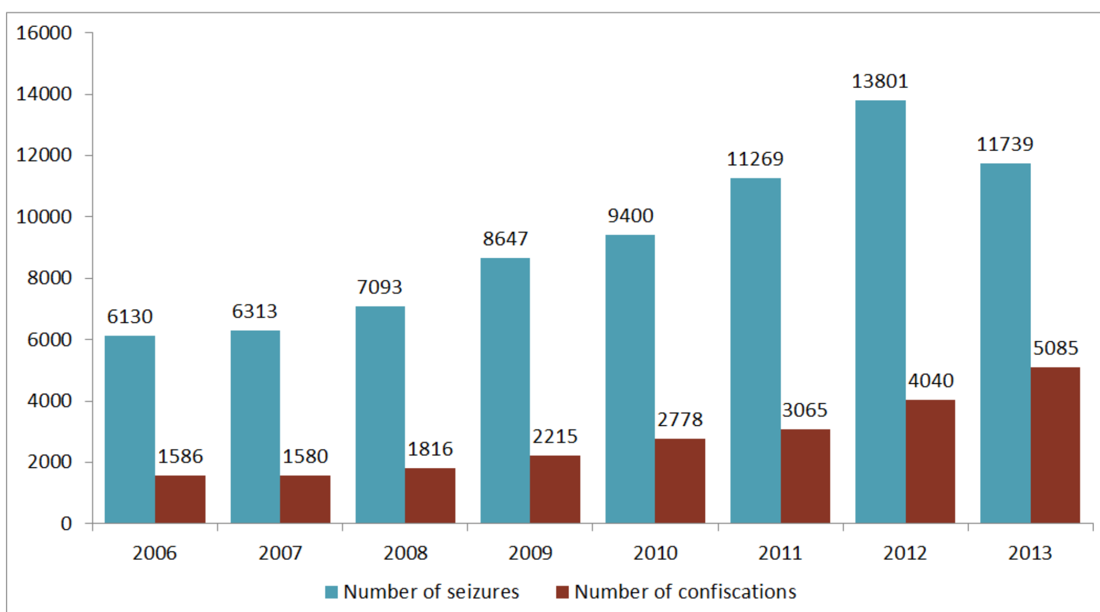
Source: OCSC

Note: During proceedings to enforce the confiscation of assets of a corresponding value, the OCSC sends a mandate to the relevant revenue collector (FPS Finance) to contact the convicted person and recover the sum determined by the trial judge. The OCSC only has statistics for the number of confiscations of assets of a corresponding value ordered by trial judges and not for the amounts actually recovered by the revenue collectors.

3.87. The OCSC also provides advice and training for the judges concerned in order to improve the confiscation process and the effectiveness of the proceedings, particularly proceedings for the **confiscation of assets of a corresponding value.**

3.88. **The OCSC's resources and means are appropriate for its current responsibilities.** In practice, the OCSC is not automatically involved in all seizure and confiscation proceedings. Although the police regularly refer seizure cases to the OCSC, the same cannot be said for judges (public prosecutors, investigating judges and trial judges). The OCSC is not informed about many seizure and confiscation proceedings, either as regards the values involved or the grounds (offences), despite the fact that one of the OCSC's responsibilities is to **collect, manage and process all the data** concerning seizures of property and its conservation or storage, and confiscations and the judgments to which they relate (in a database). However, its involvement is increasing over time, as shown by Chart 3.2.

Chart 3.2. Number of seizures and confiscations registered by OCSC



Source: OCSC – by number of cases

3.89. Based on the information gathered during the evaluation visit, the conclusion can be drawn that the OCSC's role consists mainly of placing the seized sums (currently around EUR 500 million) in a bank account and disposing of assets where their maintenance or management could be problematic (e.g. buildings occupied by tenants) or they could rapidly depreciate (e.g. vehicles). In addition, the OCSC makes various low-risk, liquid financial investments to maintain the value of seized assets. The OCSC's resources will therefore have to be increased in line with its growing role in the management of seized property and its involvement in the implementation of the 2014 law on the collection of assets for confiscation.

(c) Effectiveness of seizures and confiscations in practice

3.90. **Full use is made of the legislative framework, which is sophisticated and comprehensive** – all the available measures have been used by the Belgian authorities in ML cases. Case examples were provided to demonstrate this, for example concerning the confiscation of real estate located abroad (*Cassation*, 17 December 2013), the sale of perishable seized goods, the confiscation of assets of a corresponding value from a third party, with restitution to the victims (Brussels Court of Appeal, 10 October 2013); the confiscation from third parties of property acquired together with the proceeds of the offence (*Cassation*, 4 March 2014); the confiscation of assets of a corresponding value of a portion financed by the proceeds of the offence of a property bought jointly with a *bona fide* third party (Liège Court of Appeal, 20 May 2009).

3.91. However, the experiences and examples recounted by the Belgian authorities **do not demonstrate in any significant or convincing way the effectiveness** of confiscation proceedings, particularly in cases of **cross-border crime** or activities that represent ML **risks and vulnerabilities** for Belgium.

3.92. Moreover, the information, statistics and data presented by the Belgian authorities as regards seizure and confiscation make it difficult to evaluate satisfactorily the effectiveness of the confiscation measures and whether they reflect the evaluated ML risks:

- An internal study by CTIF of the court decisions handed down in cases related to its reports found that the confiscations ordered for the period 2005 to 2014 totalled EUR 600 million.

