

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

8. International cooperation

Effectiveness and technical compliance



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8. INTERNATIONAL COOPERATION

Key Findings

Belgium provides assistance to countries who request it, and the Belgian authorities regularly ask their foreign counterparts for information and evidence. **The countries that gave input on the international co-operation of the Belgian authorities** (speaking broadly) **found it to be generally satisfactory**. Conversely, Belgium is generally satisfied with the co-operation that it receives, even if some requests were not responded to, in particular in determining the beneficial owners of certain foreign legal persons or arrangements.

The co-operation of the FIU with its foreign counterparts seems appropriate and effective.

On the basis of the information, including statistics, supplied by the judicial authorities, it is not possible to determine the volume of international co-operation (including extradition) dedicated to AML/CFT, and how requests for co-operation are received. The judicial authorities were not even able to indicate (i) the number of incoming and outgoing requests for mutual assistance that specifically concern ML and TF, and (ii) among those requests, which are more particularly concerned with identification, seizing and confiscation of criminal assets.

The Belgian authorities do not apply an asset sharing policy, but sharing does take place in practice on an *ad hoc* basis.

8.1 Background and Context

8.1. International co-operation plays a particularly important part in the context of AML/CFT in Belgium. Through its size and its position at the heart of Western Europe, Belgium and its population centres are readily accessible from abroad. The country is a trade crossroads and a transit country for people, goods, and services. The financial sector is dominated by multinational financial groups, and many financial services providers of the EEA trade and do business in Belgium on the basis of the European passport (see Section 5). Processing of ML and TF files, both by the courts and by the CTIF, relies heavily on the quality of the international co-operation that the Belgian authorities are able to receive from their foreign counterparts.

8.2. The bordering countries are Belgian's main partners (the Netherlands, Germany, France, Luxembourg, and the United Kingdom). FPS Justice is the central authority in Belgium for mutual legal assistance (including extradition). Since Belgium is a member of the EU, its competent authorities take advantage of the European mechanisms that facilitate direct co-operation (e.g. the European arrest warrant¹ that simplifies and accelerates certain legal proceedings). It should also be emphasised that the CTIF plays an essential part in the exchanges of information related to AML/CFT. Finally, since Belgium is a country in which layering predominates according to the national risk assessment, incoming international co-operation is significant.

8.2 Technical Compliance (R 36 – R 40)

Recommendation 36 – International instruments

8.3. Belgium is compliant with R 36 – Belgium has ratified all of the necessary Conventions.

Recommendation 37 - Mutual legal assistance

8.4. **Belgium is largely compliant with R 37** – Belgium has a legal database that enables it to rapidly supply the widest possible range of mutual legal assistance for investigations, prosecutions, and related proceedings in cases of ML, related predicate offences and TF. FPS Justice is the central authority for international co-operation on criminal law matters for requests concerning countries outside the EU; requests coming from EU countries are transmitted directly between judicial authorities, and FPS Justice should be informed of such requests. The systems put in place for recording the outgoing or incoming requests for mutual assistance do not allow for the possibility to track or check proper performance of letters rogatory or to measure the execution times of the requests. Thus, there are no procedures for establishing priorities for the requests.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

8.5. **Belgium is largely compliant with R 38** – Belgium has the power to take expeditious actions in response to requests from foreign countries to identify, freeze, and confiscate: laundered assets; proceeds of ML, predicate offences and TF; instrumentalities used in or intended for use in such offences; or assets of corresponding value. Since Belgian criminal law does not allow a person to be punished by confiscation without prior conviction, Belgium cannot provide assistance for requests for non-conviction-based confiscation. In addition, certain EU provisions on simplifying exchanges between asset recovery offices have not yet been transposed into Belgian law.

1 Between the Member States of the EU, the European arrest warrant (EAW) replaces extradition policy procedures with a purely judicial procedure. Each national judicial authority in the EU must recognise – *ipso facto* and with minimum checks – a request for surrendering a person that is formulated in this manner by the judicial authority of another Member State.

Recommendation 39 – Extradition

8.6. **Belgium is largely compliant with R 39** – Belgium can execute requests for extradition in matters of ML and TF. Co-operation at European level is based on the law regarding the European arrest warrant, and, outside the EU, it is the conventional principles of extradition that apply. The authorities do not have a system for recording and monitoring extradition requests that makes it possible to track, monitor, and prioritise execution of extradition requests (see R 37). Belgium does not extradite its own nationals outside the EU. The authorities indicate that the proceedings will ‘in principle’ be initiated when the requesting State has signed a bilateral extradition agreement with Belgium. Belgium may thus refuse to extradite its nationals (outside the EU) without undertaking to prosecute the offence for which extradition is sought.

