

Executive Summary

1. This report provides a summary of the anti-money laundering (AML) / counter-terrorist financing (CFT) measures in place in Belgium as at the date of the on-site visit (30 June to 15 July 2014). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Belgium's AML/CFT system, and provides recommendations on how the system could be strengthened.¹

A. Key Findings

- Belgium's **legal framework** for AML/CFT needs to be brought into line with the FATF requirements as revised in 2012.
- **Belgium conducts a large part of its AML/CFT activities and initiatives on the basis of risk.** However, its understanding of these risks is fragmented and incomplete. The recent national ML and TF assessments provide a useful basis for full and ongoing understanding of these risks even though not all parties concerned contributed directly to this work. **An overall AML/CFT approach still needs to be put together, based on prioritising risks and allocating resources** (for example in the judicial area and in implementing controls).
- The **financial intelligence unit (CTIF)** collects and analyses quality data on ML/TF activity and suspicious transactions. The CTIF needs to work more closely with the AML/CFT supervisors and the businesses and professions covered by the system, particularly in addressing the identified risks, and with the criminal prosecution authorities to help pool and enhance knowledge and analyses.
- The **financial sector** has a good understanding of the risks and generally seems to take appropriate preventive measures, including in high risk situations. However, tighter risk-based AML/CFT controls are needed to ensure that these obligations are being adequately applied.

1 This evaluation was prepared on the basis of the 2013 FATF Methodology. This means it is substantially different in nature from previous assessments. It includes the new obligations introduced in the 2012 revision of the FATF Recommendations, and therefore the technical compliance assessment is not directly comparable to the previous evaluation. It also assesses the effectiveness of Belgium's AML/CFT system on the basis of the new effectiveness methodology, which takes a fundamentally different approach to the technical compliance assessment. It sets out conclusions on how well the AML/CFT measures are working in practice, based on comprehensive analysis of the extent to which the country achieves a defined set of outcomes that are central to a robust AML/CFT system. Both qualitative and quantitative information are used to support that analysis.

- Inadequate understanding and implementation of AML/CFT measures was noted for some money value transfer service (**MVTS**) providers, particularly those operating via a network of agents in Belgium, and certain **bureaux de change**, which represent substantial money laundering (ML) / terrorist financing (TF) risks due the use of cash for their transactions. In addition, the suspicious transaction reporting policy applied by some of these services is not adequate. From this perspective there are shortcomings in the controls in place for these institutions.
- Improvements were seen in the **non-financial sector's** commitment to AML/CFT. However, not all designated non-financial businesses and professions (DNFBPs) concerned have taken action, including a number of at-risk professions such as lawyers and casinos.
- The implementation of AML/CFT measures by diamond dealers does not seem adequate to guarantee control of the sector's high risks. Supervision of these players remains extremely limited, notably due to a lack of available resources. Despite the proven risk of money being laundered into this sector, suspicious transaction reports (STRs) are totally lacking. The number of investigations and prosecutions seems insufficient up to now given the identified level of risk, even though two significant cases are currently under investigation.
- Actions to verify compliance with restrictions on payments in cash are carried out on target activities at risk for ML/TF, such as the trade in used cars or gold. They have already led some professionals to change their practices, but more resources are needed in this area.

B. Risks and General Situation

2. Belgium has taken an approach based on risks in its AML/CFT activities and initiatives for many years. Nevertheless, its understanding of these risks is fragmented and incomplete. Belgium conducted its first national and general ML and TF risk assessments in 2013-2014. This body of work provides a useful and encouraging basis for full and ongoing understanding of these risks, although the identified risks still need to be prioritised.

3. Based on generally available information, it appears that the activities exposed to high ML risk include the **diamond** trade, in which Antwerp is a leading world centre, and sectors in which **cash** circulates, such as the trade in used cars and gold. **Money transfer** services are also particularly exposed to ML risk in this context. The geographic position of Belgium also makes it a target for the transit of illegal movements of funds. Identifying some of these risks has already given rise to preventive and law enforcement actions (with regard to the circulation of cash, for example), but a real overall AML approach still needs to be defined.

4. In terms of terrorist financing, the main risks at present concern activities relating to **'jihadists'** travelling to countries in the Near and Middle East. Recent events in these regions and the continuing radicalisation in segments of the population create undeniable risk. The **money transfer** sector is particularly vulnerable to these threats.