Table 3.12. Confiscations 2005 - 2014

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Amount (millions)	111.95	41.45	43.93	51.89	34.01	67.19	41.96	149.91	44.93	12.52

- The confiscations included were not only ML (when such a conviction was cited) but also all (predicate) offences prosecuted. The majority of the significant confiscations ordered were related to tax fraud and narcotics trafficking.

- The statistics and data supplied for seizure and confiscation are not presented in a consolidated format, making it difficult to interpret how well they meet the effectiveness criteria. The information provided is incomplete and not sufficiently precise, and therefore unreliable, on two levels. On the one hand, the figures supplied do not give a realistic or meaningful picture of the situation because they are based mainly on the OCSC database, which only records cases where there is OCSC involvement (see above). On the other, the information provided only rarely mentions the offences in which the seizures and confiscations originated.[16]

- The statistics do not provide enough qualitative information to judge the effectiveness of seizures and confiscations and asset sharing with other countries, or the restitution of confiscated funds to victims, even though several actual cases of asset sharing were presented (see Section 8) along with case examples showing the restitution of funds to victims (e.g. Brussels Court of Appeal,

16 This observation has already been made by the OECD. See OECD (2013), especially page 5.

10 October 2013). The OCSC indicates that, as regards asset recovery, a new database is currently being set up with assistance from the Federal Police.

3.93. **In practice the OCSC plays only a limited role in managing assets** because it is not systematically consulted or informed by the authorities, though its involvement is increasing over time, as explained above. The OCSC, which intends to become a centre of expertise in seizure and confiscation and to play a technical assistance role, has **only a partial picture of seizures** and confiscations and their outcomes, considerably weakening its role and competencies. In principle, the OCSC should be notified of every seizure of EUR 2 500 or more. However, the authorities say that there are sometimes delays in recording these seizures (by the police or investigating judges, for example), which means that the OCSC database is not up-to-date. The figures submitted are therefore minimum figures because they do not take account of seizures and confiscations made without the OCSC's assistance. Furthermore, few judges seek assistance from the OCSC, though the OCSC has seen an increase in this too, with cases where judges have sought practical help (e.g. Brussels Court of Appeal, 10 October 2013, a case in which the OCSC sold most of the seized property for a total of EUR 2.8 million).

3.94. Until February 2014 the OCSC's work consisted of asset management. Since the Law of 11 February 2014 was passed, **particular emphasis has been placed on the recovery of assets** with the particular aim of stepping up the search for assets that could be confiscated. As explained earlier, this is a recent law and it is therefore not possible to assess its effectiveness at this stage. Although a circular in May 2014 aimed to raise awareness of this new law among public prosecutor's offices, the implementing text is currently in preparation.

3.95. Under Belgian law, confiscation is an additional penalty (*peine accessoire*) in that it remains linked to a criminal conviction. Consequently, confiscation cannot be envisaged if the defendant is not convicted. Based on the statistics and explanations provided by the Belgian authorities, there are many proceedings for ML that do not end up in a conviction for criminal policy reasons, because of the length of the proceedings (dispersal or deterioration of the evidence) or because the statute of limitations has been exceeded. This means that **a large number of potential confiscations cannot be completed. The deficiencies in the criminal justice response (see IO 7) therefore have direct and important consequences as regards confiscation**.

3.96. **The OCSC is a member of the CARIN network** and is the recognised Asset Recovery Office for Belgium in the EU.[17] The OCSC has submitted and fulfilled mutual assistance requests, with a marked increase in outgoing requests both inside and outside the EU (see Table 3.13).

3.97. The increase in these figures may be explained by the gradual transposition of European laws into the national legislation of the Member States, facilitating co-operation between them. Notably, the number of outgoing requests is higher than the number of incoming requests, both generally and specifically for ML (except in 2013).

Table 3.13. Mutual assistance requests (OCSC) for all types of offences

Year	2010	2011	2012	2013
Requests made to foreign authorities	113	164	221	224
- Of these, for money laundering	39	59	48	24
Requests received from foreign authorities	63	72	67	124
- Of these, for money laundering	16	7	12	33

Source: OCSC

17 Established in 2004, the CARIN network (Camden Assets Recovery Inter-Agency Network) based at the Europol headquarters is an informal network of legal practitioners and detection and enforcement services specialising in tracing, freezing, seizing and confiscating the proceeds of crime.

3.98. Once again, mutual legal assistance is not only requested via the OCSC for seizures and confiscations. In the case mentioned above (Brussels Court of Appeal, 2013), the prosecution authorities asked for a bank account held abroad to be identified and frozen.

3.99. The Belgian authorities say that mutual legal assistance requests made with a view to confiscation abroad are not always carried out, particularly when the conviction in Belgium is for ML but there is no conviction for a predicate offence.

Cross-border currency movements

3.100. In the context of cross-border movements of currency or bearer negotiable instruments, where a false declaration/no declaration is made, or a false disclosure is made, cash seizures are made every year by AGDA and the national judicial police. In 2013, these services were once again reminded of the importance of checks, particularly as regards sums of money leaving Belgium related to the risk of drug trafficking, and of several best practices. AGDA has taken steps to control cross-border cash movements, particularly by making targeted checks. Since February 2014, a team specialising in this type of check has been operating at Zaventem international airport. Systematic checks are also made on some trains.

3.101. The money seized (around EUR 157 000 in 2011; around EUR 1 million in 2012) is available to the public prosecutor's office, but there are no data from which the number of confiscations of cash made outside the *Cash Watch* programme can be determined. There were 49 cases within the programme in the 2009-2013 period, amounting to a total of EUR 7.6 million. These cases resulted in 18 convictions, seven plea bargains and four case closures. The other 20 cases are not yet finished. This number of cases seems low compared with the period. Other examples of convictions for ML have been provided, often without the predicate offence being determined (ML as a stand-alone offence), where the currency being transported was confiscated.