Recommendation 40 – Other forms of international co-operation

8.7. **Belgium is largely compliant with R 40** – The competent authorities can rapidly agree to provide the widest possible international co-operation in matters of ML, related predicate offences and TF. The CTIF, the Federal Police and AGDA have clear procedures for transmitting and executing requests for information, and systems for establishing priorities and facilitating exchanges. The other authorities (BNB, FSMA) also have a legal framework that enables them to exchange information with their foreign counterparts, but they have not developed procedures to that effect. It was not established that FPS Economy and FPS Finance (apart from the AGDA) have a legal basis for international co-operation.

8.8. As regards indirect exchanges, there is no legal provision enabling such exchanges to take place by the CTIF even though the authorities indicate that such exchanges are possible. For the other competent authorities, no provision is made for any mechanism with non-counterpart foreign authorities.

8.3 Effectiveness: Immediate Outcome 2 (International Co-operation)

(a) Investigations and exchanges of intelligence in matters of ML and TF

8.9. **The CTIF frequently exchanges information with its counterparts**, such information then being usefully incorporated into its analyses and bringing added value to the transmissions made to the judicial authorities, even if the quality and the contents of the information that the CTIF can obtain from the other FIUs are very variable. The CTIF encounters only very few problems as regards exchange of information and dissemination of information to the prosecution authorities.

8.10. As regards information supplied by the CTIF, the opinions of countries who have provided their assessments,² including major partners such as France, Germany or Luxembourg, are positive. The CTIF also supplies relevant information to its counterparts in an unsolicited and spontaneous manner. A partner thus indicated that the exchanges with the CTIF were clear and constructive and brought high added value, as illustrated by the fact that about sixty files are opened every year on the basis of information provided by the CTIF. The CTIF indicated that it has never refused to assist a counterpart, and the responses are given in timely manner, the lead times being in the range a few days to a few weeks for the more extensive investigations.

8.11. The statistics provided by the CTIF in the table below clearly indicate that it uses the exchange of intelligence in a very dynamic manner, because it sends many more requests than it receives, above all to the EU, but also to other regions, including to non-typical partners (such as the countries of Central Asia, for example).

² Members of the FATF: Germany, Australia, Canada, Russian Federation, Finland, France, Mexico, Luxembourg, Portugal, Sweden; members of the Asia Pacific Group: Macao, China; Philippines; Vietnam; members of MONEYVAL: Armenia, Cyprus, Malta, Slovenia.

Table 8.1. Requests for assistance sent and received by the CTIF

	2008	2009	2010	2011*	2012	2013
Number of requests sent*	2 720	2 808	2 457	1 376	1 639	1 319
Number of requests received	358	402	381	420	464	536

Source: CTIF

*Up until 2010, requests for intelligence sent via FIU-NET were counted in terms of number of players involved. Since 2011, requests sent via FIU-NET have been counted in terms of number of files (in any one file, several players may be involved).

8.12. The various **police, AGDA, and intelligence services** also frequently use international co-operation, whether it be for ML and related predicate offences or for TF, and whether it be via official forums or organisations (e.g. Europol, Police and Customs Co-operation Centre (PCCC), Interpol), or informal forums or organisations (AMON – Anti Money Laundering Operational Network – for the Police). However, it should be noted that a large proportion of the exchanges made by the police take place for investigations initiated by a public prosecutor or by an investigating judge (since, by nature, purely police investigations last for a very short time in Belgium, because it is the public prosecutor or the investigating judge who directs investigations).

8.13. A certain number of cases have also given rise to transmission of files to law enforcement authorities of other countries (especially neighbouring ones) in cases of possible ML linked to the predicate offences of misappropriation of corporate assets, breach of trust, corruption, tax fraud, narcotics trafficking, etc. (at least 40 cases since 2010).

8.14. The competent authorities have a quite broad access to relevant information, in particular in terms of identification of the beneficial owners, and that information is exchanged with foreign counterparts (see Sections 3 and 7, for example, CTIF can obtain information from persons and institutions covered by the AML/CFT Law).

