



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

6. Supervision

Effectiveness and technical compliance



Citing reference:

FATF (2015), "Supervision" in *Anti-money laundering and counter-terrorist financing measures - Belgium*, Fourth Round Mutual Evaluation Report, FATF.
www.fatf-gafi.org/topics/mutualevaluations/documents/mer-belgium-2015.html

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6. SUPERVISION

Key Findings

Financial institutions

In the financial sector, the supervisors have generally identified the main high risks. Understanding of the risks is not, however, sufficiently ongoing, due to the insufficiency of the controls carried out, and especially on-site inspections.

To date, there is little implementation of controls by the BNB based on ML/TF risk. There are few on-site AML/CFT inspections, and this can be explained by an inadequate assessment of the ML/TF risks to which the institutions are exposed and a shortage of resources. The BNB recently launched a periodic questionnaire to obtain specific, systematic information about ML/TF risks and more effectively prioritise supervision.

For the FSMA, the AML/CFT controls introduced address the bureaux de change sector, which was identified as the most at risk of ML/TF, and these controls are appropriate. Nevertheless, these controls should be strengthened so as to address the quality of STRs due to the large proportion of automatic reports. For collective investment fund management companies, investment management and investment advisory companies and mortgage providers, given the more limited risk associated with those activities, AML/CFT controls are included in the general on-site inspections. For the financial intermediary sector, there are no specific, qualitative on-site inspections to ensure compliance with AML/CFT obligations.

FPS Finance conducted on-site visits at Bpost, for information purposes, on the AML/CFT systems and procedures in place, but at this stage no measure/inspection as such has been conducted.

For the financial sectors under FPS Economy's supervision, no desk audit or on-site inspection has been conducted. However these are low-risk sectors (consumer credit companies, finance leasing companies).

The main financial sector supervisors follow a policy of fostering understanding of ML/TF risks and explaining AML/CFT obligations, essentially through a concrete, detailed guideline, joint BNB/FSMA circulars, and by referring stakeholders to the CTIF website and annual report.

DNFBPs

Efforts have been made in recent years to engage DNFBPs and raise their awareness of AML/CFT concerns. Supervisors have been designated and regulatory systems are in place. Certain professions (e.g. notaries and the accounting/tax professions) have become very actively involved in promoting AML/CFT measures. This role is played mainly by the industry trade groups, such as for diamond traders or real estate agents, with the support of the supervisor.

DNFBP supervisors have generally identified the greatest risks. However the systems to monitor developments in these risks and ensure that they are known and understood have yet to be set up.

In general, the controls of the DNFBDs are still very limited, if not non-existent. The risk-based approach, when it exists, is confined to the assessment contained in the annual AML/CFT report, which determines the businesses to be inspected as a matter of priority, while the inspections subsequently carried out are standardised.

In a number of non-financial sectors, such as legal and accounting/tax professions, assigning responsibility for controls to working professionals could be detrimental to the effectiveness of the supervision.

For financial and non-financial sectors alike, the limited controls and the significant lack of sanctions taken solely on ML/TF matters have a major impact on the effectiveness of AML/CFT measures.

6.1 Background and Context

6.1. *Financial institutions* – In 2010, **the overall structure of Belgian supervision of financial institutions**, organised around the Belgian Banking, Finance and Insurance Commission (CBFA), **was re-engineered**¹. The supervision model introduced rests on two pillars (the ‘Twin Peaks’ model):

- a prudential pillar, assigned to the National Bank of Belgium (BNB), which exercises the various prudential supervision functions in relation to credit institutions, investment companies with the status of brokerage firm, insurance and reinsurance companies, clearing and settlement services, payment institutions, electronic money institutions and mutual guarantee companies;
- a supervisor, the Financial Services and Markets Authority (FSMA), which, on one hand, exercises all of the supervision functions over stakeholders not subject to prudential supervision and financial markets and products, and, on the other hand, supervises the rules of conduct of stakeholders in the financial sector and supervises consumer information and protection. It is responsible for collective investment funds, collective investment fund management companies, investment companies with the status of investment management and investment advisory companies, bureaux de change, market operators, insurance and reinsurance intermediaries, banking and investment service intermediaries, and businesses and operations related to mortgage credit.

6.2. Supervision of the financial institutions under the responsibility of the BNB and the FSMA also covers compliance with AML/CFT obligations. Co-operation between the BNB and the FSMA is governed by a Protocol signed in March 2013. It allows them to exchange information so that they can co-ordinate their supervision policies, including in AML/CFT matters, and ensure that their interpretation of the system is identical and that they are implementing consistent supervision measures and procedures. This co-ordination is especially important in AML/CFT matters in cases where the spheres of responsibility are shared. For example, where investment companies are concerned, the FSMA supervises investment management and investment advisory companies, while the BNB supervises brokerage firms. In insurance, the BNB is responsible for insurance companies, while the FSMA supervises the intermediaries.² The table shown in Section 5, point 5.1.(b) presents the authorities responsible for the various financial institutions.

6.3. With the introduction of the Single Supervisory Mechanism for banks in November 2014, the European Central Bank (ECB) became the sole authority competent for the direct prudential supervision of significant European banks³ and will accordingly **exercise direct supervision over Belgian financial groups**.⁴ However, the **supervision roles not assigned to the ECB - one of which is to prevent the financial system from being used for ML/TF purposes - will remain the responsibility of the national**

1 The reform was described in Communication CBFA_2011_15 du 23 mars 2011 (CBFA, 2011)

2 It should also be noted that the BNB and the FSMA share competence for supervision of the Euroclear group: the BNB supervises securities settlement systems and the group’s banking operations, while the FSMA supervises the protection of investments and the rules of conduct in relation to the financial markets.

3 More specifically, banks with assets worth in excess of EUR 30 billion or representing at least 20% of their home country’s GDP, or which applied for or received direct financial support from the European Financial Stability Facility or the European Stability Mechanism, or which have substantial cross-border operations (Art. 6.4 Reg. 1024/2013, Official Journal of the European Union, 2013). For cross-border banks, the existing procedures for co-ordinating supervisors from the home country and the host country will continue to apply. For institutions where the ECB will take on the role of direct supervisor, it will fulfil the functions of home country authority and host country authority for all of the participating Member States.

4 Banque Central Européenne (2014).

authorities.⁵ The other banks remain under the exclusive prudential supervision of the national authorities - the BNB, as it happens - but the results of this supervision will be reported to the ECB.

6.4. Under the **rules governing the European passport**, EEA financial institutions operating in Belgium through a branch office (under freedom of establishment) are subject to AML/CFT supervision by the Belgian authorities, in co-operation with the authorities in their home country. EEA financial institutions operating in Belgium without being established there (under the freedom to provide services) are subject to AML/CFT supervision by the authorities in their home country. Payment and electronic money institutions from another EEA Member State who offer payment services in Belgium through agents based in Belgium (a form of freedom of establishment) are subject to the AML/CFT Law. They should designate a person to be responsible for compliance with the Belgian AML/CFT law, who must be located in Belgium. AML/CFT supervision of the establishment by the Belgian authorities will be carried out through this person, the 'central point of contact'.

6.5. **FPS Finance is responsible for supervising Bpost** with respect to financial activities for which it is covered by the AML/CFT regime (see Section 5). Bpost also acts as an agent for a major European payment institution's money transfer operations in Belgium. Within this framework, FPS Finance is also competent to supervise this European payment institution operating through Bpost, for which it is also the central point of contact (see Section 5 and c. 14.3).

6.6. **FPS Economy is responsible for supervising finance leasing companies and consumer credit institutions.** It is also responsible for supervising compliance with the limitations on cash payments (see Section 3).

6.7. *DNFBPs - The Law of 18 January 2010* added a new Art.39 to the AML/CFT Law, which **transfers responsibility for the AML/CFT supervision of DNFBPs from the CTIF to the supervisors, supervisory government authorities or disciplinary authorities of these businesses and professions.** The table shown in Section 5, point 5.1.(b) shows the authorities responsible for AML/CFT supervision of the various DNFBPs.

6.2 Technical Compliance (R 26 – R 28, R 34, R 35)

Recommendation 26 – Regulation and supervision of financial institutions

6.8. **Belgium is partially compliant with R 26** – For the financial institutions subject to their supervision, the BNB and the FSMA have set up processes and tools to define their prudential risk profile, of which ML/TF is one of the components, but without the BNB's having identified the amount of ML/TF risk for each of the institutions. With the exception of the bureaux de change supervised by the FSMA, the extent and frequency of ML/TF controls are not stipulated specifically on the basis of the type and level of ML/TF risk identified for each of the institutions. The BNB and the FSMA regularly review the risk profile of the institutions under their supervision, though there is no indication what role ML/TF risk plays in the scope of this review. FPS Finance, which is in charge of supervising a major European payment institution for the money remittance service provided in Belgium through Bpost, does not specify the supervision method applied. This is also true for FPS Economy, although it is in charge of lower-risk sectors (consumer credit companies and finance leasing companies).

Recommendation 27 – Powers of supervisors

6.9. **Belgium is largely compliant with R 27** – The BNB and the FSMA have the general powers to supervise, oversee and sanction financial institutions, including by applying the enforceable means at their

5 'The ECB should co-operate, as appropriate, fully with the national authorities which are competent to ensure a high level of consumer protection and the fight against money laundering.' Official Journal of the European Union (2013).

disposal within the broader framework of their powers to impose sanctions in prudential matters. FPS Economy and FPS Finance, on the other hand, have only the sanctions provided for by the AML/CFT Law, which are confined to information measures and administrative sanctions.

Recommendation 28 – Regulation and supervision of DNFBPs

6.10. **Belgium is partially compliant with R 28** – There are a number of shortcomings: the absence of requirements for fit and proper checks in the diamond trade sector, which is recognised as high risk. Furthermore as a general rule, supervision programmes, when they exist, were drawn up without any individualised assessment of professionals’ risk, nor reference to the sector’s risk. What impact the stakeholders’ risk profile has on the extent and frequency of controls is not indicated.