C. Overall Level of Compliance and Effectiveness

5. Belgium has the basic core elements needed to develop a solid AML/CFT regime. The legal framework technically complies in broad terms but still needs to be adapted to the revised FATF requirements of 2012. As to effectiveness, Belgium has achieved substantial results in international co-operation, use of financial information and prosecution of terrorist financing acts. Only moderate improvements are needed in these areas. Major improvements need to be made in other areas:

C.1 Belgium has conducted a national assessment of its ML and TF risks but needs to incorporate the findings into its national AML/CFT policy

6. A large part of the existing AML/CFT measures in Belgium are based on its understanding of risk. The framework for assessing ML/TF risks and the mechanisms for co-operation and co-ordination at the national level were recently institutionalised. Two risk assessments were developed for ML and TF. The result provides a good basis for the overall and ongoing understanding of these risks; however, this understanding does not appear to be exhaustive at this stage, and limitations were observed, particularly in terms of the input contributed. At the time of the on-site visit, the authorities still needed to ensure that the non-confidential results of both analyses were disseminated to the concerned entities (only the professional associations had received the ML risk assessment), develop an overall AML/CFT approach and allocate resources according to the risks identified. In terms of co-ordination among the various players, improvements could be made to ensure that expertise and intelligence developed by all competent parties can be fully exploited.

C.2 Prosecution of ML needs to be more targeted

7. Belgian law enforcement agencies do treat ML as an offence: it is frequently prosecuted, notably in connection with economic offences that generate substantial profits because it facilitates confiscation of these funds (fraud, offences related to bankruptcy, benefit fraud and tax fraud). Belgium is also a leader in confiscating property when its legal origin cannot be established, in which case the person can be convicted for ML without being convicted for the predicate offence that generated the funds.

8. It is rarer however that cases reveal structured ML systems involving third parties who offer their assistance in laundering proceeds from the offences. The financial intelligence unit (FIU) and law enforcement authorities are competent and have all of the necessary investigative measures at their disposal; however, limited resources prevent them from pursuing all of the possible financial ramifications. Moreover, better co-ordination among authorities could also help identify connections between operating methods found in seemingly unrelated cases.

9. A large number of laundering cases are also linked to financial crime – such as tax fraud – and involve more structured and sophisticated laundering, notably with misuse of offshore structures. In cases such as these, international mutual legal assistance is necessary but not always successful.
10. Developing a national AML strategy that addresses the risks identified and takes stock of the situation (for which statistics would be useful) would help define targets for investigations and thus produce more effective results.

C.3 Combatting terrorist financing that is discrete but effective

11. While assessment of the country's TF risks is not yet complete, the authorities responsible for preventing and combatting terrorism and TF are well-co-ordinated and aware of the current risks, particularly with regard to individuals and small groups travelling to conflict areas. Some TF convictions have been handed down and international co-operation in this area is very well-developed, especially with neighbouring countries that face the same risks.
12. However, certain investigative programmes carried out in the past could be repeated (such as closer monitoring of certain non-profit organisations [NPOs]), and Belgian authorities should consider using targeted financial sanctions to prevent terrorists and terrorist organisations from financing their activities. Finally, the authorities should resolve the technical problems that keep them from applying targeted financial sanctions without delay when designations occur (this comment also applies with regard to the financing of proliferation of weapons of mass destruction).

C.4 The financial sector appears to apply preventive measures satisfactorily, but non-financial businesses and professions need to improve in this area

13. The financial institutions interviewed seem generally to have a good understanding of the ML/TF risks and to apply appropriate AML/CFT measures according to those risks, including stronger measures when risk is higher. However, risk-based AML/CFT controls need to be strengthened to ensure that these obligations are being adequately applied.
14. Certain of the non-financial sectors have made efforts to raise ML/TF awareness among professionals, but other sectors are still downplaying their exposure to these risks, particularly diamond dealers and casinos. In general, DNFBPs seem to apply basic due diligence measures but less so enhanced measures.
15. Belgium is confronted with a high volume of STRs, which are not based on suspicions of ML/TF. A large proportion come from the bureau de change and funds transfer sectors and consist of (automatic) STRs submitted systematically defensively by the reporting entities in the absence of any suspicion for any new transactions carried out by a customer for whom an STR has already been made. These reports should be distinguished from follow-up STRs, which are useful. Furthermore, DNFBPs that are required to submit STRs on the basis of thresholds or criteria often prefer this type of reporting and do not attempt to make an evaluation of suspicion. Other sectors, however, such as lawyers and diamond dealers, submit almost no STRs. These practices have been continuous for several years; measures are needed both to improve the quality of suspicious transaction reporting policy applicable to reporting entities and thus to enhance the detection and prosecution of acts of ML/TF.