3.102. Representatives of the public prosecutor's office indicated that, because of workload and many cases being behind schedule, the 14-day administrative seizure is rarely extended by a judicial seizure, but particular attention seems to be paid to *Cash Watch* operations.

3.103. The Belgian customs service (AGDA) makes practical use international co-operation, co-operating particularly with the French customs service. The majority of sums seized in 2012 were seized as a result of this co-operation.

3.104. ***In conclusion***, the information provided by the Belgian authorities shows that there are seizures, confiscations, and confiscations of assets of a corresponding value in ML cases. However, although the authorities are keen to prioritise prosecutions that lead to confiscation, they are not always entirely successful in this. The prosecution authorities have indicated that emphasis is placed on confiscation, but the information provided does not reveal evidence of any such objectives having been set or any systematic search during financial investigations for assets that could be confiscated. However, confiscations are regularly made of readily available and easily identifiable proceeds of offences. Lack of effectiveness as regards criminal prosecutions (length of proceedings, lapsing of the statute of limitations, etc.) also has an impact on confiscations.

3.105. **The Belgian authorities do not have any relevant or clear centrally-held statistics** for seizures and confiscations of assets in Belgium or abroad, asset sharing, the offences in which the seizures or confiscations originated (ML and the predicate offences), confiscations related to false disclosures or declarations at borders, or the amounts returned to victims. It is therefore difficult to evaluate the tracing undertaken and results achieved in these areas.

3.106. **Belgium has achieved a moderate level of effectiveness for Immediate Outcome 8**.

3.6 Recommendations on legal system and operational issues

Financial Intelligence (Immediate Outcome 6)

- The law enforcement authorities should step up the search for financial intelligence and the processing of this intelligence, particularly on the basis of the case files and other information supplied by CTIF.
- Those involved in AML/CFT activity, particularly the law enforcement authorities, should improve co-ordination and the exchange of information with one another (forwarding, processing and feedback). Establishing a unified approach and reinforcing relationships within prosecution authorities should help with this.
- Appropriate statistics and databases should be introduced so that the research and exploitation of information useful and necessary for criminal proceedings can be defined and their effectiveness evaluated.

ML investigations and prosecutions (Immediate Outcome 7)

- Belgium should define a clear criminal justice policy that identifies the prosecution of ML as a priority, and should define the resources necessary for prosecuting and punishing ML commensurate with the main risks identified.
- The prosecution authorities should have appropriate (human and material) resources and technical means (IT, databases) at their disposal for the effective criminal prosecution of ML.
- Judges responsible for ML prosecutions should receive more thorough training on the subject and should set priorities so as to achieve greater effectiveness, so that perpetrators are successfully prosecuted and the proceeds of crime are confiscated. Particular emphasis should be placed on detection in the case of ML that could be related to cross-border transportation, precious metals and diamonds, and international or predominantly international ML cases.
- Co-ordination between the various partners in the criminal justice system should be increased.
- Reliable, comprehensive statistical data should be collected so that they may be used as tools for establishing an appropriate criminal justice policy. They should also be suitable for assessing the effectiveness of criminal prosecution and for making any necessary changes to the system.

Confiscation (Immediate Outcome 8)

- The authorities responsible for seizures and confiscations should be made aware of the importance and priority of confiscating all the proceeds of crime.
- The OCSC's central role in seizure and confiscation should be reinforced as regards both asset management and recovery.
- The Belgian authorities should implement the legal provisions passed to strengthen the confiscation of the proceeds and instrumentalities of ML and predicate offences (Law of 11 February 2014), whether they are located in Belgium or abroad, particularly by carrying out systematic financial investigations and ordering all measures aimed at the successful conclusion of confiscation proceedings. The role of the special judges responsible for enforcement investigations in criminal cases should be clarified.
- Relevant and clear statistics should be held centrally for seizures and confiscations of assets in Belgium and abroad, asset sharing, the offences in which the seizures or confiscations originated (ML and the predicate offences), confiscations related to false disclosures or false declarations at

borders, and the amounts returned to victims, so that any necessary adjustments to criminal justice policy can be determined.

3

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3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3 – Money laundering offence

a3.1. In 2005 Belgium was evaluated as compliant with the FATF standard that criminalises ML (formerly R 1 and R 2). Since then, the offence has been modified slightly, particularly as regards confiscation.

a3.2. **Criterion 3.1 –** The criminalisation of ML (Art. 505 PC) incorporates the material elements which constitute the offence as defined in the Vienna and Palermo Conventions.

a3.3. **Criteria 3.2 and 3.3 –** All crimes (*crimes et délits*) under Belgian law may constitute predicate offences. In Belgium, the ML offence covers the laundering of *material benefits* from all the offences included in the FATF definition of *designated categories of offences*.

a3.4. **Criterion 3.4 –**The ML offence extends to the material benefits derived directly from the offence, as well as property that indirectly represents the proceeds of crime: the property (defined broadly) and the values that have been substituted for them, as well as income earned on investing these proceeds (Art. 42 – PC).

a3.5. **Criterion 3.5 –** Prosecution of the ML offence is not dependent on conviction for the predicate offence nor on proof of the predicate offence and of all its constituting elements; nevertheless, it must be demonstrated that the proceeds are of illegal origin (*Cassation*, 21 March 2006) or at the very least that the funds cannot be derived from the official income of the defendant; therefore the illegal origin of proceeds can be deduced from the circumstance by which there is no credible data indicating the origin can be legal (*Cassation*, 17 December 2013).