Recommendation 34 – Guidance and feedback

6.11. **Belgium is largely compliant with R 34** – The competent authorities, and more specifically the CTIF, in addition to a number of supervisors and self-regulatory bodies, circulate information of a general or thematic nature on AML/CFT matters and draw up guidelines for the persons and institutions covered by the law. It is to be noted, however, that no specific measures have been taken recently by FPS Finance or FPS Economy, or by the authorities in charge of security companies, casinos, lawyers registered with the French- or German-speaking Bars, or bailiffs. The CTIF circulates general feedback in the annual report, which presents relevant statistics for each sector, along with typologies based on an analysis of the reports. The supervisors do not take part in or take the initiative in providing sectorial feedback in relation to the implementation of reporting obligations, on the basis of observations made during their inspections. Such actions might help reporters detect and report suspicious transactions.

Recommendation 35 – Sanctions

6.12. **Belgium is largely compliant with R 35** – A diverse range of criminal, administrative and disciplinary sanctions are available to prudential supervisors, and can be applied, either specifically or through prudential controls, for failure to fulfil AML/CFT obligations. However, to gauge the proportionality of the sanctions, there is no indication of whether and how the scale or nature of these sanctions might vary with the nature and extent of the non-compliance observed, the institution responsible for the non-compliance, the seriousness and number of violations, whether or not it was a repeat offence, or other relevant criteria. When sanctions are imposed on legal persons, their directors and officers may also be sanctioned. For certain DNFBPs, this involves imposing a disciplinary sanction against the director.

6.3 Effectiveness: Immediate Outcome 3 (Supervision)

(a) Approvals and ‘fit and proper’ checks on directors and shareholders

6.13. *Financial institutions* - The BNB has mechanisms for verifying that directors and significant or controlling shareholders are *fit and proper*, both when applications have been submitted for licencing or registration, and when the BNB receives mandatory notice of changes of directors or shareholders. These procedures are set out in BNB circulars that the assessment team was able to consult. These verifications mainly consist in checking the criminal record or requests to the prosecutor’s office for information on any legal proceedings in progress. The BNB records instances in which it was in contact with the judicial authorities for criminal cases involving prospective directors, which might call into question their suitability for directing a financial institution. These checks may also rely on the international co-operation of foreign counterparts when the situation involves cross-border elements. The BNB indicated that it is extremely rare that it formally refuses an approval on ‘fit and proper’ grounds, because approval applications that are problematic on these points are systematically withdrawn by the applicants concerned when they are examined by BNB staff. The BNB told the assessors about several cases in which, when it had requested further information on the capacity of the shareholders, the applications had been withdrawn or the plans cancelled, for example concerning the sale/purchase of an insurance company. The BNB also cited an example in which it had refused a banking

license because the status of the majority shareholder, a transnational finance company, may have made it difficult to carry out effective consolidated supervision.

6.14. **The FSMA also has supervision mechanisms in place to verify the capacity of the directors and shareholders who exercise control over the companies** under its responsibility. It uses them when applications have been submitted for licensing or registration, and when the FSMA receives mandatory notice of changes of directors or shareholders. It cited the case of requests to change the shareholder structure, which were turned down because of the difficulty in tracing the source of the funds to be used to purchase the securities. It can also use foreign counterparts, though this does not happen often, given the essentially domestic character of the institutions under its control. The FSMA also has a department dedicated to identifying cases of illegal practice of financial activities, which refers around 20 cases per year to the public prosecutor's office.

6.15. **DNFBPs – The business practices of DNFBPs are subject to conditions designed to avert the risks of infiltration by criminals or their accomplices.** As a general rule, applicants for registration or licensing are required to supply a certificate of good character, which provides information about any convictions in the applicant's police record. Only diamond traders are not subject to fitness and properness conditions, but FPS Economy may use its discretion to refuse registration. For lawyers and statutory auditors, registration and supervision of the professional register fall, respectively, to the public prosecutor's office and the Prosecutor General.

6.16. Despite this supervision, an isolated case still in progress was noted in which the supervisor of statutory auditors had not withdrawn the professional qualification of a person who had been convicted on appeal of forgery and use of forged documents, forgery and use of forged tax documents, fraud and tax fraud in the exercise of his professional functions, which may raise reservations on the effectiveness of supervision in this area.

6.17. The Belgian Gaming Commission considers that the greatest ML/TF risk facing casinos is that of being infiltrated by criminals. Accordingly it performs very thorough checks on the establishments' potential shareholders and directors before granting a licence (face-to-face interviews, application of subjective criteria to assess the capacity of the shareholders, etc.), and may communicate with other government agencies, in particular the tax authorities. The Commission has also drawn up a *black list of illegal gaming websites* in Belgium, which do not have access to a server in Belgium.

6.18. As a general rule, **information is required on DNFBPs' shareholders, including changes that occur over the course of the business's existence, and violations of this requirement are subject to sanctions.** For the accounting/tax and legal professions, the majority of shares and voting rights within associations and groups must be held by certified professionals. The certification authorities/supervisors ask the managers to provide a statement about the beneficial owners and/or the register of shareholders. For real estate agents and diamond traders, there are no requirements about providing information on the shareholders. However, FPS Economy is currently taking steps to obtain directly from registered diamond traders the identity of shareholders who hold over 25% of the shares in their companies.

6.19. There is cause for concern in the fact that legal and tax advisory services are available from persons who are not members of regulated professions and are not subject to any AML/CFT obligations, or from professionals who violate the rules governing their practice, including in ML/TF matters. This is particularly true for company formation and carrying out the various legal acts pertaining to the life of companies. Besides the fact that these activities may be deliberately misleading about the capacity of the person who performs them, they may also result in operations aimed at misusing companies for the purposes of ML/TF. The lack of regulations for domiciliary companies (see Section 5) heightens the risks of these mechanisms misusing legal persons. This issue also raises the question of the effectiveness of the controls applied to certain DNFBPs.

6.20. The real estate agents' industry trade body conducts ongoing, effective action to prosecute individuals practising the profession without a licence.

*(b) AML/CFT controls of financial institutions***Controls by the BNB**

6.21. *Understanding of ML/TF risks - As a general rule, the BNB has identified the main financial activities under its supervision exposed to ML risks:* money remittance services, and in particular those involving a network of agents, activities associated with cash movements, wealth management, with concerns regarding knowledge of the source of the funds (in the recent, specific context of the *Déclaration Libératoire Unique* tax amnesty, which gave Belgian taxpayers an opportunity to regularise their tax position⁶), or electronic money and online banking, which nevertheless appear to be relatively limited in their use at this point. Bank customers' business sectors are also risk factors, in particular certain businesses in which transactions are mainly carried out in cash, such as second-hand vehicle sales or cleaning companies.

6.22. **The BNB stays informed of the emergence and evolution of ML/TF risks through outside sources** that cover primary ML/TF phenomena (information in the college of supervisors, European fora such as the European Commission or the European Supervisory Authorities, FATF, the press, etc.). It focuses on supervising the procedures and systems set up by the financial institutions to detect unusual transactions and effectively address threats. It does not, therefore, take a proactive approach to gain insights into the criminality associated with ML/TF, and acts in response to warnings or confirmed instances of ML/TF, which it believes the CTIF or the professional sector are responsible for identifying and monitoring. However, as part of its controls and its information initiatives, an authority can also be in a position to identify ML/TF phenomena that would not otherwise have been identified, and help to identify ML/TF risks and ensure that the financial sector understands them and that they are addressed by AML/CFT prevention systems. This step would give the BNB input to the risk-based approach that it is going to pursue and strengthen for carrying out its AML/CFT controls (see below). The BNB should also ensure that outside information on the risks, which are many and diverse, is fed into this effort so that the BNB operational departments in charge of organising compliance controls can access and consult it. The BNB should also analyse any data it holds that might be relevant for AML/CFT (e.g. information about wire transfers collected under Target 2).

6.23. **The BNB indicated that it will include the relevant risks shown in the national ML and TF risk assessments** in the risk-based approach it is going to pursue and strengthen for carrying out its AML/CFT compliance controls. It has nevertheless conducted specific initiatives on the sectors identified as high-risk sectors by the national ML risk assessment. For example, in 2010 and again in 2013, the BNB drew financial institutions' attention to the risks associated with large cash movements (deposits or withdrawals), especially in connection with gold transactions.⁷ It also mentioned an example of an investigation it had conducted into a *systemic* bank that had made a delayed STR to the CTIF regarding large cash withdrawals. The BNB took action after being informed by the prosecutor's office, which had been informed by the CTIF. This example underscores the need for the BNB to regularly co-operate with the CTIF (see Section 1), especially as credit institutions are among the main reporters to the CTIF (see Section 5), and to permit it in this way to actively contribute to the ML risk assessment.

6.24. Concerning TF risks in the financial sector, the main focus of attention is the money remittance sector. For the rest, and especially where wire transfers are concerned, the BNB underscores the need for the rule-based application of asset-freezing obligations.

6.25. *Helping stakeholders understand AML/CFT risks and obligations - Policy on building stakeholder understanding of ML/TF risks and AML/CFT obligations relies essentially, to date, on a concrete,*

6 Law of 11 July 2013 amending the tax regularisation regime and establishing a social regularisation.

7 BNB/FSMA (2013).

detailed⁸ **guideline**, joint BNB/FSMA⁹ circulars issued in response to warnings from the CTIF or confirmed instances of ML/TF, and advice to consult the CTIF website and annual report. Moreover, the BNB's annual report contains very little information about its AML/CFT policy.