8.15. **The evaluation of mutual legal assistance is based primarily on qualitative data; however the quantitative data provided was also taken into account.** Incoming and outgoing mutual legal assistance is difficult to evaluate quantitatively in the absence of centralised and full information (above all in terms of statistical data), due, in particular to the fact that mutual legal assistance is the competence of various different authorities (FPS Justice, Federal public prosecutor's office, public prosecutors' offices, investigating judges), each of whom has, to various degrees, certain information, and to the fact that those authorities. Thus, statistics on international letters rogatory sent and received only include those for which the processing exceeds EUR 2 500, which is rarely the case for outgoing requests (the eventual costs of translation or travel for the official are rarely that high). However, since 1 January 2013, a statistical database has been in place at FPS Justice for requests with countries outside the EU. That database does not reference the requests transmitted directly between judicial authorities in the EU zone, insofar as the prosecutors and investigating judges only rarely inform the central authority of requests processed directly by them, in spite of the obligation to do so.

8.16. It was not possible to evaluate what becomes of requests for mutual assistance, in particular as regards identification, seizure, and confiscation of criminal assets, be it in Belgium or abroad. Finally, the Belgian authorities were not able to provide information in the form of statistical data demonstrating sharing of assets, as provided for by the Belgian legislation, and as regularly implemented in practice. The same applies for assets confiscated and repatriated following international co-operation. Only three examples were mentioned of confiscation in Belgium or at Belgium's request with sharing of assets, one of which took place in 2010.

8.17. On the basis of the observations made by the assessors, and of the contributions from the partners, **international co-operation in combatting terrorism and TF is generally effective.** The Belgian authorities indicate that international co-operation 'brings the expected added value', i.e. it makes it possible for definite progress to be made on investigations. The existence of specialised teams and authorities, at all levels (justice, police, intelligence services), the specifics of the subject (the various States concerned co-

operating, according to the authorities met, more rapidly and more effectively than on ordinary law matters) are important factors in this analysis. A lack of resources, both human and technological (in particular as regards the computer system), was pointed out to the assessors – a lack that, without directly adversely affecting investigations as things currently stand, is not without repercussions on the effectiveness of the system and particular attention should be paid to it by the competent authorities.

(b) Mutual legal assistance provided by Belgium

8.18. It can be concluded, based on the opinions given by various countries (representing several hundred requests) and on the interviews conducted with the representatives of the competent Belgian authorities, that **Belgium provides assistance that is satisfactory or indeed good in the field of international mutual legal assistance on criminal law matters**. Certain partners indicated that the assistance provided by Belgium was of very high quality, and several also indicated that communication was easy, one partner noting the efforts made by the Belgian authorities to adapt to the required formalities. As a positive example of international co-operation, the Brussels public prosecutor's office has a specific department responsible for international co-operation. In addition, certain judicial districts in border areas have developed excellent contacts with their foreign neighbours.

8.19. It appears that this assistance is provided in a timely fashion by the Belgian authorities, according to certain foreign authorities who asserted that the mutual assistance and extradition are provided within times ranging from 3 to 10 months. None of the countries who gave opinions noted any refusal to grant mutual legal assistance (or extradition). The Belgian authorities have quite wide access to relevant information, in particular in terms of identifying the beneficial owners (see Section 7).

8.20. In terms of **extradition**, ML/TF cases are processed like any other request: while the surrender system instituted by the European arrest warrant is, in the opinion of professionals, generally effective, doubts remain as to the effectiveness of extradition outside the EU, particularly in terms of the length of the procedures. In addition, it is not established that Belgium initiates proceedings against its own nationals when extradition has not been granted. The Belgian authorities indicate that the main reasons are the wording of the underlying treaty (which does not always make provision for that possibility), the lack of reciprocity or of collaboration by the counterparty for establishing the facts, the lack of double criminality, or the lapsing of the statute of limitations for taking action.

8.21. Finally, the Belgian legislative framework does not make it possible to grant assistance, as required by the FATF, for co-operation requests based on confiscation procedures without prior convictions (at least in certain circumstances, such as death or absconding of the perpetrator of the offence), which, depending on the circumstances, can adversely affect the AML system. In practice, no partner of Belgium raised this point.

(c) Mutual assistance requested by Belgium

8.22. According to the interviews during the on-site visit, the Belgian judicial authorities, in particular the investigating judges, regularly use mutual assistance in all ML and TF cases.

8.23. In the opinions of the professionals met, mutual assistance in criminal law matters works quite well at EU level, in particular because of the specific regulations and mechanisms (e.g. the European arrest warrant). Outside the EU, the authorities assert, in general, that they do not encounter problems as regards the countries in which the amount of exchange of information and of provision of assistance is highest on AML and CFT matters, while, at the same time they regret the lengthiness of the procedures, ranging in general from 6 months to 2 years for execution of a request for mutual assistance. Co-operation remains difficult with a limited number of jurisdictions, in particular in cases of ML and predicate offences committed in the diamond sector even though the amounts involved are large.