a3.6. **Criterion 3.6 –** The criminalisation of ML extends to acts committed in another country that constitute an offence in that country provided that they also constitute an offence under Belgian law. The commission of ML acts on Belgian soil is sufficient, even if the predicate offence was committed in another country (provided that these acts would have also constituted an offence if they had occurred on Belgian soil).

a3.7. **Criterion 3.7 –** Art.505 al. 2 PC stipulates that the ML offence applies also to the persons who commit the predicate offence (*self-laundering*).

a3.8. **Criterion 3.8 –** The principle of freedom of evidence is an overriding principle in Belgian evidentiary law. Under Art. 505 al. 2 PC pertaining to natural persons who knew or should have known about the illegal origin of laundered assets, the intentional element and knowledge of the facts required to prove the ML offence can therefore be inferred from objective, factual circumstances.

a3.9. **Criterion 3.9 –** The sanctions applied to natural persons convicted of ML are proportionate and dissuasive. In the scale of sanctions that may be applied to offences in Belgium, the sanction provided for ML is in the higher end of the average range (5 years) and is equivalent to other, comparable financial offences (possession of stolen goods, misappropriation of corporate assets). ML is punishable by 15 days to 5 years in prison and/or a fine of EUR 156 to EUR 600 000 (Art. 505 al. 1 PC[1]). Furthermore, confiscation (Art. 43ff. PC) applies to the proceeds of the crime and can be added as an additional sanction, whose purpose is to reinforce the dissuasive nature of the sanctions (see R 4). The court also has the ability in all cases to add additional sanctions such as the withdrawal of certain rights or of the right to hold certain positions or jobs.

1 The indexation system makes it possible to increase the penalty set forth in the law by multiplying it by a legally defined coefficient that is regularly updated to reflect the present value of money. In July 2014 this coefficient was X6.

a3.10. **Criterion 3.10 –** According to Art.5 PC, all legal persons are criminally liable for offences that are intrinsically linked to the fulfilment of its corporate purpose or to the defence of its interests or for offences that have been committed on its behalf. In the event that this liability is incurred solely because of the actions of an identified natural person, 'only the person who committed the most serious offence can be convicted'. Moreover, the PC stipulates that, 'if the identified natural person committed the offence knowingly and voluntarily, said person may be convicted at the same time as the liable legal person', which suggests causality between the legal liability of the company and that of the individual. Finally, the criminal liability of legal persons in place since 1999 does not preclude in any way the ability for them to be subject to civil liability.

a3.11. The range of applicable sanctions is broad and the sanctions available seem proportionate and sufficiently dissuasive. The applicable sanctions are: a fine (from EUR 3 000 to EUR 1.2 million), special confiscation, dissolution, prohibition from conducting business relating to the corporate purpose, the closure of one or several sites, the publication or dissemination of the decision (Art. 7a PC). The Law of 1999 stipulates that convictions of legal persons are to be entered in a criminal record kept by the registry of the competent court. These amounts are comparable to the amounts of fines set forth for other financial offences such as corruption and crimes relating to bankruptcy.

a3.12. **Criterion 3.11 –** Belgium has appropriate ancillary offences to the ML offence. Facilitating the commission of the offence and conspiracy to commit an offence can be construed as criminal participation or aiding and abetting (Art. 66, 67 and 68 PC). Criminal conspiracy and participation in a criminal organisation that facilitates, in particular, the commission of an offence relating to acts of ML are also punishable. Attempt to commit is criminalised in Art.51 PC.

Weighting and conclusion

a3.13. **Belgium is compliant with R 3.**

Recommendation 4 – Confiscation and provisional measures

a3.14. Belgium has a seizure and confiscation mechanism that was evaluated as largely compliant with the FATF standard in 2005 (formerly R 3). In particular, clarification was expected with regard to the confiscation of assets of equivalent value and was provided in 2007, along with other improvements.

a3.15. **Criterion 4.1 -** Article: 42ff.PC establishes a special confiscation regime, namely one that is ancillary to a primary sanction, which applies to all categories of offences, including ML, TF and terrorism. Since 2007, confiscation can be imposed on all perpetrators, co-perpetrators or accomplices of laundering, even if the property does not belong to the convicted person.

a3.16. **Criterion 4.2 –** The Law of 19 December 2002 introduced the ability to conduct a specific investigation into the material benefits described in Art. 42, point 3, 43a and 43c PC in order to confiscate them. This measure was strengthened by a recent law (Law of 11 February 2014). Different types of provisional measures to prevent transactions involving property subject to confiscation are available in Belgium. These provisions enable the seizure of objects, instruments and proceeds of the crime, as well as of the material benefits derived directly from offences, property and values that have been substituted for them and income from invested proceeds. Several freezing measures are also available to administrative (including the CTIF) and judicial authorities that aim to place certain assets under control so that subsequent confiscation is possible (also see R 6).

a3.17. **Criterion 4.3 –** The rights of bona fide third parties are protected by law.

a3.18. **Criterion 4.4 –** The management of material assets seized has been entrusted since 2003 to the OCSC. This entity under the public prosecutor's office has the primary responsibilities of assisting judicial authorities with seizing material assets and executing decisions and decrees resulting in the confiscation or restitution of material assets.