C.5 ML/TF risk-based controls need to be implemented for all entities subject to the obligations

16. In the financial sector, inspections are implemented according to the institutions' prudential risks, but inspection priorities are not sufficiently determined by the ML/TF issue. As a general rule, there are not enough specific and qualitative on-site inspections to verify compliance with AML/CFT obligations. This is of particular concern for vulnerable sectors such as money transfer services, especially those provided in Belgium by agents of a European payment institution that is a leader in the sector. The National Bank of Belgium (BNB) recently established a framework for remote inspection that takes ML/TF risks into account.

17. In general, AML/CFT supervision of DNFBPs remains extremely limited or inexistent, even in high risk sectors (e.g. diamond dealers or lawyers). ML/TF risks are not taken into account in particular when determining the scope of supervision operations.

18. For the financial and non-financial sectors, the limited controls, the significant lack of sanctions applied solely in ML/TF matters, and the lack of resources for conducting controls seriously impair the effectiveness of AML/CFT measures.

19. Recent actions to verify compliance with restrictions on payments in cash were aimed at sectors that are particularly exposed to ML/TF risks (trade in used cars and gold) and have already had a positive impact on professional practices, which could be further improved if more resources were allocated to these controls.

C.6 Measures underway to improve the transparency of legal persons and better evaluate their exposure to ML/TF risks.

20. The competent authorities have identified several concrete risks and other vulnerabilities in the framework that governs legal persons and are taking measures to make these entities more transparent in order to prevent their misuse. As such, the AML/CFT regime should be applied promptly to domiciliation companies.

21. The competent authorities have access to basic information along with information on beneficial ownership for the large majority of legal persons. This information is available through public registers. The fact that notaries must authenticate instruments relating to the creation and existence of the large majority of legal persons reinforces the information source. However, it is regrettable that the registers are not always kept up-to-date. Initiatives are underway to eliminate these updating problems, which appear to be widespread.

22. Information available in the registers mainly indicates the company's legal ownership, which may coincide with its beneficial ownership. Other means exist to help determine beneficial ownership, such as information obtained by financial institutions and non-financial professions, or any publicly available information on publicly and non-publicly traded Belgian companies.

D. Priority Actions

- Based on the national risk assessments, competent authorities should **set priorities in terms of ML/TF actions and recommendations** and relay them to the policy makers for use in defining a national AML/CFT policy covering everything from prevention to suppression of ML and TF.
- In particular, **the lack of resources in the Belgian judicial system**, which exists in varying degrees at every level, directly impairs the detection, prosecution and sanctioning of complex ML. A concrete and co-ordinated strategy for the criminal prosecution of ML is needed.
- All of the AML/CFT control authorities should **establish a supervision based on ML/TF risks** by adapting the scope, frequency and intensity of supervision according to the nature of the risks. On-site inspections that adequately correspond to the risks also need to be implemented. Appropriate resources should be allocated to supervision based on the nature and level of ML/TF risks facing the various sectors.
- The competent authorities should **emphasise dialogue and communication with the entities concerned** on the ML/TF obligations applicable to them, what is required of them in terms of STRs and the results of AML/CFT supervisory actions.

Table 1. Effective Implementation of Immediate Outcomes

Effectiveness	
1. Risk, Policy and Coordination	Substantial
<p>Belgium evaluates its ML and TF risks. It appears to understand TF risks correctly and to have taken co-ordinated action at the national level to attenuate those risks. This co-ordination includes as well the combatting of proliferation financing. While the risks of ML appear to have been generally identified and understood, the analysis of this activity does not appear to be based on a proactive approach that would enable the detection of trends and emerging phenomena, notably with regard to vulnerabilities. In particular, the assessments did not have the participation of all competent authorities or the private sector.</p> <p>Elements of a risk-based approach have long contributed to AML/CFT policies and activities in Belgium. The CTIF and to a large degree the criminal prosecution authorities (the police in particular) have an established tradition of taking the identified risks into account when defining their objectives and activities. Nevertheless, certain weaknesses were noted at the time of the on-site visit:</p> <ol style="list-style-type: none"> i. there is no overall, integrated approach that adequately ranks ML/TF risks in order to ensure the organisation and consistent planning of AML/CFT activities and policies; ii. supervisors and self-regulatory bodies (SRBs) have not incorporated the main ML/TF risks into their inspection policies; iii. a certain number of identified ML risks have not been addressed; and iv. incomplete dissemination of the non-confidential results of the risk assessments to financial institutions and DNFBPs slows down their being taken into account in their internal procedures. 	
2. International Cooperation	Substantial
<p>Belgium's partners find the international co-operation it provides to be of good quality. No countries reported any major difficulties with Belgium's information exchange practices, and the assessors did not see any indication of serious ineffectiveness in the handling of international co-operation by the Belgian system. The interviews with the various competent authorities confirmed this finding, which was particularly positive in the area of combating TF and terrorism. In practice, the legal limitations that were found do not appear to have a major impact on the exchange of information.</p>	
3. Supervision	Moderate
<p>In the financial sector, supervisors have generally identified the main high risks. However, the understanding of the risks is too irregular due to insufficient controls, particularly on-site inspections. At present, the BNB mainly conducts its controls on a prudential basis, and the implementation of ML/TF risk-based controls is limited. On-site inspections are also limited, due to underestimation of the ML/TF risks faced by the institutions and lack of resources. The shortcomings in terms of supervision are of particular concern for financial institutions operating in Belgium under the European Passport, operating under freedom of establishment via agents</p>	