6.26. **The BNB should be encouraged to take a more proactive approach**, based on a review of its supervision operations and leading to initiatives to educate and inform stakeholders. Joint initiatives with the CTIF should be organised, in particular with regard to STRs. The financial sector interviewed unanimously called for regular feedback on STRs so that it could ultimately obtain a sector-specific overview of the reports made, similar to what currently exists, informally, with the major banks' compliance officers. The financial sector appreciates and uses the tools already provided by the CTIF, and in particular its annual reports, which contain useful statistics and typologies. A more direct, targeted and frequent dialogue with the CTIF and the BNB, based on on-site inspections of the institutions' reporting policy, would give each sector a qualitative appraisal of the reports received and guidance for raising the quality of the reports. It would also help change the approach of certain payment institutions that provide money remittance services either directly or through a network of agents, and which submit a large percentage of automatic STRs. It would also be desirable to **co-operate more closely with the CTIF on typologies** affecting the financial sector. Initiatives to take advance measures, as was done for freezing mechanisms with regard to Ukraine, would make it possible to include these cases in financial institutions' warning and monitoring systems (e.g. the use of illegal Brazilian labour in the industrial cleaning sector, the construction sector, or used car sales/purchases involving West Africa).

6.27. *ML/TF risk-based controls* - **The BNB examines prudential risk at sector level and for each institution**. Accordingly, institutions are classified into *systemic, core, current, small* and *industrial supervision*. Within each of these categories, the risks to which each institution is exposed are periodically assessed on an individualised basis to determine the appropriate supervision actions ('scorecarding').¹⁰ This overall risk assessment includes an assessment of ML/TF risks, as a sub-criterion of the 'compliance' criterion. However, there does **not appear to be a clear, specific definition and organisation (type and level) of ML/TF risk analysis for each sector and each institution**. So, while there is an individual prudential rating, it has neither been established nor derived from a specific assessment of the institutions' AML/CFT risk even if this aspect has an influence on the overall rating. For the insurance sector, there is however a map of AML/CFT risks for each product, which could not be replicated for the other sectors and for which, according to the BNB, the product/business approach would not be as useful.

6.28. **When on-site inspections or specific off-site controls are conducted, the ML/TF risk-based approach is not yet sufficiently organised**. The understanding of each institution's individual risks is based on the knowledge derived from overall prudential supervision, examination of the annual AML/CFT report, and the annual interviews, which will determine which institutions are to be inspected. The BNB is nevertheless making an effort to expand the information on which it bases its assessment of ML/TF risks: it recently brought in a periodic AML/CFT questionnaire.¹¹ This tool was developed in consultation with the profession. It is currently undergoing improvements and should give the BNB a systematic, ongoing understanding of ML/TF risks.

6.29. However, **the complementarity and hence the effectiveness of the supervision/reporting tools (the AML/CFT report and the periodic questionnaire) are still in question**, mainly because of the BNB's

8 CBFA (2010).

9 For example, BNB/FSM (2013).

10 The risk assessment carried out in *scorecarding* is structured into three main areas: 1) Environment, which includes governance, environment, general profile, solvency and financial ratios; 2) horizontal functions, which includes audit, risk management, compliance - including the AML/CFT aspect - management control, IT, outsourcing, business continuity plan-business recovery plan; 3) risks, which includes credit, interest rate, market, cash assets, operations, asset management.

11 BNB (2013).

shortage of resources for processing and monitoring them. The questionnaire is welcome for smaller entities of the banking and insurance sector and new entrants in the financial sector (such as payment institutions or electronic money institutions).

6.30. To date, the risk-based approach (based essentially on prudential risks) applied by the BNB has led it to concentrate its on-site inspections on larger institutions. On the other hand, we noted a serious insufficiency if not an almost total lack of on-site AML/CFT inspections of small and medium-sized banks (classified as *current* or *small*). Inspections of so-called *systemic* institutions are warranted, including for AML/CFT purposes, but they should not make up the bulk of on-site inspections for the banking and insurance sector. The supervision approach should include a definition of a minimum frequency for inspections of smaller-scale 'baseline' institutions.

Table 6.1. Inspections

| Type of inspection – Credit institutions and investment companies | Number from 01/01/2010 to 01/07/2014 |
|---|---|
| Total prudential inspections | 150 |
| of which inspections including one or more AML/CFT-related components | 47 |
| of which inspections focused <u>exclusively</u> on AML/CFT | 7 |
| Total recommendations made during AML/CFT inspections | 207 |
| AML/CFT inspections: coverage of the banks and brokerage firms sector (criterion used: balance sheet total) | 73.56% ¹ |
| Type of inspection – Insurance companies | Number from 01/01/2010 to 01/07/2014 |
| Total prudential inspections | 45 |
| of which "internal control systems" | 16 |
| of which inspections focused <u>exclusively</u> on AML/CFT | 2 |

Source: BNB

1. This figure does not include second or third AML/CFT inspections of the same institution during the specified period.

6.31. **The serious insufficiency of on-site AML/CFT inspections lessens the effectiveness of the AML/CFT prevention system** and makes it impossible to be certain that the financial institutions are meeting and properly implementing the requisite obligations. **It also impedes ongoing understanding of the risks. The lack of on-site inspections or follow-up action since the interviews conducted with the diamond banks following the publication in the press of the 'Monstre Worldwilde'¹² affair illustrates the difficulty of achieving continuity in risk assessment.**

6.32. The low number of inspections is also due to an **acute shortage of resources, and the BNB needs to significantly increase its available resources**. More specifically, this will be necessary for it to be able to carry out the ambitious programme of on-site inspections scheduled for 2014 at eight payment and electronic money institutions. These new non-bank stakeholders were licensed only recently, so should be allowed to

12 An international courier company organised illegal diamond movements for 355 diamond merchant customers, enabling them to evade paying tax on these transactions. The investigation into this affair began in 2004 and the fraud is estimated at nearly EUR 800 million.

operate for a sufficient period of time before an on-site inspection¹³ is held, to enable an in-depth review. But in July 2014, only one on-site inspection was in progress on the first payment institution licensed in 2010.

6.33. **No on-site inspections have been conducted to date at the 17 EEA payment institutions operating in Belgium through a network of agents** (nearly 1 500 agents), even though **money remittance services, especially those provided through a network of agents, are considered a high-risk business in Belgium and throughout the EU**. One of these European service providers - a major industry player - has the largest network of agents in Belgium. One of these agents is Bpost, which has a culture and an understanding of AML/CFT. The gaps in the European framework concerning the determination of the competent authority for supervising these institutions have not allowed the BNB to take decisive action as the competent authority of the institutions' host country. Belgium recently brought in various measures to remedy these shortcomings, and now has a complete map of the *central points of contact* (CPCs) appointed by European payment institutions. The CPC is the supervisor's contact person in the host country: the supervisor's questions/requests to the payment institution covered by the system go through the CPC. The CPC also comes under supervision, by virtue of a right to require information, because the services are provided through these agents (see TC Annex, C.14.3). It should be noted that the European payment institution that provides money transfer services in Belgium through Bpost and another network of agents has two CPCs: one is supervised by the BNB, the other by FPS Finance (through Bpost). Each of these supervisors accordingly supervises the European payment institution that does business with the network of agents for which it is competent. The BNB and FPS Finance should co-ordinate their efforts to ensure that their controls are carried out using equivalent methods.

6.34. The BNB has just launched a **periodic AML/CFT questionnaire**, modelled on the questionnaire applied to institutions licensed in Belgium, for European institutions established in Belgium solely in the form of networks of agents or distributors. It lays the groundwork for off-site supervision of these institutions. It is a simplified version of the questionnaire, adjusted to suit institutions operating in Belgium through a very small number of agents, or which run a very limited number of operations there.

6.35. Nearly **270 European payment institutions operate in Belgium under the freedom to provide services**, mainly to offer money remittance services. They come many from the United Kingdom (188 institutions were noted). Under European law, AML/CFT compliance supervision falls to the competent authority in the home country. The BNB explained that money remittance activities carried out under freedom to provide services in Belgium consist in transactions that go through an account held by a Belgian institution, which reduces the risk of ML/TF associated with these transactions.¹⁴ For their compliance controls, Belgium relies on the supervision of the competent authority of the country of origin and the quality of the due diligence carried out by the Belgian institution under its supervisory authority. The prevention of ML/TF activity by this channel depends therefore on the quality of supervision of these institutions. No information was provided on the cross-border co-operation with the competent authorities in question. There were also no information on any safeguards put into place by the Belgian authorities to ensure that European payment institutions comply with the principles of the freedom to provide services, for which supervisor from the country of origin is competent.

6.36. The on-site AML/CFT inspections conducted by the BNB, which are very limited, **do not appear to be based on an in-depth or thematic approach** that would provide closer and more effective supervision. For instance, it is not clear that certain aspects or activities that present or might present high ML/TF risks (e.g. diamond banks, cash deposits/withdrawals – outside the gold sector – third-party accounts) are analysed or monitored to any significant extent within the framework of these on-site inspections.

13 Moreover, some statutory auditors have already submitted installation reports to check that all of the procedures described are effectively in place.

14 However, the money remittance transactions which are exposed to a higher risk of ML/TF take place through the acceptance of cash payments to an agent or teller located in Belgium, and operating under the freedom of establishment.

6.37. The Single Supervisory Mechanism for banks (see point 6.1) was not in force at the date of the on-site inspection (it took effect on 1 November 2014), so was not taken into account for the assessment. The BNB should nevertheless define the resources to be allocated, in particular for co-ordination with the ECB, and adjust its overall risk assessment system described above. It should also consider possible changes in the prudential risk analysis and classification system in place, which includes AML/CFT.

6.38. *Remedial action and sanctions* – Only two cases related to ML/TF have been opened to date. **The lengthy processing and follow-up on the findings in on-site inspection reports** – in particular for the referral to and examination by the auditor, and the possible subsequent referral to the BNB sanctions committee – **weaken the only two cases** related to ML/TF, currently pending, given the defendant's right to a reasonable timeframe. Here again, the lack of resources is one of the causes.¹⁵ In any case, the significantly insufficient number of on-site inspections and the lack of a specific AML/CFT risk-based approach in the action priorities are the main factors behind the insufficient number of cases submitted for sanctions.