Weighting and conclusion

a3.19. **Belgium is compliant with R 4.**

Operational and prosecutorial matters

Recommendation 29 – Financial Intelligence Units

a3.20. Belgium was evaluated in 2005 as compliant with the FATF standard pertaining to the authority and powers of the FIU (formerly R 26).

a3.21. **Criterion 29.1** - The Belgian FIU is the *Cellule de Traitement des Informations Financières* (CTIF), which was created by the AML/CFT Law. It is the agency in charge of receiving, analysing and transmitting AML/CFT information and of analysing information received in relation to ML, related predicate offences and TF.

a3.22. **Criterion 29.2 –** The CTIF serves as the central agency for the receipt of disclosures filed by reporting entities, including STRs (see R 20 and R 23). In addition to STRs, submitted on the basis of subjective criteria, the CTIF receives and processes other reports under the AML/CFT Law based on objective criteria (notably reports received for non-compliance with the prohibition of cash payments for real estate assets, Art. 20 – AML/TF Law; reports on cross-border transportation of cash; reports filed by casinos).

a3.23. **Criterion 29.3 –** Under the AML/CFT Law, the CTIF can obtain any additional information of a financial, administrative or legal nature which it deems useful to carrying out its mission. When a matter is brought properly before it (i.e. under the terms of Art. 22 of the AML/CFT Law notably), the CTIF can question and obtain information from any reporting entity (without restriction), from the chairman of the bar association (under certain conditions, see R 23), from trustees in bankruptcy and interim administrators, from judicial authorities (provided that the filing is authorised by the public prosecutor or the Federal Prosecutor), from the administrative agencies of the national government and from the police. The collection of information from public authorities is facilitated by the secondment of liaison officers to the CTIF. The CTIF can also share information with the Anti-Fraud Co-ordination Service (with regard to combatting tax fraud) and with the BNB and the FSMA. In order to perform its functions, the CTIF has access to the financial and other information (from private and public sources) necessary to carry out its activities.

a3.24. **Criterion 29.4 –** The Analysis Department of the CTIF conducts operational analysis using the information it receives and collects. Analytical work is explained in a guide given to each analyst. Furthermore, in 2009 the CTIF created a strategic analysis department tasked with conducting proactive research on trends in ML and TF.

a3.25. **Criterion 29.5 –** Whenever analysis reveals reliable indicators of ML, TF or PF, the public prosecutor or federal prosecutor is notified. The law also provides for the dissemination of information by the CTIF to other competent authorities, both spontaneously and upon request (notably OLAF and entities with oversight and regulatory authority over institutions and professions subject to the AML/CFT Law under certain conditions). There are no secure, protected channels for this communication. Notifications of acts of laundering that the CTIF submits to the public prosecutor's office are hand delivered by the CTIF (in Brussels) or sent by registered mail (and, in an emergency, by fax).

a3.26. **Criterion 29.6 -** A comprehensive legislative mechanism was put in place to ensure the confidentiality of information held by the CTIF and of its dissemination in accordance with the provisions of the law. The personnel of the CTIF are held to a strict obligation of confidentiality which bars any external disclosure acknowledging the existence and content of the individual cases handled. *Memoranda* and a *code of ethics* establish several aspects pertaining to the protection of sensitive and confidential information and fundamental principles such as strict professional secrecy, loyalty, compliance and security. Finally, queries in internal and external databases are limited strictly to the purposes defined in the AML/TF law.

a3.27. **Criterion 29.7 –** The CTIF is an administrative authority established as a legal entity under the AML/CFT Law (Art. 22). The following elements ensure its independence and operational autonomy:

1. The CTIF has extensive autonomy both in the fulfilment of its mission (decisions taken, external collaboration, internal organisation, etc.) and in administrative matters (including its budget). The details pertaining to the composition, organisation, function and independence of the CTIF are determined by royal decree (RD of 11 June 1993).
2. The CTIF has adequate powers which enable it to negotiate agreements or determine in total independence to collaborate with other relevant national authorities or with its foreign counterparts via MOU (Art. 22, AML/CFT Law,).
3. The CTIF is subject to joint administrative oversight by the Ministers of Justice and Finance which have no control over the decision-making power of the CTIF: they cannot give it instructions, injunctions or orders, notably with regard to the decision of whether to submit a case to the public prosecutor's office.
4. The CTIF is able to obtain and deploy the resources needed to carry out its functions. Its budget is not funded by the national government, but rather is made up of contributions paid annually by the institutions and professions subject to the AML/CFT Law.

a3.28. **Criterion 29.8 – This criterion is not applicable.** The CTIF is one of the founding members of the Egmont Group.

Weighting and conclusion

a3.29. **Belgium is compliant with R 29.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

a3.30. In 2005 Belgium was evaluated as compliant with the FATF standard pertaining to the responsibilities of law enforcement authorities (former R 27).

a3.31. **Criterion 30.1 –** In Belgium several law enforcement authorities are able to conduct investigations into ML, TF or predicate offences for ML. The Ministry of Justice is competent in judicial investigations carried out under the orders of local investigative authorities and of the federal prosecutor. The allocation of ML cases to court districts is based on different criteria (geography, international dimension, links to organised crime, etc. and consistent with the CCP). The prosecutor may decide to bring a matter before an investigating judge, especially for complex cases. The federal prosecutor's office initiates prosecution for a set list of offences (including TF) and works to facilitate international co-operation.

a3.32. There are two different levels of police (local and federal) that function in an integrated and complementary manner. The national judicial police have responsibility across the entire country for carrying out the specialised and supra-local missions associated with criminal policing and for providing support to local and other police authorities. It reports to the Ministers of Interior and Justice who may give orders, instructions and directives necessary to the performance of its judicial police duties. Within the national judicial police, the Directorate for Combatting Economic and Financial Crime (DJF) and the Directorate for Combatting Crimes against Persons (DJP), as well as the decentralised directorates (called PJFs) which are responsible for, in particular, pursuing ML/TF matters. Within the DJF, the Central Office for Combatting Organised Financial Crime (OCDEFO) is specifically responsible for combatting ML. Within the DJP, the Terrorism and Sects Department is responsible for combatting TF.