8.24. The Belgian authorities also regularly use organisations responsible for co-operation and coordination at European level, such as EUROPOL and EUROJUST. In addition, Belgium regularly participates in joint investigation teams (particularly in cases of organised crime or narcotics trafficking, which may lead to ML).

(d) Other competent authorities

8.25. The BNB and the FSMA have legal tools enabling them to co-operate with their counterparts in performing the AML/CFT missions entrusted to them. The BNB often uses such mechanisms because of the cross-border activities of a large number of establishments that it has to oversee. The essentially domestic activity of the establishments placed under the oversight of the FSMA means that it uses these mechanisms less often.

8.26. The main focuses of international co-operation for the BNB are firstly its participation in a European college of supervisors set up to monitor banking groups with operations in several countries of the EU (see Section 5, and R 40), and, secondly, the exchange of information and co-operation on a bilateral basis, in the event of common interest relating to the activities of a financial institution or in the event of cross-border activities.

8.27. The FSMA indicates that it co-operates with its foreign counterparts to identify persons who act as financial intermediaries in Belgium, without being authorised to do so. Such persons are often businesses of foreign origin, and the supervisory authorities of those countries warn and refer the matter to the FSMA who, although it is not empowered to intervene on the premises of such service providers, can publish warnings to the public on its website (see Section 5 and R 40). The FSMA cites an example of co-operation to that effect with the British Financial Services Authority. The BNB and the FSMA indicate that they also co-operate with their foreign counterparts to verify the fitness and properness of the managers and shareholders (see Section 6). The FSMA indicates that, in general, few situations require international co-operation.

8.28. **In conclusion**, the international co-operation provided by Belgium is considered to be of good quality by its partners. No country indicated any major difficulty with Belgian practices in matters of exchange, and the assessors did not have any information that might suggest that the Belgian system of international co-operation suffers from any serious deficiencies as regards effectiveness. This observation was confirmed by the interviews conducted with the representatives of the various competent authorities. This observation was particularly positive in matters of combatting TF and terrorism. The legal limitations observed do not, in practice, seem to have any preponderant impact on exchange of intelligence.

8.29. **Belgium has achieved a substantial level of effectiveness for Immediate Outcome 2.**

8.4 Recommendations on International Co-operation

8.30. In order to enable appropriate policies to be in place, conducive to reinforcing and to improving the effectiveness of Belgium's international co-operation on ML/TF matters and more generally to reinforcing and improving the effectiveness of the combat against those crimes, Belgium should:

- Equip itself with appropriate IT tools to enable the judicial authorities, at all levels of the proceedings, to have an overall vision of mutual assistance for criminal law matters, and analyse the effectiveness of the system in order to mitigate any deficiencies that might remain, improve the processing of the requests and find the appropriate solutions with respect to the countries with which mutual assistance is deficient or perfectible.
- Examine whether it would be opportune for Belgian law to enable foreign confiscation decisions to be recognised without any prior conviction.
- Review the legislative framework for extradition outside the EU in order to improve the time taken to process files and to respond to requesting authorities (except when that would be contrary to the fundamental interests of Belgium or in violation of the supranational standards such as conventions for safeguarding personal rights).

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Recommendation 36 – International instruments

a8.1. In 2005, Belgium was assessed as largely compliant with the FATF standard on international instruments as concerns AML/CFT (former R 35 and SR I; Section 6.2, MER 2005) because there were doubts remaining over full transposition of certain treaties on declaring cross-border cash movements and the definition of funds to be frozen in application of UNSCRs, matters on which progress has been made (see R 32 and R 6).

a8.2. **Criterion 36.1** – Belgium is a Party to the Conventions of Vienna (since 1996), Palermo (since 2004), Mérida (since 2008) and the Convention on TF (since 2004), the Council of Europe Convention on Cybercrime (since 2009) and that on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and TF (since 2010).

a8.3. **Criterion 36.2** – Belgium has reinforced its compliance with the provisions of the Conventions of Vienna, Palermo and that on TF, and has fully implemented the Merida Convention.