6.39. Insufficient remedial measures, including administrative sanctions,¹⁶ and the complete lack of disciplinary sanctions in AML/CFT matters in recent years also impair the effectiveness of AML/CFT efforts. They are the direct outcome of a serious insufficiency of AML/CFT controls, and in particular on-site inspections.

6

FSMA controls

6.40. *Understanding of ML/TF risks* – **The FSMA has identified the main ML/TF risks presented by the institutions under its responsibility and has developed matrices** that measure these risks in terms of likelihood of occurrence and impact for the sector. The operations most at risk are those of bureaux de change, because of the cash movements involved in these transactions. However, the small sums involved in these transactions and the small number of institutions (12) limit the impact of these risks. Additionally, because there are so few bureaux de change, the FSMA knows them well. The FSMA breaks down bureaux de change by risk level (*high, medium, low*), which determines the extent and frequency of the control measures implemented.

6.41. **The risks associated with the operations of collective investment fund management companies and investment management companies are considered moderate**, since these businesses cannot receive customer assets, and the assets are simply managed or advice given, not moved from one institution or account to another. **Regarding financial intermediaries**, given the size and the characteristics of the sector, the risks seem limited in terms of both instances of ML/TF and their impact (see Section 5).

6.42. With the exception of supervision of the bureaux de change sector, the **understanding of the risks is neither ongoing nor exhaustive, given the insufficiency of AML/CFT controls** and in particular on-site inspections. It is based essentially on outside information sources and annual AML/CFT reports, except in the case of financial intermediaries, which are not required to produce AML/CFT reports.

6.43. *Helping stakeholders understand AML/CFT risks and obligations* - **Policy on building stakeholder understanding of ML/TF risks and AML/CFT obligations relies essentially, to date, on a concrete, detailed guideline, joint BNB/FSMA circulars issued in response to warnings from the CTIF or confirmed**

15 In the two cases in question, following the reform of the supervisory architecture in 2011, a new sanctions committee had to be set up, and the member appointment procedure was marked by very protracted delays and timeframes.

16 The BNB indicated that 14 serious administrative measures were taken against banks and brokerage firms between 1 January 2010 and 31 October 2013, but they all concern a horizontal (one-off) action conducted on the identification of beneficial owners, and the sanctions taken are laid down not in the AML/CFT Law but in banking law.

instances of ML/TF, and advice to consult the CTIF website and annual report.¹⁷ The FSMA does run some initiatives to educate and inform stakeholders, but they are limited (e.g. circular to remind life-insurance intermediaries of their AML/CFT obligations¹⁸). The only substantial information on AML/CFT controls in the FSMA annual report concerns bureaux de change.

6.44. **The FSMA should be encouraged to take a more proactive approach**, based on a review of its supervision operations and leading to initiatives to educate and inform stakeholders. Joint initiatives with the CTIF should be organised, in particular with regard to STRs, using the same approach as was recommended for the BNB (see above).

6.45. It is also important to check that employees involved in AML/CFT controls have adequate AML/CFT training, especially on the notion of beneficial owner and the steps to take when the beneficial owner is not identified, for which some bureaux de change have difficulties.

6.46. *ML/TF risk-based controls* – **Because of the high ML/TF risks in bureaux de change's operations, specific, in-depth AML/CFT controls are conducted, including document-based checks and on-site inspections.** The resources allocated seem appropriate (one full-time equivalent to carry out on-site inspections and off-site controls), given the number of stakeholders. They could be increased for greater effectiveness of the controls (for example concerning the quality of the STRs) and to cater to the requirements of the next on-site inspection programme, since the FSMA says that the 12 bureaux de change should be inspected on site every year. The observations made during on-site inspections concern the computer system and its ability to record and manage all of the identification data and other know-your-customer information, accurate data entry into the computer system by counter staff, or failure to carry out due diligence measures. **Some bureaux de change have also been found to have difficulty effectively detecting, analysing and reporting suspicious transactions to the CTIF.** One money changer in particular submits a large proportion of automatic STRs, which are not supplemental STRs relating to reports already made concerning a particular customer. This practice could lessen the effectiveness of the AML/CFT system (see Section 5). The fact that this practice has been going on for a number of years and is the work of one of the largest players in the sector, placed in the AML/CFT 'high risk' category in the FSMA classification, **raises questions about the level of supervision for STRs applied to this bureau de change. The FSMA's compliance controls for STR obligations by bureaux de change, and more particularly with this bureau de change should be tightened.** At the very least, steps should be taken to provide guidance to ensure that the CTIF reporting obligations are properly and effectively applied (e.g. during an inspection, review the controls carried out in the sector on this subject).

6.47. **The other sectors under FSMA responsibility** (investment management and investment advisory companies, financial intermediaries, collective investment fund management companies, mortgage credit services) **have a lower ML/TF risk profile.** Accordingly, the **controls on these services concern aspects other than AML/CFT**, and the implementation of AML/CFT risk-based controls consists, to date, in an appraisal of the annual AML/CFT report (except in the case of intermediaries). Following its examination, the FSMA may ask for changes to be made to the report. In 2012, 12 investment management and investment advisory companies and four collective investment fund management companies were asked to amend their reports, i.e. roughly 25% of the total. However, it is difficult to assess the effectiveness of the follow-up on this report for want of specific, qualitative AML/CFT on-site inspections.

6.48. Concerning intermediaries, because of their large number and the low degree of risk, except for off-site control of the licensing application, **there are no AML/CFT tools for off-site supervision of the sector**, nor are there tools that are adjusted and proportionate to the size and diversity of these entities. **On-site controls are based solely on indicators** (e.g. press articles, information from judicial authorities,

17 CBFA circular of 6 April 2010 and, for example, BNB/FSMA circular on recent changes concerning the prevention of money laundering (BNB/FSMA, 2013) (in French only).

18 FSMA (2013).

information provided by an insurance company, formal complaint). In the other cases, the FSMA indicated that it carried out AML/CFT awareness-raising instead during its general inspections.

Table 6.2. Number of Inspections with an AML/CFT Component

| | 2011 | 2012 | 2013 |
|--|-----------------|------|---|
| Insurance intermediaries | 44 ¹ | 26 | 22 (of which 9 were at the main offices) ² |
| Banking and investment services intermediaries | | | 0 |

Source: FSMA

1. A more specific breakdown for 2011 and 2012 is not available.
2. This number also includes inspections that were carried out at the main offices that were themselves responsible for verifying whether the intermediary met the necessary conditions for registration. The number of intermediaries concerned by these inspections is thus greater than the number of inspections carried out.

6.49. Based on information provided by FSMA on-site inspectors, **in practice, on-site inspections of the entities subject to inspection** (except bureaux de change, see above) **are general and not specifically directed towards** compliance with AML/CFT obligations. On-site inspections nevertheless include an AML/CFT component concerning collective investment fund management companies, investment management and investment advisory companies and mortgage credit services (e.g. whether there is an AML/CFT officer, whether there are AML/CFT procedures), the extent of which depends on the business concerned.

Table 6.3. Number of Inspections with an AML/CFT Component

| | 2012 | 2013 | 2014 |
|---|------|------|------|
| Collective investment fund management companies | 2 | 0 | 1 |
| Investment management and investment advisory companies | 0 | 7 | 0 |

Source: FSMA

6.50. The sectors referred to above were analysed as 'limited risk' of ML/TF by the FSMA, and it was therefore understandable that there were no on-site inspections dedicated exclusively to AML/CFT. **However, an increase in the number of AML/CFT inspections is necessary to ensure compliance with the obligations. With respect to intermediaries, an assessment of low risk should not lead to on-site checks that are limited as to compliance with AML/CFT obligations**, for example, whether AML/CFT measures and procedures are in place.

6.51. The FSMA indicated as well that it is currently reorganising its on-site inspection methods and re-allocating resources (it is setting up a 10-strong team of inspectors for financial intermediaries), **primarily to include AML/CFT concerns** in a general on-site inspection programme for the financial intermediaries sector.

6.52. *Remedial action and sanctions – An administrative sanction was taken in 2010* (by the CBFA) against a bureau de change, based on a non-compliance case opened in 2005. The bureau de change was required to pay a EUR 25 000 fine, and the authorities published the judgement (without naming the bureau de change) indicating the failure to discharge the obligations associated with unusual transactions, shortcomings in the performance of the function of AML/CFT officer, and failure to report suspicious transactions. **Another case is in progress, which also involves a bureau de change.** The AML/CFT inspection reports always indicate the remedial action to be taken.

Controls by FPS Finance and FPS Economy

6.53. **FPS Economy has a sound understanding of the risks related to finance leasing operations.** Regulatory measures are being finalised (estimated entry into force in 2015) to allow AML/CFT measures and controls to be implemented.¹⁹

6.54. **From the interviews with FPS Finance, which is in charge of Bpost, it appears that it is beginning to come to grips with the activities and risks concerning Bpost.** The reports on the recent on-site visits confirmed that the contacts were aimed at informing Bpost and establishing a sound understanding of the system, procedures and supervision tools used for AML/CFT. **No on-site inspection had been conducted** and no recommendations or points for improvement had been issued regarding Bpost. Regarding supervision of Bpost in its capacity as agent (and central point of contact) for a major European payment institution that offers money transfer services in Belgium through counter post offices, **no mention was made during the interviews of the actions taken or planned by FPS Finance to co-ordinate its control methods with the BNB**, which is responsible for supervising the other central point of contact designated for the second network of agents used by this payment institution in Belgium. As a general rule, co-operation and support initiatives on the part of the BNB in particular (which controls Bpost Bank) should continue so that FPS Finance can implement effective controls of Bpost's operations, in particular on-site inspections.