a3.33. **Criterion 30.2 –** The police promote a cross-cutting approach to AML, notably within the OCDEFO. All the departments in charge of fighting priority criminal phenomena must be able to conduct asset investigations or receive support from units specialised in this type of investigation. Within the Brussels

PJF, there is a terrorism investigation department that takes on both distinct TF investigations as well as the financial aspects of investigations relating to a terrorism case managed by the department. One or several investigating judges specialised in terrorism matters are designated within the circuit of each court of appeals.

a3.34. **Criterion 30.3 –** The criminal prosecution authorities have the power to identify, trace and initiate procedures to seize property that may be proceeds of crime (see R 4). Asset tracing investigations may be ordered by the public prosecutor's office or the investigating judge in order to assess the property to be seized. In addition, the public prosecutor's office can ask the trial judge – after conviction – to order a specific investigation into material benefits. A recent law strengthens the role of the OCSC in asset investigations (see R 4). AGDA is empowered to detain some funds in relation to controlling the cross-border transportation of money (see R 32).

a3.35. **Criterion 30.4 –** Authorities which are authorised to conduct financial investigations of predicate offences are law enforcement authorities as described for C.30.1. In addition, the Special Tax Inspectorate (ISI) within FPS Finance is responsible for combatting certain financial offences, including serious tax fraud, financial fraud and misappropriation of corporate assets. AGDA also assists with efforts to combat fraud, organised crime and terrorism and with the implementation of requirements relating to controlling the cross-border transportation of funds (see R 32).

a3.36. **Criterion 30.5 –** In Belgium, the investigation and prosecution of ML/TF resulting from or relating to a corruption offence generally fall under the purview of federal authorities.

Weighting and conclusion

a3.37. **Belgium is compliant with R 30.**

Recommendation 31 – Powers of criminal prosecution and investigative authorities

a3.38. In 2005, Belgium was evaluated as compliant with the FATF standard pertaining to the powers of criminal prosecution and investigative authorities (formerly R 28). This Recommendation was expanded in 2012.

a3.39. **Criterion 31.1 –** During investigations of ML, predicate offences and TF, the police employ traditional investigative methods (use of open source information, seizures, taking statements, searches, etc.) as provided for in the CCP. Financial institutions are required to respond to requests from the public prosecutor and cannot refuse a search or seizure of documents relating to their customers (Art. 46d CCP). These measures do not apply to persons held to professional secrecy sanctioned by Art.458 PC (including attorneys, notaries public, accountants and tax advisers). In this case, the requested items may be handed over voluntarily or forcibly upon obtainment of a targeted search warrant by the investigating judge who has the authority to decide which evidence is protected by professional secrecy and thus cannot be seized.

a3.40. Judicial police officers can search private premises (residence or business location). Searches are only possible if judicial authorities have reliable evidence that an offence has been committed. In the framework of judicial investigation, it is possible to take statements from suspects and witnesses (Art. 47a CCP). Statements cannot be taken from persons bound to professional secrecy, but these individuals can testify in a legal court. Finally, the public prosecutor or the investigating judge can seize anything that may serve to reveal the truth. All evidence must be obtained fairly and legally. The ISI uses the prerogatives of the Income Tax Code and the VAT Code to conduct its investigations, notably with regard to tax fraud, and to gain access to any document or information it deems necessary, including access to the business or other premises and the production of documents held by financial institutions under certain conditions.

a3.41. **Criterion 31.2 –** The judicial police can use the special investigation techniques described in Art. 40a (deferred actions, to include controlled deliveries), 47b to 47j (undercover operations, surveillance, use of informants) and 90b CCP (interception of communications and telecommunications), under the supervision of the public prosecutor's office and in the framework of an investigation or inquiry. The police may use techniques to access computer systems under certain conditions (Art. 88b CCP). The Law of 6 January 2003

on special investigation techniques and certain other investigative methods governs the interception of mail, discreet visual checks and delayed actions. The Law of 4 February 2010 on data collection methods used by intelligence and security agencies confers on those agencies other investigation techniques useful for AML/CFT. The ISI can gain access to the computer systems of the natural or legal persons it audits.

a3.42. **Criterion 31.3 –** The public prosecutor's office can access banking information pertaining to natural or legal persons with a substantiated written order (Art. 46c Paragraph 3 CCP). The authorities indicate that the time necessary for such a decision to be taken depends on the needs of the investigation (emergency or normal procedure) and that the turnaround time for accessing the information depends on the time it takes financial institutions to process the request. Nothing in the law blocks the obtaining of information in a timely manner. This information is obtained without giving prior notice to the owner [of the assets] (see Art.46c Line 3 CCP). Pursuant to the Law of 14 April 2011, the Belgian Tax Agency and the police have access to a national database maintained by the BNB to which all banking, currency exchange, credit and savings institutions must submit the identities of their customers and the account and contract numbers of said customers.

a3.43. **Criterion 31.4 –** The police can access the information held by the CTIF only in cases where this information has been previously submitted to the public prosecutor's office, notably via liaison officers from the Federal Police who have been seconded to the CTIF. Nevertheless, it is possible to obtain a legal exemption from this general rule. The AML/CFT Law (Art. 33) stipulates that the police can spontaneously provide information regarding investigations underway to the CTIF. If the CTIF has relevant information for the investigators and if there is reliable evidence of ML or TF as defined by law (which, according to the authorities, is the case when the investigation concerns one of the predicate offences described in the law), the CTIF submits the information in its possession to the judicial authorities and will notify the investigators of this submission.

a3.44. Thus the law enforcement authorities (public prosecutor's office, investigating judges and police) can have access to relevant information held by the FIU. For the public prosecutor's offices, it should also be added that the CTIF makes a secure internet connexion available to magistrates designated by the country's 28 public prosecutor's offices and a database of files submitted by the CTIF since 1993. Finally, since the Law of 11 February 2014, the OCSC has very broad powers to obtain information from the CTIF.