Effectiveness

in Belgium. The BNB recently began using a periodic questionnaire, which will provide it with specific and systematic information on ML/TF risks and allow it to set supervision priorities more effectively.

The AML/CFT controls implemented by the Financial Services and Markets Authority (FSMA) target the *bureau de change* sector, identified as the sector exposed to the greatest ML/TF risk; they are appropriate. Nevertheless, this control should be reinforced with regard to STR quality due to the large proportion of automatic STRs. For collective investment fund management companies, investment management and investment advisory companies and mortgage credit services, given the more limited risks these activities present, AML/CFT controls are included in the more general on-site inspections. For the financial intermediary sector, no other specific and qualitative on-site inspections are in place to verify compliance with AML/CFT obligations. A tightening of controls is thus necessary.

Federal Public Service (FPS) Finance has conducted on-site inspections at Bpost, for information only, on the AML/CFT systems and procedures in place, but no on-site inspection operation has been conducted to date. For the financial sectors under the supervision of FPS Economy, no inspections have been conducted. However, these are low-risk sectors (mortgage and direct financing lease providers).

The main supervisors of the financial sector have an active policy to promote understanding of ML/TF risks and explain AML/CFT obligations, primarily through a concrete and detailed Guidance and joint circulars (BNB/FSMA), and referral to the website and annual report of the CTIF.

The DNFBP supervisors have been designated and the regulatory systems are in place. In general, the highest risks have been identified by these authorities, but systems still need to be set up for ensuring that these risks are known and understood and for monitoring how they change over time. In general, supervision of DNFBPs remains extremely limited or inexistent. When there is a risk-based approach, it is limited to the assessment included in the annual AML/CFT report; this determines the priorities in terms of businesses to inspect. However, there is no differentiation in the subsequent controls carried out, which are uniform.

For the financial and non-financial sectors, there needs to be greater co-operation between the supervisors and the CTIF, particularly in improving the policy for all reporting entities. Limited controls and significant lack of sanctions applied, specifically in ML/TF matters, have a major impact on the effectiveness of AML/CFT measures.

FPS Economy conducts targeted supervision operations to verify compliance with restrictions on payments in cash, and ML/TF risk is one of the elements considered in selecting the target sectors. As these controls have only recently been introduced, the results are difficult to measure, but they have already prompted some professionals to change their practices. Greater resources need to be allocated to these inspections so that large-scale operations can be conducted.

4. Preventive Measures

Moderate

Financial institutions seem to have a good understanding of the risks. It appears that not all DNFBPs understand the degree of risks to which they are exposed or the need to protect themselves against potential ML/TF-related abuse.

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AML/CFT obligations are generally well-understood by financial institutions, and AML/CFT measures implemented are proportionate and appropriate with regard to the corresponding risks. However, shortcomings were found among some payment institutions and *bureaux de change*, particularly inadequate understanding of the requirements relating to beneficial ownership and politically exposed persons (PEPs). The financial sector also appears to apply enhanced due diligence measures in situation recognised as 'high risk', but less so for correspondent banking and wire transfers within the EU.

In recent years, many DNFBPs have made efforts to raise awareness and motivate professionals with regard to AML/CFT. These types of operations need to continue so that satisfactory implementation of the measures can be achieved. The enhanced measures applied by DNFBPs, for example, seems insufficient for situations requiring increased attention. When customer due diligence (CDD) requirements cannot be met, DNFBPs indicate that they refuse to enter into a business relationship or perform the transaction, even if they do not issue an STR. The implementation of AML/CFT measures by diamond dealers does not seem adequate to address the sector's high risks.

As a general rule, the financial sector has adopted the practice of issuing STRs, but some *bureaux de change* and payment institutions operating via a network of agents also submit a significant share of automatic STRs, which do not provide additional information on the transactions of a customer who has already been reported. DNFBPs reporting transactions on the basis of thresholds / criteria prefer this type of 'objective' reporting and do not reflect the level of suspicion raised by the related transactions. Lawyers and diamond dealers submit almost no STRs. This approach can hinder the detection of ML and contribute to under-prosecution of certain offences.