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(c) *AML/CFT controls of DNFBPs*

6.55. *Understanding of AML/CFT risks and promotion of AML/CFT obligations* – In recent years, **many non-financial sectors have developed initiatives to engage professionals and raise their awareness of AML/CFT.** Supervisors have been designated and regulatory systems are in place. Certain professions (e.g. notaries) have become very actively involved in promoting AML/CFT measures. This role is played essentially by the industry trade groups (diamond traders and real estate agents, for example), with support from the supervisor. Training courses have been provided, along with learning and practical tools for professionals.

6.56. **DNFBP supervisors have generally identified the highest ML/TF risks, but they have not developed risk assessments** or guidelines for understanding the risks. Nor are there any systems to help them, or professionals, monitor developments in these risks and ensure that they are known, understood and taken into account when applying preventive measures and controls. Given these circumstances, it is important to point out the initiative taken by FPS Economy, in collaboration with real estate agents, to develop a computer application that should be operational by end-2015: it will make it easier to identify high-risk and unusual transactions, and will give FPS Economy a map of the agents the most at risk, to help with organising controls.

6.57. **With regard more specifically to STRs**, and with a view to raising their quality, joint initiatives should be organised between the DNFBP supervisors and the CTIF, using an approach similar to that recommended for the financial sector (see above).

6.58. *ML/TF risk-based controls* – **For many DNFBPs, steps have yet to be taken to check compliance with AML/CFT and risk-management obligations.** In any case, the resources assigned to this supervision seem insufficient as a general rule. This is especially true for FPS Economy, which is responsible for not only diamond traders and real estate agents but also finance leasing companies (and in a related field, controls of the limitations on cash payments). There are not enough inspectors for the number of entities to be inspected (eight employees in the central office and a pool of 100 regional inspectors for all of the areas under FPS Economy's responsibility), and inspectors are insufficiently trained in AML/CFT aspects. A greater focus on the risk-based approach, which FPS Economy has been actively working on, should make it possible to offset, albeit partially, these deficiencies.

¹⁹ Supervision of the consumer credit sector currently falls to FPS Economy, but no measures to apply AML/CFT rules and no supervision measures have been taken.

Table 6.4. AML/CFT controls carried out by DNFBPs

| DNFBP | Supervisors | Inspection reports |
|--|--|--|
| Notaries | National Chamber of Notaries and Chamber of each of the 11 provincial companies | 2012: 129 offices were inspected; 2013: 393; 2014 (including the controls programmed through the end of the year): 1173 Information on the results of these controls is not available |
| Statutory auditors | Institute of Statutory Auditors (IRE) | AML/CFT controls as part of quality control: 250 performed in 2014; 57 prompted follow-up on points related to AML/CFT obligations |
| Chartered accountants and tax consultants | Institute of Chartered Accountants and Tax Consultants (IEC) | AML/CFT questionnaire sent end-2012: 99.5% response rate. On-site inspections only if a disciplinary investigation has been opened AML/CFT checks as part of quality control: 36 professionals controlled in June/July 2014 |
| | Professional Institute of Certified Accountants and Tax Accountants (IPCF) | Questionnaires sent out to all members in 2013. No on-site inspections as yet 3 disciplinary sanctions were imposed by the 2 institutes in the 1st half of 2014 including for failure to comply with AML/CFT obligations |
| Lawyers | Order of the French-speaking Bars and the German-speaking Bar and each of the 14 bars Order of the Flemish Bars and each of the 14 bars | French and German-speaking Bars: no inspections carried out Flemish Bar: 4 detailed reports on the application of preventive measures; no control as yet |
| Casinos | Belgian Gaming Commission (FPS Justice) | 2013/2014: 14 inspections (full controls and not targeting AML/CFT exclusively) No AML/CFT compliance shortcomings observed and no sanctions imposed |
| Diamond traders | FPS Economy | 2 inspections carried out in 2013/14, based on an analysis of annual AML reports 1 violation in relation to the limit on cash payments |
| Real estate agents (and chartered surveyors) | FPS Economy | 4 inspections carried out in the 1st half of 2014 (then 6, one of which resulted in a warning and 3 requests for STRs). |
| Security companies | FPS Interior | Regulation was adopted in March 2014. No inspection had taken place since then |
| Bailiffs | Belgian National Chamber of Court Bailiffs | No information about the inspections carried out. First inspections scheduled for 2016 |

Source: Information from the Belgian Authorities

6.59. **The lack of AML/CFT controls contributes to the lack of follow-up and analysis of the risks.** In this respect, the purpose and goal of the AML/CFT controls conducted by the competent authorities sometimes remain to be clarified: many professions seem to use these controls to detect cases of ML/TF,

rather than to check whether AML/CFT preventive measures are being properly applied. There is also a significant difference between the way certain authorities describe the intensity of the controls and the way it is perceived by the entities controlled. Casinos, for instance, do not mention AML/CFT aspects among the aspects checked by the Belgian Gaming Commission.

6.60. **For some professions, the application of AML/CFT measures is checked as part of a broader quality control** on services or accounting (e.g. accounting/tax professions, casinos and notaries, except in one province). **But in other sectors, such as lawyers, such controls do not exist and are in the process of being introduced.** It should be noted that, legally, controls on third-party accounts, which are quite exposed to ML/TF risk, should be carried out by the president of the bar. For lawyers on the Dutch-speaking bar, controls should be conducted each year on at least 2.5% of the francs managed by the lawyers of each bar.

6.61. Questions should be asked about the extent of the responsibilities assigned to the professional bodies that play a key role in conducting AML/CFT controls (given that the disciplinary sanctions are in the hands of bodies made up of members from outside the profession), particularly as concerns the legal and accounting/tax professions. The lack of geographical proximity between the controllers and the controlled parties, or the involvement of honorary members of the profession in carrying out the controls, do not always appear to be sufficient to guarantee neutral, transparent controls. Moreover, with no distinction between the controllers and the controlled, the assessment of the sector risks cannot take advantage of the differing perspectives on ML/TF risks and vulnerabilities that the professions and the supervisors might bring. The involvement of third parties from outside the profession could bring a critical and objective view on the level and types of ML/TF risk and would thus be desirable.

6.62. The responses to a self-assessment questionnaire on compliance with AML/CFT obligations, or the annual AML/CFT report (when it is required by the regulatory provisions for applying AML/CFT law), will generally serve as the starting point for controls, when such exist, and determine which professionals should be controlled as a matter of priority, thereby factoring in ML/TF risks to a certain extent. In other cases, supervision is organised on a regular basis (every 3 years for notaries, for example, or for the quality control of statutory auditors of public-interest bodies, and every 6 years for other statutory auditors), without taking the risks into consideration.

6.63. **On-site inspections**, when they exist, last no more than a half-day or one day, and **focus exclusively on the main obligations laid down by law and formal compliance with them** (in particular, customer identification, record-keeping, and appointment of an AML/CFT compliance officer). The obligations concerning identification of the beneficial owner and PEPs and relations with high-risk countries and asset freezing do not seem to be covered by specific, appropriate controls. Suspicious transaction reporting does not seem to be examined either, nor does the inspector look at the quality of the reports submitted consider whether some of its transactions should have been reported. The selection of cases for testing may take the risk factor into account: for example, cases concerning a pre-nuptial contract at a notary's office will not be checked for AML/CFT aspects. It would also be necessary to ensure inspections look at whether asset freezing measures are in place and effective for all DNFBPs (see Section 4.4a).

6.64. *Remedial action and sanctions* - **Sanctions were imposed for AML/CFT matters in certain sectors, almost exclusively for failure to send in the annual AML/CFT report.** FPS Economy imposed EUR 1 000 administrative fines on 36 diamond traders on these grounds, and these measures prompted an increase in the number of annual reports sent to the supervisor. The disciplinary bodies of the IEC and the IPCF (accounting/tax professions) also imposed disciplinary sanctions for this non-compliance.

6.65. The IEC recently initiated quality controls that include an AML/CFT thematic component. In 2014, 36 controls were conducted (2013 are scheduled for 2015), but the shortcomings observed in four cases have, for the time being, only led to a follow-up control, which has to take place within six months. Statutory auditors imposed about 10 disciplinary sanctions between 2010 and 2013, mainly for non-compliance with AML/CFT regulations. In April 2013, following a question from the College of Prosecutors-General, the IRE reminded its members that, in the event of the dismissal of a statutory auditor for disciplinary reasons and signs of ML, the institute's board would refer the matter to the disciplinary bodies and tell them that they can impose an administrative fine. This reminder of the possibility of imposing administrative sanctions should

be circulated more widely. When controls reveal non-compliance with AML/CFT obligations, the level and frequency of the sanctions pronounced remain limited.

(d) Specific controls on cash payment limitations

6.66. **FPS Economy selects the sectors to be controlled on the basis of an analysis that takes into consideration risk and opportunity criteria**, based on complaints or information from outside departments such as the police or FPS Finance.²⁰ **Widespread controls have been conducted** over the last three years in the sectors of new and used vehicles, or gold, for example. They detected sums illegally paid in cash amounting to over EUR 1.1 billion. In 2011/13, 478 offences were observed and 32 cases referred directly to the public prosecutor's office as a serious offence. Over the same period, 446 administrative transactions were proposed, to the value of EUR 956 553. The fines imposed range from EUR 250 to EUR 225 000, capped at 10% of the sums unduly paid in cash (Art. 41 § 1 of the AML/CFT Law).²¹ While these sanctions may seem dissuasive in theory, it should be noted that, in 2013, fines totalling EUR 335 000 were imposed for 151 violations: this represents EUR 2 000 per violation, which seems a minor amount.

6.67. **FPS Economy does not yet have sufficient objective distance to be able to make an overall assessment of the impact of the controls.** Some sectors will be controlled again in coming years. There does appear to be a positive impact however on auction houses, which were the subject of an industry-wide investigation launched in 2013. After the control, auction houses changed their terms and conditions to clearly state that they no longer accept cash payments for amounts in excess of the legal limit.