Weighting and conclusion

a3.45. **Belgium is compliant with R 31.**

Recommendation 32 – Cash couriers

a3.46. In 2005 Belgium was evaluated as non-compliant with the FATF standard pertaining to the cross-border transport of currency and other financial instruments (formerly SR] IX) because it did not have a system to control cash movements at its borders. A control mechanism for cross-border transportation of currency and other financial instruments has been in place since 2007; it is based on two levels of regulation: European and national (RD of 2006 then 2014).

a3.47. **Criterion 32.1 –** Regulation No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the European Community applies to the movement of cash into or out of states outside the EU. The RD of 26 January 2014 containing certain measures to control the cross-border transportation of cash establishes the control of extra-Community currency movements using a *declaration* system and to control intra-Community currency movements using an on-request *disclosure* system. Therefore Belgium has set up two models to control the movement of funds based on the destination or source country of the cash and bearer negotiable instruments (BNIs).[2]

2 The definition of BNI which appears in Art. 3 of the RD of 26 January 2014 and in Art. 2 line 2 of Reg.1889/2005, complies with the one set forth in the Glossary of the *FATF Recommendations*.

a3.48. The European regulation (which applies only to natural persons), does not cover the physical transportation of cash or BNIs through container cargo or the shipment of cash or BNIs through mail. This type of transportation (through cargo or mail, including on behalf of a legal person) is only mentioned in the RD of 26 January 2014 with regard to the intra-Community transportation of cash and BNIs. For extra-Community transportation, a customs declaration prepared under the normal procedure must still be presented with the correct customs codes and the value of the cash.

a3.49. **Criterion 32.2 –** Belgium has a declaration system for the cross-border transportation (incoming and outgoing) of cash or BNIs between Belgium and third countries outside the EU above a threshold of EUR 10 000 (or equivalent value, Art.3 of Regulation 1889/2005). The declaration must be filed in writing or in electronic form with the competent authority (Art. 2 of the RD of 26 January 2014).

a3.50. **Criterion 32.3 –** Art.4 of the RD of 26 January 2014 establishes the control of currency transportation between Belgium and an EU member country and establishes a communication system (in this case the cash courier must declare, only upon request by the competent authority, if transporting cash in the amount of EUR 10 000 or more).

a3.51. **Criterion 32.4 –** In application of the RD of 26 January 2014, AGDA officers and police officers can perform *de facto* inspections of natural persons, their means of transportation and their luggage. In practice, detection is carried out by AGDA and subsequent investigations are conducted by the Federal Police. AGDA officers can require the presentation of documents establishing the identity of persons involved and obtain information (via a standardised declaration form) on the origins of the funds, the owner and recipient of the funds and on the use for which they are intended.

a3.52. **Criterion 32.5 –** Under Regulation 1889/2005, in the event of an incorrect or incomplete declaration, the declaration obligation has not been met (Art. 3). Under the RD of 26 January 2014, any attempt to violate the obligation to declare extra-Community currency movements (in application of Regulation 1889/2005) is punished with a fine of EUR 125 to EUR 1 250 (doubled for a repeat offence). This sanction is imposed when it appears that the failure to declare is the result of a mere oversight on the part of a passenger who forgot to declare or who was apparently unaware of the law. The Belgian authorities explained that the intention of the fine in cases of a failure to declare or false declaration (when there is no other indicator of the violation of another law, particularly in relation to ML/TF) justifies the amount. They note that a preliminary ruling about the amount of these fines is pending before the CJEU. The authorities indicated that, as soon as customs authorities suspect that the funds are from of illegal origin, the transportation of funds is a distinct act and may be punishable following an investigation (the sanctions being in accordance with the related offence). With regard to the disclosure of intra-Community currency movements, Art.6 stipulates also that in the case of incorrect or incomplete information, it is considered that the declaration obligation was not met. Moreover, any violation of this obligation is punished by imprisonment of eight days to five years and by a fine of EUR 25 to EUR 25 000. In the framework of declaration and disclosure, if there is evidence that leads to suspicion that the cash comes from illegal activity or is meant to fund such activity, the money is detained by the competent authority (see C.32.8).

a3.53. **Criterion 32.6 –**AGDA records and analyses declarations and disclosures of currency movements and makes them available to the CTIF which is authorised to receive such information. Under the AML/CFT Law, the declarations and disclosures received in application of the aforementioned RD are considered in the same way as STRs, just as the declarations received from other persons and institutions subject to the law. The authorities indicated that the data from extra-Community currency declarations are submitted each week to the CTIF. Disclosures obtained upon request (intra-Community transfers) are also submitted to the CTIF (via the Central Office for Information Management and Risk Analysis). The reports on all violations of the declaration obligation are sent to the public prosecutor's office, and a copy goes to the CTIF.