The competent authorities need to strengthen their AML/CFT controls in order to verify that the entities subject to the obligations are adequately applying them.

5. Legal Persons and Arrangements

Moderate

Authorities' understanding of the vulnerabilities with regard to legal persons remains sector-based, and is not drawn from an overall, up-to-date and continuing assessment. The criminal prosecution authorities specialised in counter-terrorism are aware of the risks of legal persons being misused for TF purposes. Depending on the case, the authorities monitor these risks on a continuing basis although they have not done a recent assessment of such risks.

Competent authorities have identified concrete ML/TF risks and vulnerabilities in the framework for legal persons. Several initiatives have been taken to address these; however, the recent implementation of certain of these measures at the time of the on-site visit, and the need for more time to fully appreciate their impact, mean that they cannot yet be considered fully effective. The authorities are aware that additional measures need to be taken.

Basic information and information on beneficial ownership for the large majority of legal persons are publicly available through the information maintained in the companies register – *Banque-Carrefour des Entreprises* (BCE) – although there are shortcomings, in particular regarding the reliability and updating of the data. However, the fact that notaries authenticate the majority of instruments relating to the creation and existence of legal persons increases the reliability of the information. Information available essentially includes the legal ownership of the legal person, which may coincide with the beneficial ownership. Other means exist which aid in establishing beneficial ownership, in particular information obtained by financial institutions and DNFBPs, or any publicly available information on publicly and non-publicly traded Belgian companies. The

Effectiveness

effectiveness of ML/TF investigations involving legal persons or in which beneficial ownership information had been sought and used could not be established on the basis of the qualitative information provided by criminal prosecution authorities.

The sanctions imposed on persons who do not comply with obligations to provide transparent information on legal persons are not effective or dissuasive. Belgium has expanded its arsenal of sanctions in order to compensate for the ineffectiveness of administrative and criminal penalties, and the initial results are promising.

The development of legal arrangements in Belgium is limited. For this reason, the authorities have not at present identified or evaluated the vulnerabilities of such structures in relation to ML in Belgium. However, a risk analysis of fraud using foreign legal arrangements by natural persons subject to tax in Belgium has led to the tightening of reporting obligations to fiscal authorities on links to legal arrangements, including foreign ones. Professional trustees are as a general rule subject to AML/CFT obligations.

International co-operation with regard to the identification and exchange of information on legal persons and legal arrangements is generally positive in both directions (incoming and outgoing).

6. Financial Intelligence

Substantial

Within the Belgian legal system, competent authorities have at their disposal a wide range of measures for obtaining financial information and any other information pertaining to ML/TF investigations, both for obtaining evidence of offences and searching for and locating the related assets.

The CTIF collects information on ML and TF on a broad scale, and the processes used to gather the information are of high quality. The CTIF uses a large number of databases and maintains co-operation with all national and international authorities that can contribute or provide added value. The CTIF also carries out vulnerability analyses on the sectors subject to the obligations and shares the results with all relevant parties and authorities. Its reports are well-received and useful to the criminal prosecution authorities.

While criminal prosecution authorities use and gather information both for investigations and for prosecution, they do not do so in an optimal manner. Limited human resources do not allow criminal prosecution authorities to exploit all of the information received correctly or to build on it to reveal ML cases, in particular significant international cases.

7. ML Investigation and Prosecution

Moderate

The Belgian authorities possess a strong culture of fighting ML. They also have the necessary investigative techniques at their disposal. As a result, the number of prosecutions for ML is significant in Belgium. It is not uncommon for convictions to be obtained without a proven predicate offence due to the shared burden of proof in certain ML cases. However, The offences prosecuted are most often focussed on the predicate offences with a related ML charge against the same person. The number of cases of structured ML schemes involving third parties who facilitate the laundering of proceeds from offences committed by criminals is rare. Some offences, e.g. for the cross-border movement of cash, precious metals or diamonds, are under-prosecuted with respect to the level of risk indicated by Belgium.

Effectiveness

The scope of AML actions is limited by the absence at the national level of an overall strategy for combatting ML and lack of co-ordination between judges handling ML cases. A lack of resources, material means, training and co-ordination within the criminal prosecution agencies impairs their effectiveness. Too many cases are dismissed at the court's discretion, bringing down the rate of penal response. Furthermore, the length of certain ML procedures has the consequence that offences are not prosecuted within the statute of limitations, or the sanctions are reduced.