6.68. The controls have certain limitations, though, more specifically because they are based solely on the accounts of the merchants and services providers, so cannot take into account any transactions that were not entered into the books. The resources allocated to these controls also remain limited.²² It seems moreover that, even if the various stakeholders interviewed indicated that they had noticed changes in the use of cash, this is still the usual means of payment for certain businesses.

6.69. **In conclusion**, in the financial sector, the supervisors have generally identified the main high risks. Understanding of the risks is not, however, sufficiently ongoing, due to the insufficiency of the controls carried out, and especially concerning on-site inspections. To date, BNB controls are conducted primarily using a prudential approach, and little use is made of AML/TF risk-based controls. There are few on-site inspections, due to an inadequate assessment of the ML/TF risks to which the institutions are exposed, and a shortage of resources. Shortcomings in supervision are particularly worrying in the case of financial institutions doing business in Belgium based on the European passport, under freedom of establishment, through agents in Belgium. The BNB recently launched a periodic questionnaire to obtain specific, systematic information about ML/TF risks and more effectively prioritise supervision.

6.70. For the FSMA, the AML/CFT controls introduced address the bureaux de change sector, which is identified as the most at risk of ML/TF, and are appropriate. Nevertheless these controls should be reinforced with regard to the quality of STRs given the large proportion of automatic reports. For the collective investment fund management companies, investment management and investment advisory companies and mortgage credit services, given the more limited risks associated with these activities, AML/CFT controls are included in more general controls. For the financial intermediary sector, there are no specific, qualitative on-site inspections to ensure compliance with AML/CFT obligations. A reinforcement of these controls is therefore necessary.

20 Some data is more difficult to obtain, such as customs data.

21 Further percentage increases have to be added to these fines - a system that increases the fine laid down by law by applying a legal coefficient, which is regularly adjusted to the current value of the money. The coefficient was X6 in February 2014, which brings the maximum fine to EUR 1 350 000.

22 See below for the resources available to FPS Economy.

6.71. FPS Finance made on-site visits to Bpost for information purposes, on the AML/CFT systems and procedures in place, but at this stage no on-site inspection has been conducted. For the financial sectors under FPS Economy's supervision, no inspections have been conducted. However these are low-risk sectors (consumer credit companies, finance leasing companies).

6.72. The main financial sector supervisors follow a policy of fostering understanding of ML/TF risks and explaining AML/CFT obligations, essentially through a concrete, detailed guideline, joint BNB/FSMA circulars, and by referring stakeholders to the CTIF website and annual report.

6.73. The DNFBP supervisors have been designated and the regulatory provisions are in place. The supervisors have generally identified the highest risks. However the systems to monitor the evolution of these risks and ensure that they are known and understood have yet to be set up. In general, supervision of the DNFbps is still very limited, if not non-existent. The risk-based approach, when it exists, is confined to the assessment contained in the annual AML/CFT report, which determines the businesses to be supervised as a matter of priority, while the controls subsequently carried out are standardised.

6.74. For the financial and non-financial sectors, closer co-operation should be organised between the supervisors and the CTIF, mainly to improve the policy applied by all reporting institutions, in particular concerning the quality of STRs. Moreover, the limited controls and the significant lack of sanctions taken solely on ML/TF matters have a major impact on the effectiveness of AML/CFT measures.

6.75. FPS Economy conducts targeted controls of compliance with the limitations on cash payments, and the ML/TF risk is one of the factors taken into account to select the sectors covered. It is difficult to gauge the results because the controls began only recently, but they have already brought about changes in certain professionals' practices. The resources allocated to these controls need to be increased to ensure that large-scale initiatives can be undertaken.

6.76. **Belgium has achieved a moderate level of effectiveness for Immediate Outcome 3.**

6.4 Recommendations on supervision

Implementation of ML/TF risk-based controls

- Analyses of sector-specific risks should be conducted, to identify the high-priority areas that require special due diligence measures on the part of the private sector and targeted controls by the competent authorities.
- The BNB should significantly increase the resources for ongoing control and on-site inspections, and the staff available to examine the cases requiring sanctions. It should step up ML/TF risk-based supervision and adjust its extent, frequency and intensity to the risks. The BNB should also carry out sufficient on-site AML/CFT inspections to address the risks.
- The authorities responsible for the AML/CFT controls of DNFbps should organise risk-based supervision covering all AML/CFT obligations. They should also increase the resources allocated to controls, taking into account the type and level of ML/TF risks in the various sectors. Belgium should ensure that the professionals acting as AML/CFT supervisors set up the necessary procedures, including through contributions from outside the profession, to achieve objective risk assessments and effective, qualitative controls.
- For the diamond sector in particular, Belgium should initiate and step up controls that factor in the high ML/TF risks of these operations, and reinforce the controllers' training and technical expertise for the supervision of diamond traders and diamond banks.
- The FSMA should carry out sufficient specific, qualitative on-site AML/CFT inspections, depending on the risks, in sectors other than that of bureaux de change. It should increase the resources allocated

to ongoing AML/CFT supervision and on-site inspections. For the insurance intermediaries sector, it should set up sufficient off-site AML/CFT supervision and on-site inspections to cater for the intermediaries' size and business volume.

- FPS Finance should implement AML/CFT supervision, including on-site inspections, in particular for Bpost operations where it acts as the central point of contact for a major European payment institution that offers money transfer services in Belgium through counter post offices. It should co-ordinate with the BNB, which is responsible for supervising the other central point of contact designated for the institution's second network of agents in Belgium.
- FPS Economy should allocate sufficient resources for ongoing supervision and on-site inspections to address the risks, and implement sufficient AML/CFT risk-based controls, especially for on-site inspections. It should also clarify the competent AML/CFT authorities for consumer credit.

Support tools for ML/TF controls

- The BNB should develop a guide for financial institutions which would provide indicators and examples of minimum requirements to mention in the annual AML/CFT report, to facilitate sector-wide and sub-sector comparisons.
- The BNB should continue its efforts to develop the periodic questionnaire so that it can be used to collect information about each institution's exposure to ML/TF risks and the effectiveness of the risk-mitigation measures applied, so that the information gathered can be used more fully as a basis for risk-based supervision.
- The FSMA should make greater use of the annual AML/CFT report and introduce effective tools for off-site supervision of intermediaries.

Co-operation mechanisms for optimising ML/TF controls

- Belgium should encourage the European Commission to consider, at European level, ways to achieve closer co-operation between competent authorities for the supervision of payment institutions conducting business in another Member State, and in particular money remittance services, under freedom to provide services.
- The CTIF and the BNB should have regular, institutionalised discussions on the ML/TF vulnerabilities, threats and risks that could have repercussions for the financial sector, and the implementation of a risk-based approach.
- The CTIF and the supervisors should work more closely together on the requirements for STRs, in order to improve their quality and help supervisors more effectively target the aspects to be controlled with regard to STRs (e.g. issue common guidelines, publish a report on the controls carried out on these aspects).
- The competent authorities should co-operate on activities that are under joint supervision by a number of them and require co-ordination to assess the risks and implement adequate controls (e.g. investment services, insurance).

Reinforcement of initiatives to promote ML/TF risk prevention

- The competent authorities should step up dialogue and discussions with the private sector on the applicable AML/CTF obligations. This would entail publishing/releasing reports on the results of off-site supervision and major on-site inspections, essentially by the BNB, and setting up regular discussion and consultation platforms, for example when guidelines are being drawn up.

Controls measures in relation to cash payment limitations

- Additional resources should be made available to FPS Economy so that it can conduct broad initiatives for sectors requiring supervision.
- The legislation should be clarified to confirm that the limitation applies to both purchases and sales of precious metals by traders (Art. 21 § 2 of the AML/CFT Law).
- Belgium should take steps to make the European Commission and the other Member States more aware of the benefits of harmonising the limitation on cash payments across Europe.

Bibliography

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Banque Central Européenne (2014), *Liste des entités importantes soumises à la surveillance prudentielle et liste des institutions moins importantes*, Banque centrale européenne, www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm-listofsupervisedentities1409fr.pdf?48b8968851534c891be0f1a0302d6e89 (French only)

BNB (2013), *Circulaire NBB_2013_10*, BNB circular on the questionnaire and its two annexes, September 2013, www.nbb.be/pub/cp/news.htm?l=fr (French only).

BNB/FSMA (2013), *Evolutions récentes relatives à la prévention du blanchiment de capitaux*, BNB/FSMA joint circular, December 2013, BNB/FSMA, Brussels, www.nbb.be/doc/cp/fr/vo/circ/pdf/nbb_2013_16.pdf (French only)

CBFA (2010), *Circulaire CBFA_2010_09 du 6 avril 2010*, circular of 6 April 2010, CBFA, www.nbb.be/doc/cp/fr/vi/settle/circ/pdf/CBFA_2011_09-1.pdf

CBFA (2011), *Communication CBFA_2011_15 du 23 mars 2011*, CBFA, www.fsma.be/~media/Files/fsmafiles/circ/fr/cbfa_2011_15.ashx (French only)

FSMA (2013), *Respect de la législation anti-blanchiment*, Communication FSMA_2013_02, 5 February 2013, www.fsma.be/~media/Files/fsmafiles/circ/fr/2013/fsma_2013_02.ashx (French only).