a3.54. **Criterion 32.7 –** Co-operation between AGDA and the police is based on a framework agreement that organises their collaboration, information exchanges and joint risk and fraud analysis, notably in cases of joint inspections. The Law of 18 March 2014 on the management of police information now authorises the two-way communication of data and other information to enable the other authorities to fulfil their legal responsibilities. The terms of this sharing are set forth in an MOU approved by the ministers in question.

a3.55. **Criterion 32.8 –** In the event of non-compliance with the obligation to disclose intra-Community currency movements or if the declaration obligation was met, but there is evidence to suggest that the cash is derived from illegal activity or is intended to fund such activities, the money is detained by the competent authority (Art.8 – RD 2014). The money cannot be detained for more than 14 days. Detention is an administrative measure whose goal is to give the competent judicial authorities the time to conduct a focused investigation. During the aforementioned 14-day period, the public prosecutor's office can decide (i) to release the cash; in this case, the cash is made available to the carrier, who can come retrieve it; or (ii) to seize (through legal action) the cash; in this case, the cash shall be deposited with the registry or paid into the OCSC account (see C.4.2). This 14-day period is not enough to conduct an investigation into the origin of the funds, but it can be followed by a legal seizure of the funds which enables the money to be restrained for a reasonable period so that it can be determined whether proof of ML/TF is likely to be found. In the event of non-compliance with the declaration obligation stipulated in Regulation 1889/2005, the funds may be restrained by administrative or judicial decision.

a3.56. **Criterion 32.9 –** Declarations and disclosures about cash transfers in amounts equal to or greater than EUR 10 000 are recorded in the AGDA database (see C.32.6, Art. 9 – RD 2014). The CTIF has access to it, which enables sharing with its foreign counterparts. Moreover, Belgium is party to the Convention of 18 December 1997 on Mutual Assistance and Co-operation between Customs Administrations (*Naples II*). Finally, is also enforces Regulation No. 515/97 which calls for the implementation for a rapid and effective system to share information between customs authorities. A customs information system at the Community level contains information regarding undeclared currency movements.

a3.57. **Criterion 32.10 –** The information collected from declarations of extra-Community cross-border movements of funds is subject to professional secrecy. Information is disclosed or disseminated in strict compliance with data protection provisions. Point 1 in the Preamble of Regulation 1889/2005 reiterates that the European Community endeavours to create a space without internal borders in which the free movement of goods, persons, services and capital is ensured.

a3.58. **Criterion 32.11 –** In the event of non-compliance with the declaration obligation or if the obligation to declare was met, but there is evidence to suggest that the cash is derived from illegal activity or is intended to fund such activities, the money is detained by the competent authority (Art. C.32.8). If this suspicion is confirmed, seizure and confiscation measures may be decided upon by the judicial authority under the conditions described in R 4. The sanctions described in R 3 and R 5 are also available.

Weighting and conclusion

a3.59. **Belgium is compliant with R 32.**

A3

ACRONYMS

AGDA	*Administration générale des douanes et accises* (Belgian Customs & Excise)
AISBL	*Association internationale sans but lucratif* (international non-profit association)
AML/CFT	Anti-money laundering / counter-terrorist financing
Art.	Article / Articles
ASBL	*Association sans but lucratif* (non-profit association)
BCE	*Banque Carrefour Entreprises* (Belgian Companies Register)
BNB	*Banque Nationale de Belgique* (National Bank of Belgium)
BNI	Bearer negotiable instruments
C.	Criterion
CAF	Service de coordination anti-fraude de l'inspection spéciale des impôts
CBFA	*Commission bancaire, financière et des assurances* (former Belgian financial supervisor)
CCLBC	*Collège de coordination de la lutte contre le blanchiment de capitaux d'origine illicite* (College for AML Co-ordination)
CIC	*Code d'instruction criminelle* (Criminal Instruction Code)
CPC	*Code de procédure criminelle* (Criminal Procedure Code)
CRS	*Collège du renseignement et de la sécurité* (College for Intelligence and Security)
CTIF	*Cellule de traitement des informations financières* (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 (*Autorité des services et des marchés financiers*)
GDP	Gross domestic product
IEC	*Institut des Experts comptables et des Conseils fiscaux* (Insitute of Chartered Accountants and Tax Consultants)
IN	Interpretative Note
IO	Immediate outcome
IPCF	*Institut Professionnel des Comptables et Fiscalistes Agréés* (Professional Institute of Certified Accountants and Tax Accountants)
IRE	*Institut des Réviseurs d'Entreprises* (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	*Organe centrale pour l'analyse de la menace* (Central Unit for Threat Analysis)
OCDEFO	*Office Central de la lutte contre la Délinquance Économique et Financière Organisée* (Central Unit for Combatting Economic and Organised Financial Crime)
OCSC	*Organe central pour la saisie et la confiscation* (Central Unit for Seizure and Confiscation)
OECD	Organisation for Economic Co-operation and Development
OLAF	*Office européen de lutte anti-fraude* (European Anti-Fraud Office)
Para.	Paragraph
PC	*Code pénal* (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 (*Arrêté royal*)
Reg.	Regulation
SA	*Société anonyme* (public limited company)
SCA	*Société en commandite par actions* (company with liability limited by shares)
SCRI	*Société coopérative à responsabilité illimitée* (unlimited-liability co-operative company)
SCRL	*Société coopérative à responsabilité limitée* (limited-liability co-operative company)
SE	*Sûreté de l'État* (State Security Service)
SGRS	*Service Général du Renseignement et de la Sécurité* (General [military] Intelligence and Security Service)
SNC	*Société en nom collectif* (general partnership)
SPF	*Service public fédéral* (Federal Public Service = Belgian Federal Ministry)
SPRL	*Société privée à responsabilité limitée* (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