However, in preparing for and taking part in the assessment, the Belgian authorities identified shortcomings and demonstrated commitment to strengthening the prosecution of laundering as a priority, and produced examples of progress in this direction.

8. Confiscation

Moderate

The information provided by the Belgian authorities shows that seizure, confiscation and corresponding value confiscation are implemented in ML cases. However, while the authorities want to prioritise prosecutions giving rise to confiscation, they do not always fully succeed in this. The criminal prosecution authorities affirmed that there is an emphasis on confiscation, but the information provided did not show that goals consistent with this approach had been set. There is furthermore no evidence that financial investigations systematically include looking into assets that could be confiscated; it is available and easily identifiable proceeds that are regularly confiscated. The ineffectiveness in the criminal prosecution system (drawn-out procedures, statutes of limitation, etc.) also hampers confiscation.

The Belgian authorities do not have clear, relevant and centralised statistics on

- assets seized and confiscated in Belgium and abroad,
- asset sharing,
- the offences giving rise to these measures (ML and predicate offences),
- confiscation in cases of false disclosure or false declarations at the border, and
- the sums returned to victims.

This makes it difficult to assess the results of the investigations undertaken and performance in these areas.

9. TF Investigation and Prosecution

Substantial

The tactics and methods used by the Belgian authorities are not solely focused on the financial aspects of the global terrorist threat, but nothing in the actions they have undertaken, or the judicial rulings handed down, suggested to the assessors that these authorities are neglecting CFT. Based on the information the assessors received and interviews with the relevant specialists, it appears that the response of the Belgian authorities corresponds to the reality of the situations and threats, effectively detecting related offences and playing an active role in CFT. Persons have been convicted for TF within the scope of broader terrorism cases.

Effectiveness

10. TF Preventive measures & financial sanctions

Moderate

Belgium has a legal system allowing for the use of targeted financial sanctions in TF matters. However, the technical deficiencies found (notably the time it takes to implement new sanctions) raise doubts as to the system's effectiveness. In practice, the amount of assets that have been frozen is small, but this in itself is not an indication of ineffectiveness, especially because it has not been established that the assets concerned by the sanctions were on Belgian territory.

In terms of the risks of using NPOs for terrorist or TF purposes, there are shortcomings in the areas of administrative supervision regarding obligations on the transparency of NPOs, raising awareness, and targeted actions. However, the Belgian authorities have identified the NPOs that are at risk and set up ongoing monitoring of their activities and transactions.

11. PF Financial sanctions

Moderate

The Belgian legal system, coupled with that of the European Union, serves as the basis for implementation of the resolutions of the United Nations Security Council on targeted financial sanctions to counter the financing of proliferation. However, the time it takes to transpose such measures impairs the system's effectiveness. Even before they are transposed into European and therefore Belgian law, the information needs to be quickly communicated beyond the major financial institutions, and training and supervision measures are needed for all sectors subject to the obligations. The actions undertaken to thwart attempts to evade sanctions indicate that the various competent authorities all have high and appropriate levels of expertise and knowledge, although it is regrettable that more emphasis has not been placed on the financial component of proliferation.