Official Journal of the European Union(2013), *Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions*, Reg. 1024/2013, recital no. 29, Official Journal of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:287:0063:0089:en:PDF>

6. SUPERVISION

Recommendation 26 – Regulation and supervision of financial institutions

a6.1. Belgium was rated partially compliant in the third evaluation (para. 518 to 544, 553ff. MER 2005). The shortcomings were mainly due to the lack of resources for effective AML/CFT supervision in the insurance sector, to a lack of supervision of credit card issuers or managers (other than credit institutions), leasing and consumer credit companies, and to a doubt as to whether mortgage credit services were really supervised. At the time, the CTIF was the supervisory authority of these financial institutions, and it did not appear to have sufficient resources to perform this mission.

a6.2. **Criterion 26.1** – The scope of the AML/CFT Law includes all the financial institutions covered by the FATF Glossary. The 2010 overhaul of the structure of financial sector supervision entailed a new allocation of responsibilities, now shared by the BNB and the FSMA.¹ Given that AML/CFT supervision is integrated into prudential supervision, the BNB and the FSMA are respectively responsible for the AML/CFT supervision and regulation of institutions placed under their prudential responsibility. Consumer credit and leasing companies are supervised by FPS Economy.² The law expands its scope of application to the BNB and to the *Caisse des Dépôts et Consignations* in order to create a complete and effective AML/CFT framework. These two institutions are under the authority of the Finance Minister. Bpost is subject to the AML/CFT Law for its financial activities for own account (e.g. remittances/postal money orders, issuance of prepaid cards), and is under the supervisory control of FPS Finance. However, concerning activities performed as an agent of a credit institution or a European payment institution, it is not itself subject to the AML/CFT requirements; the institutions themselves are subject. As an agent, Bpost also acts as a ‘central contact point’ under the supervision of FPS Finance which oversees the European payment institution providing its activities in Belgium via the network of post offices (see R 14).

a6.3. **Criterion 26.2** – All of the institutions subject to the Core Principles are licensed by the BNB, including institutions authorised to perform money or value transfers (see R 14). The other institutions are either granted licenses, or registered by the relevant supervisory authority. Furthermore, the establishment or the continued operation of shell banks is not permitted (Art. 43, law of 25 April 2014).

a6.4. **Criterion 26.3** – For all financial institutions, legislative provisions require information to be provided about the capacity and professional standing of senior executives, when applying for licensing or registration.³ In addition, for credit institutions, investment firms, and insurance companies, the BNB must be given prior notification of any intended change to the institution’s administration, operation or effective management, and it may object to the appointment of the person in question. For insurance intermediaries, and banking and investment service brokers, this notification concerns any change to the institution’s control. As regards control over shareholders, when applying for licensing or registration, the supervisory authority must be sent information about holders of a significant interest which may have an influence over the control

1 See Section 6.1 of the main report.

2 The law of 31 July 2013 removed the provision of the law of 2 August 2002 which entrusted the FSMA with the task of supervising consumer credit companies and transactions, as of an effective date to be set by royal decree. It was decided that FPS Economy would be responsible for supervising credit regulation (mortgage and consumer credit) and that the FSMA would be responsible for supervising access to the business of lenders and intermediaries in these sectors. This distribution of responsibilities was given effect by the law of 19 April 2014. The section of that law on the FSMA’s responsibilities will come into force on 1 July 2015. Therefore, consumer credit is currently supervised by FPS Economy.

3 Particularly Art. 19 and 20 of the law of 25 April 2014; Art. 8 and 90 of the law of 9 July 1975; Art. 59 to 61 of the law of 6 April 1995; Art. 62 of the law of 21 December 2009.

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of these financial institutions.⁴ The supervisory authority may deny a license or registration if it considers that the persons in question do not have the necessary capacities to ensure the sound and prudent management of the institution. For credit institutions and investment firms, management companies of collective investment funds, insurance companies, electronic money institutions and clearing institutions ongoing supervision of shareholders also applies and involves prior notification of acquisitions, increases, reductions and disposals of qualified interests in a financial institution. The supervisory authority may object to the acquisition if it has reasonable grounds to consider that the proposed acquirer does not have the necessary capacities to ensure the sound and prudent management of the financial institution. These financial institutions must also give notice of acquisitions concerning non-qualified interests and make occasional and periodic declarations of acquisitions of securities which go beyond the thresholds applicable for prior notifications, thus giving the supervisory authority ongoing knowledge of the shareholding structure.

a6.5. **Criterion 26.4** – The AML/CFT Law provides that supervisory authorities responsible for financial institutions that are subject to AML/CFT requirements ‘may’ exercise their authority on a risk-sensitive basis (Art. 39 §1 sub-para. 2). The general supervisory framework in force in Belgium nonetheless provides that responsible authorities take risk factors into account: a) BNB regulation and supervision of financial institutions subject to the Core Principles are based on the Basel Committee on Banking Supervision Principles, and on the Principles of the International Organisation of Securities Commissions and of the International Association of Insurance Supervisors. All of these financial institutions are subject to prudential supervision on a risk-based approach. AML/CFT supervision, including the application of consolidated supervision of the group, is carried out within the framework of global oversight of financial institutions but may be supplemented by specific AML/CFT compliance inspections. b) For the other financial institutions, the FSMA states that it applies a risk-based supervisory approach. FPS Finance and FPS Economy did not provide any information about the method of supervision applied to Bpost or planned for consumer credit and leasing companies. Financial institutions offering MVTs or bureau de change services are subject to AML/CFT regulation and supervision (see R 14).

a6.6. **Criterion 26.5** – For financial institutions subject to their supervision, the BNB and the FSMA have introduced tools and processes to enable them to precisely define the institutions’ prudential risk profile and to identify the prudential supervision priorities, individually for each institution, and for the various sectors for which they are responsible. These elements particularly take into account the institution’s importance for the sector, its internal control procedures, its structure, the type of business it carries out, the profile of its customers and the characteristics of the products it offers. The ML/TF risk is one of the components taken into account to define the institution’s prudential risk profile, but the weight of the ML/TF risk identified for each institution is not sufficiently established for the BNB. The frequency and extent of inspections are therefore defined according to an approach based on the prudential risks to which the financial institutions are exposed. For the FSMA, ML/TF risk matrices have been defined, at least for the sectors to be supervised, and the ML/TF risk is therefore assessed but, except for bureaux de change, the impact on the frequency and extent of inspections to be carried out is not clearly established.

a6.7. **Criterion 26.6** – The BNB and the FSMA regularly review the risk profiles of the institutions they supervise, but the extent to which the ML/TF risk influences this revision is not established. They specify that the frequency of the profile review may depend on the way an institution’s risk profile changes, including in response to significant events or developments in the institution’s management and operations.

Weighting and conclusion

a6.8. The shortcomings relative to the assessment of ML/TF risk and on-site and remote inspection based on these risks have an important impact on the rating. **Belgium is partially compliant with R 26.**

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4 Art. 18 and 46 to 54 of the law of 25 April 2014; Art. 67 and 67bis of the law of 6 April 1995; Art. 207 and 208 of the law of 3 August 2012; Art. 23 and 24 of the law of 9 July 1975.

Recommendation 27 – Powers of supervisors

a6.9. Belgium was rated largely compliant in the third evaluation (para. 553ff. MER 2005). The main difficulty related to the lack of effective CTIF supervision of credit card issuers or managers (other than credit institutions), leasing companies and consumer credit companies.

a6.10. **Criterion 27.1** – The BNB and the FSMA have general powers to supervise or monitor financial institutions.⁵ The AML/CFT Law also grants them specific powers, to impose administrative sanctions for example, such as publishing the decisions made and/or imposing an administrative fine of at least EUR 250 and up to EUR 1 250 000 (Art. 40).

a6.11. **Criterion 27.2** – The AML/CFT Law grants supervisory authorities power to conduct on-site inspections (Art. 39 §2 sub-para. 2).

a6.12. **Criterion 27.3** – The AML/CFT Law grants supervisory authorities the power to obtain all the information they consider useful concerning the way these institutions implement their AML/CFT obligations (Art. 39 §2 sub-para. 1).

a6.13. **Criterion 27.4** – The range of sanctions made available by the AML/CFT Law appears to be limited, insofar as it only includes publication measures and administrative fines (Art. 40). It does however appear to be satisfactory for financial institutions under BNB and FSMA supervision, as the latter may use the restrictive measures they have within the broader framework of their prudential sanctioning powers.⁶

Weighting and conclusion

a6.14. The shortcomings in terms of sanctions concern FPS Finance and FPS Economy. While FPS Economy is not involved in high-risk operations, FPS Finance is responsible for supervising a major European payment institution that is subject to AML/CFT requirements for the money transfer service it provides in Belgium via Bpost (agent and central contract point). **Belgium is largely compliant with R 27.**

Recommendation 28 – Regulation and supervision of DNFBPs

a6.15. Belgium was rated partially compliant in the third evaluation (para. 674ff. MER 2005). The implementation of the AML/CFT Law had not been defined for non-financial professions, and the systems for monitoring and supervising the obligations incumbent upon those professions were not in place, except for casinos. Furthermore, the structures responsible for compliance controls appeared to be lacking resources.

a6.16. Art.21 para. 1 of the AML/CFT Law lays down a general prohibition whereby merchants and service providers must not accept cash payments for goods or services worth EUR 3 000 or more, for an amount of more than 10% of the purchase price, provided it does not exceed EUR 3 000. This limitation on cash payment is important in the Belgian system, since the use of cash is identified as a factor of risk and vulnerability in the country. FPS Economy is responsible for detecting failures to comply with this provision. Following the analysis of the ML/TF threat, one or more sectors particularly at risk could be required, by RD, to inform the CTIF of any non-compliance with the limitation imposed (Art. 21 para. 5).

a6.17. **Criterion 28.1** – a) The Belgian Gaming Commission, which is an authority governed by the FPS Justice, is the authority empowered to issue casino licences. Casinos may be granted additional licences to run online casinos, for activities identical to those carried out in the physical casino. Foreign online casinos must

5 For example, Art. 134 of the law of 25 April 2014; Art. 92 §1 of the law of 6 April 1995; Art. 34 of the law of 2 August 2002.

6 See for example Art. 234 §1 of the law of 25 April 2014; Art. 104 §1 of the law of 6 April 1995; Art. 26 §1 of the law of 9 July 1975.