Table 2: Compliance with FATF Recommendations

Compliance with FATF Recommendations			
Recommendation		Rating	Factor(s) underlying the rating
1.	Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> • There is no formal mechanism for disclosing the non-confidential results of the risk assessment to the competent authorities and self-regulatory bodies as well as to the businesses and professions subject to the obligations. • Situations in which exemptions from AML/CFT obligations are allowed, and in which simplified measures can be applied, are not based on assessments showing low or lower risk. • Supervisors need to make more effort to ensure that obligated entities implement their AML/CFT obligations, taking risk into account.
2.	National cooperation and coordination	LC	<ul style="list-style-type: none"> • The principle of a national AML/CFT policy has been institutionalised but not yet put into effect.
3.	Money laundering offence	C	The Recommendation is fully met.
4.	Confiscation and provisional measures	C	The Recommendation is fully met.
5.	Terrorist financing offence	LC	<ul style="list-style-type: none"> • It does not appear to be an offence to supply funds to one or two persons without proof of a connection to a specific terrorist offence.
6.	Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> • Belgium is not yet able to apply the targeted financial sanctions of UNSCRs 1988 and 1989 without delay, which also compromises the application of sanctions without notice (de facto) to the entities concerned. • There is no formal mechanism at EU level or in Belgian legislation to request that other countries give effect to freezing actions undertaken according to UNSCR 1373.
7.	Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> • Belgium is not able to apply the targeted financial sanctions of UNSCRs 1718 and 1737 without delay, which also compromises the application of sanctions without notice (de facto) to the entities concerned. • Sanctions for failure to comply with freezing obligations are not applied in a clear manner.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
8.	Non-profit organisations	PC	<ul style="list-style-type: none"> • There are shortcomings with regard to the initiatives to raise awareness and inform the NPO sector of TF risks. • Controls regarding transparency do not cover all of the components of R 8. • The proportionality of applicable sanctions has not been established.
9.	Financial institution secrecy laws	C	The Recommendation is fully met.
10.	Customer due diligence	LC	<ul style="list-style-type: none"> • Applicable provisions for determining beneficial ownership do not specify whether the financial institution must automatically consider the senior managing official as the beneficial owner when no natural person can be identified as such (and in cases where the administrator is separate from the senior managing official). • There is no explicit provision requiring financial institutions to systematically consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures apply.
11.	Record keeping	C	The Recommendation is fully met.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
12. Politically exposed persons	PC	<ul style="list-style-type: none"> The definition of PEPs does not include domestic PEPs or persons entrusted with a prominent function by an international organisation, as only persons living abroad who are, or have been, entrusted with prominent public functions can be considered PEPs. The list of persons to be considered direct family members and close associates of PEPs is too restrictive and contrary to the open, non-restrictive spirit of R 12. There is a time limit of one year, after which a PEP no longer exercising a prominent function should no longer be considered a PEP. In this case, the general principle applies, by which enhanced measures must be implemented if called for by the level of risk. There is no specific provision requiring the verification of whether the beneficiary of an life insurance contract or its beneficial owner are PEPs.
13. Correspondent banking	PC	<ul style="list-style-type: none"> Specific CCD measures for cross-border correspondent banking do not extend to relations with financial institutions of the European Economic Area (EEA) or an equivalent third country.
14. Money or value transfer services	LC	<ul style="list-style-type: none"> There is no clear policy on sanctions applying to persons who provide MVTS without being certified or registered, which would enable the proportionality of these sanctions to be determined.
15. New technologies	LC	<ul style="list-style-type: none"> Belgium has not developed a specific analysis of the ML/TF risks in the financial system due to the use of new technologies. However, the general AML/CFT framework does address these risks to some degree, through the application of enhanced due diligence rules applying to contracts entered into without face-to-face contact, and through the definition of 'specific risk criteria' which are the basis of the risk-based approach and for initial definition of the customer's risk profile.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
16.	Wire transfers	PC	<ul style="list-style-type: none"> The EC Reg. 1781/2006 does not stipulate the obligation of including information on the beneficiary of the transfer, and contains limited requirements for the obligations applying to intermediate financial institutions.
17.	Reliance on third parties	PC	<ul style="list-style-type: none"> It is not possible to verify whether the AML/CFT measures carried out by institutions are adequate due to the exemption for third party introducers from the EEA or third country equivalents. The inclusion of a country on the list of third country equivalents covers risk-related elements (compliance with the main FATF Recommendations, the level of risk relating to the amount of crime in the country), but this analysis is not focused on ML/TF risks.
18.	Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> Only financial groups headed by a credit institution or investment firm are required by the law to develop a co-ordinated AML/CFT programme. Laws and regulatory measures do not specify the effective content of the obligations to be set out in this programme, nor do they stipulate that the branches and subsidiaries of groups are required to follow AML/CFT rules compatible with the level of risk in the home country.
19.	Higher-risk countries	LC	<ul style="list-style-type: none"> Belgium does not have instruments at its disposal that allow it to take counter-measures against higher risk countries, except within the scope of an FATF decision.
20.	Reporting of suspicious transaction	C	The Recommendation is fully met.
21.	Tipping-off and confidentiality	C	The Recommendation is fully met.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