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hold a licence in Belgium and the Gaming Commission publishes a list of online casinos banned in Belgium. *b)* Conditions relative to the standing of managers and directors apply as regards obtaining licences, along with duties to provide shareholder information in order to determine the persons who exercise control or influence (Art. 31.4 of the law of 7 May 1999). The casino operator is required to inform the Gaming Commission of any planned changes to the personnel responsible for running the casino and to its shareholders (Art. 32.2 and 3). *c)* The Gaming Commission is also responsible for the AML/CFT inspections of casinos, on the basis of the requirements of the AML/CFT law, the RD of 6 May 1999⁷ and the law of 7 May 1999.⁸

a6.18. **Criterion 28.2** – An authority responsible for monitoring compliance with AML/CFT requirements has been appointed for all other non-financial businesses and professions covered by the Belgian AML/CFT system. This is the FPS Economy for real-estate agents and diamond traders, and the FPS Interior for firms providing security services. The authorities responsible for monitoring legal and accounting/tax professions are public law institutions empowered to organise and supervise the profession by law.

a6.19. **Criterion 28.3** – All designated non-financial businesses and professions have defined regulatory measures establishing the principle of AML/CFT implementation oversight. The measures applicable to casinos have however been adopted in a broader framework than ML/TF prevention (see C.28.1 and R 22). Company service providers are not covered by the AML/CFT Law (see R 22).

a6.20. **Criterion 28.4** – *a)* The law grants all AML/CFT supervisory authorities general powers to seek disclosure of information and to conduct on-site inspections (except for independent legal professions and accounting/tax professions which have these powers nonetheless by virtue of their specific professional rules) to perform their supervisory mission (Art. 39 §2). *b)* All the professions lay down conditions of integrity and standing of natural persons for access to the profession, except for diamond traders. There are no rules governing supervision of shareholders or interests held in real-estate agencies or the diamond trade. For bailiffs, notaries and lawyers, only authorised professionals who have met the conditions of standing and integrity may manage and administer a firm or office. Among accounting/tax professions, registered auditors and chartered accountants and tax advisors require audit offices and/or statutory auditors to monitor companies and firms, both as regards shareholding and governing bodies. Certified accountants and tax advisors impose extensive monitoring requirements in respect of shareholders and the influence exercised in legal entities, both when an application is made to join the profession and throughout the company's existence. *c)* Without prejudice to the measures defined by other laws or regulations applicable to AML/CFT supervisors, Art.40 of the AML/CFT Law empowers them to impose administrative sanctions. The range of administrative sanctions provided by the law only includes publication measures and fines. However, there are also disciplinary sanctions applicable in each profession and business sector. The law does not establish any connection between the non-compliance detected and the applicable sanction, but the supervisory authorities may adjust the fine to the seriousness of the offences and use the range of sanctions available to them. Given the lack of indications concerning the sanctions policy, their proportional nature is difficult to assess.

a6.21. **Criterion 28.5** – The AML/CFT Law provides that authorities responsible for monitoring compliance with AML/CFT requirements 'may' exercise their control on a risk-sensitive basis (Art. 39 §1 sub-para. 2). Real-estate agents, companies providing security services and notaries state that they take the risk into account to determine their inspections, without giving any further details. The monitoring criteria established by diamond traders, and chartered accountants and tax accountants to a certain degree, are mainly based on the existence and quality of the annual AML/CFT report, which is used to determine inspection priorities for professionals. For the other professions and businesses, monitoring programmes have been established without any individual professional risk assessment (e.g. company auditors), and without any reference to

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7 RD implementing Art. 14bis §2 sub-para. 2 of the AML/CFT Law which defines a list of objective criteria in order to make targeted declarations.

8 Law on gaming, gaming houses and the protection of gamblers which contains provisions relative to the identification requirement (see R 22).

the sector's overall risk. No indication is provided of how the risk profile of covered institutions impacts the scope and frequency of inspections.

Weighting and conclusion

a6.22. There are several shortcomings: the absence of fit-and-proper requirements affects in particular the diamond trade sector, which is recognised as high risk. In addition, the shortcomings noted in respect of the basic principles on which AML/CFT inspections are defined and the failure to take ML/TF risks into account in the approach developed by all DNFBPs heavily influence the rating. **Belgium is partially compliant with R 28.**

Recommendation 34 – Guidance and feedback

a6.23. Belgium was rated largely compliant in the third evaluation (former R 25, para. 545ff. MER 2005). The FATF underlined the lack of guidance, particularly with regard to non-financial professions. The new R 34 of 2012 extends the obligation to supervisors and self-regulatory bodies.

a6.24. **Criterion 34.1 – Guidelines:** On its website, the CTIF publishes general and topic-specific educational AML/CFT information (particularly relating to asset freezing obligations), and draws up guidelines for relevant professionals and institutions. It also maintains relations with reporting entities particularly by taking part in training seminars. Its annual reports help relevant entities to understand AML/CFT provisions. FPS Finance (Treasury Administration) publishes information about sanctions, embargoes and cash transfers.

a6.25. The BNB and the FSMA issue circulars and updates, including commentaries, for financial institutions under their supervision, to give them a complete, systematic and coherent view of legal and regulatory AML/CFT requirements (including European requirements). They also state their expectations as regards the implementation of these requirements. When necessary, common circulars are issued. FPS Finance and FPS Economy have not prepared any guidance for the companies they supervise.

a6.26. Most authorities responsible for AML/CFT supervision of DNFBPs have provided guidance on the applicable AML/CFT provisions by means of circulars, guides and memos designed to explain the applicable AML/CFT measures and facilitate application. However, no specific measure appears to have been taken recently for companies providing security services, casinos, lawyers of French-speaking and German-speaking Bar associations, and bailiffs.

a6.27. *Feedback:* The CTIF states that it conducts a quality review of the reports received from each sector or from a given entity in particular, although this procedure is not formalised or systematic and does not correspond to regularly organised exchanges. In addition, the CTIF contributes through its strategic analysis section to a better understanding of ML/TF trends, an analysis that allows the indicators and suspicions of reporting institutions to be placed in context. Overall feedback about reports received is provided in the annual report, through statistics specific to each reporting sector and the typologies presented. The CTIF analysts are in contact with compliance officers: Requests for additional information in connexion with STRs can also contribute to improving future reporting when they indicate an omission or lack of clarity. These various levels of examination can lead to informing a supervisory or disciplinary authority of the findings made in respect of professionals under its responsibility. Supervisory authorities do not take part in or initiate any sectoral feedback. Such actions could help reporting entities detect and report suspicious transactions.

Weighting and conclusion

a6.28. SPF Finance and SPF Economy, as well as the oversight authorities for casinos, the French- and German-speaking bar associations and bailiffs have not produced any specific AML/CFT guidelines recently. Supervisors do not participate in, nor do they take the initiative in providing sectoral feedback in relation to the implementation of reporting obligations, on the basis of observations made during their inspections. Such actions might help reporters detect and report suspicious transactions. **Belgium is largely compliant with R 34.**

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Recommendation 35 – Sanctions

a6.29. Belgium was rated largely compliant in the third evaluation (para. 492ff. MER 2005), but the proportionality of the sanctions was not closely examined. The difficulty identified concerned the effectiveness of sanctions for certain financial institutions (credit card issuers and managers other than credit institutions, and leasing and consumer credit companies).

a6.30. **Criterion 35.1** – The AML/CFT Law makes provision for administrative sanctions for failures to meet due diligence, record-keeping, internal organisation, suspicious transaction reporting and communication of information requirements by all organisations subject to it (Art. 40). These sanctions may also be applied in respect of any violations of financial embargo obligations (R 6) laid down by EU Regulations,⁹ where they involve failures to comply with requirements to inform the CTIF of transactions suspected of being related to terrorist financing, and shortcomings in the organisation and internal control required to ensure effective prevention of both TF and ML. Criminal sanctions for violations of the requirements of these Regulations are also provided for (Art. 6 of the law of 13 May 2003). They may be imposed against any natural or legal persons, including financial or non-financial institutions subject to the AML/CFT Law. The AML/CFT Law applies to covered institutions, without distinguishing natural from legal persons. Real-estate agents specify that AML requirements apply to them as natural persons. Notaries, bailiffs and lawyers are always personally liable, even if they work in the framework of a company. For the accounting/tax professions and companies providing security services, the legal entities and the natural persons responsible for the violations may be sanctioned. For the financial institutions under their supervision, the BNB and the FSMA may also use the measures they have in the more general framework of their prudential sanctioning powers (see C.27.4.). The range of sanctions is quite broad. To assess the proportionality of sanctions, it has not been established whether or not and how the scale or type of sanctions may vary depending on the nature and extent of the violation, the institution in violation (e.g. financial institution/non-financial profession, size and financial situation), the amount of the transaction in question to determine the amount of administrative sanctions, the severity and number of grounds, the case of repeated offences, or any other relevant criteria.

a6.31. **Criterion 35.2** – Where sanctions are imposed against legal persons, the senior executives may also be sanctioned. For some DNFBPs, a disciplinary sanction it is required. Regarding financial institutions supervised by the BNB and the FSMA, if the senior executives are directly involved in the violation for which their financial institution is sanctioned under Art.40 of the AML/CFT Law, their required standing and/or expertise may be challenged and the competent authorities may, depending on the seriousness of the offence, use the enforcement powers they have under these same prudential laws (see 26.3). These authorities may thus, *inter alia*, require the financial institutions in question to dismiss the relevant senior executives.¹⁰

Weighting and conclusion

a6.32. **Belgium is largely compliant with R 35.**

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⁹ Regulations 881/2002 (Al Qaeda), 2580/2001 (concerning certain persons and entities with a view to combating terrorism), 329/2007 (restrictive measures against the Democratic People's Republic of Korea) and 267/2012 (restrictive measures against Iran).

¹⁰ The Belgian authorities state that, when they transpose into Belgian law the 4th AML/CFT Directive currently being developed, they will examine the need to clarify the current provisions.

ACRONYMS

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

ACRONYMS

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