22.	DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> Trust and company service providers are not covered by Belgian AML/CFT measures. The limits identified under R 10, R 12, R 15 and R 17 affect DNFBPs. CDD requirements (R 10 rated LC) are central to R 22, but only moderate shortcomings were observed. Moreover, the weaknesses with regard to reliance on third parties (R 17 rated PC) have less impact in the context of DNFBP activities.
23.	DNFBPs: Other measures	LC	<ul style="list-style-type: none"> The limits identified under R 18 and R 19 affect DNFBPs. In particular, there is no independent audit function for testing the AML/CFT system for any DNFBPs. However, because of the small size of the DNFBPs concerned, this shortcoming has a limited impact.
24.	Transparency and beneficial ownership of legal persons	LC	<ul style="list-style-type: none"> Belgium has not assessed horizontally the ML/TF risks associated with the various categories of legal persons created on its soil up-to-date. Legal persons (or their representatives) do not risk facing sanctions simply for submitting false or erroneous information when reporting their beneficial ownership to the professions concerned, but the consequences of these acts can be punishable by sanctions. It is difficult to assess the proportionality of the sanctions due to the absence of information on the sanction policy. Mechanisms put into place by Belgium do not ensure that the information on beneficial ownership is correct and up-to-date. The mechanism applicable in Belgium to nominee shares is insufficient to ensure that they are not misused.
25.	Transparency and beneficial ownership of legal arrangements	LC	<ul style="list-style-type: none"> There is no clear policy on the sanctions applying to professional trustees who fail to meet their AML/CFT obligations that would allow the proportionality to be determined.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
26.	Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> The BNB and the FSMA have set up processes and tools for defining the prudential risk profile of the institutions they regulate, of which ML/TF is one element. For the BNB, the share of ML/TF risk identified for each institution is not well-established. For the FSMA, with the exception of <i>bureaux de change</i>, the scope and frequency of ML/TF controls are not specifically formalised according to the type and level of risk identified for each institution. The BNB and the FSMA regularly review the risk profile of the institutions they regulate, but the extent to which ML/TF risk affects this revision is not specified. FPS Finance, which is tasked with supervising a major European payment institution for fund transmission services provided in Belgium via Bpost, does not specify the applied method of supervision. This is also the case for FPS Economy, although the sectors it supervises are lower risk sectors (consumer loan and direct financing lease providers).
27.	Powers of supervisors	LC	<ul style="list-style-type: none"> FPS Economy and FPS Finance can only impose the AML/CFT sanctions provided for by law, which are limited to disclosure measures and administrative sanctions.
28.	Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> There are no 'fit and proper' provisions that apply to diamond dealers and real estate agents. As a general rule, when supervision programmes exist, they have been established without assessing risk individually for the different professionals and without referring to the risk in the sector. There is no indication of how the risk profile of the entities concerned affects the scope and frequency of the controls.
29.	Financial intelligence units	C	The Recommendation is fully met.
30.	Responsibilities of law enforcement and investigative authorities	C	The Recommendation is fully met.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
31.	Powers of law enforcement and investigative authorities	C	The Recommendation is fully met.
32.	Cash couriers	C	The Recommendation is fully met.
33.	Statistics	PC	<ul style="list-style-type: none"> The statistical tools relating to STRs and investigations are good, but those for ML and TF prosecution and convictions are not up-to-date. The data on property seized and confiscated are fragmented and unreliable. Statistics on international judicial co-operation are almost non-existent, even though ML/TF risks in Belgium are often international in nature.
34.	Guidance and feedback	LC	<ul style="list-style-type: none"> The competent authorities, particularly the CTIF, disseminate AML/CFT-related information and establish guidelines for entities subject to the obligations. However, no recent specific measures have been taken by FPS Finance, FPS Economy or the authorities that regulate a number of DNFBPs. The supervisory authorities do not take part or take the initiative in providing sectoral feedback in relation to the implementation of reporting obligations, on the basis of observations made during their inspections. Such actions might help reporting entities detect and report suspicious transactions.
35.	Sanctions	LC	<ul style="list-style-type: none"> A fairly diverse range of sanctions can be applied, within the specific framework of AML/CFT supervision or in the course of prudential supervision. However, when and how these sanctions can vary in scale and nature depending on relevant criteria could not be determined, making it difficult to assess proportionality. When sanctions are imposed on legal persons, their directors can also be sanctioned. For some DNFBPs, this means a disciplinary penalty is imposed on the director.
36.	International instruments	C	The Recommendation is fully met.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
37.	Mutual legal assistance	LC	<ul style="list-style-type: none"> • Belgium lacks clear procedures for prioritising and executing requests for mutual legal assistance. • Moreover, the current system of managing cases does not allow for follow-up or monitoring the execution of rogatory commissions.
38.	Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> • The expeditious nature of measures taken in response to identification and confiscation requests could not be established (see R 37).
39.	Extradition	LC	<ul style="list-style-type: none"> • Because there is no tool for managing requests, extradition requests cannot be ranked according to priority. Moreover, as the procedures for extraditions outside the EU are complex and unwieldy, extraditions without delay cannot be guaranteed. • When Belgium does not extradite its nationals based solely on their Belgian nationality, it is not guaranteed that these persons will be prosecuted.
40.	Other forms of international cooperation	LC	<ul style="list-style-type: none"> • Two of the supervisors (FPS Economy and FPS Finance) are not able to co-operate with foreign authorities with comparable responsibilities. • Belgium does not have an organised system for the exchange of information between non-counterparts.

ACRONYMS

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

ACRONYMS

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