Weighting and conclusion

a8.4. **Belgium is compliant with R 36.**

Recommendation 37 – Mutual legal assistance

a8.5. In 2005, Belgium was assessed as largely compliant with the FATF standard on mutual legal assistance (former R 37 and SR V) due to a relative effectiveness for assistance outside the framework of bilateral agreements and a lack of statistics (Section 6.3, MER 2005). The first point was resolved by the Law of 9 December 2004 (whose effectiveness could not be evaluated in 2005), but the second remains problematic.

a8.6. **Criterion 37.1** – Belgium may provide legal assistance to other countries under bilateral and multilateral conventions it has ratified and may provide as much legal assistance as possible in criminal matters, subject to the law and applicable international law (see MER 2005 for a list of treaties). The Law of 9 December 2004 on international legal assistance in criminal matters also governs enforcement in Belgium of requests for assistance from States with which Belgium is not internationally linked by a convention on mutual legal assistance, on the basis of reciprocity.

a8.7. **Criterion 37.2** – SPF Justice is the central authority in the area of international co-operation in criminal matters for requests concerning countries outside the EU; requests from within the EU are sent directly to the judicial authorities and SPF Justice advised accordingly. Within the prosecution authority, the federal prosecutor's office is empowered to manage any type of outgoing or incoming request for international co-operation in criminal matters. Transmission of the letters rogatory is made either directly from one judicial authority to another in a country with which Belgium is linked by an international convention, or after being authorised by the Minister of Justice in other cases.¹ The federal prosecutor's office facilitates execution of requests for legal assistance, whatever the offence concerned. It is also the central point of contact for judicial authorities and international institutions such as the European Judicial Network and Eurojust. The authorities state that the central authority receives a copy of each outgoing or incoming request for assistance whenever requests are made directly and that it has a request registration system, operational since 1 January 2004. However, the registration system does not enable supervision or checking of the due execution of either outgoing or incoming letters rogatory, or measuring the time taken for execution and

¹ Circular no COL 5/2005 of the College of Prosecutors-General and the Ministry of Justice contains instructions for dispatch and receipt of requests for assistance to and from judicial authorities.

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cannot therefore be regarded as a management system. It is not integrated, i.e. it is not accessible to the Kingdom's courts or judges. The central authority has therefore no automatic system for following up on requests whose execution is delayed, but can only react to reminders from the requesting authority. There are no formal criteria for managing request urgency or for establishing priorities and prompt execution of requests for judicial assistance. The system does not enable collection of statistical data on assistance activity.

a8.8. **Criterion 37.3** – The grounds for rejecting requests for legal assistance in criminal matters in Belgium (aside from those in conventions) are set out in the law of 9 December 2004. A request may be rejected if there is no reciprocity commitment, or if execution might harm sovereignty, security, public policy or other 'essential interests of Belgium' (undefined, but according to the Belgian authorities this ground has never been the basis for non-execution of a request for assistance in the field of economic and financial criminality). These grounds do not appear to be incompatible with those generally accepted and contained in international conventions (including conventions signed by Belgium). The authorities state that the rule in principle is to honour requests for assistance.

a8.9. **Criterion 37.4** – Since entry into force of the Law of 9 December 2004, legal assistance may no longer be refused for tax offences (except as provided in conventions). A request for assistance may not be refused on the grounds of secrecy or confidentiality of financial institutions and non-financial professions, unless such information has been obtained in circumstances covered by professional secrecy. 'Banking secrecy' (see C.9.1. for the definition of this concept in Belgium) is unenforceable against a judicial authority (see R 31).

a8.10. **Criterion 37.5** – Bilateral conventions with Belgium provide as a general rule that the requested State and the requesting State undertake to preserve the confidentiality of information, evidence exchanged and any action undertaken as a result of the request, or only to use the information on predefined terms. The authorities state that confidentiality is stipulated by recent mutual assistance conventions. Each request for assistance must in any event be part of a Belgian judicial file or be the subject of a new file for the purposes of execution. This immediately involves investigative and examining secrecy and thereby the confidentiality of the foreign request for assistance.

a8.11. **Criterion 37.6** – The principle of dual criminality is a condition for mutual assistance, whether or not Belgium is linked by convention to other States. However, dual criminality does not apply to requests for mutual legal assistance in the case of non-coercive measures. Coercive measures are defined in the CPC as measures which imply a (legal) exception to fundamental rights (prosecution, seizure, arrest and preventive detention, telephone-tapping and direct or indirect interception of communications, surveillance and undercover operations).

a8.12. **Criterion 37.7** – As the principle of dual criminality is a condition for mutual assistance, the fact that TF is not criminalised in Belgium in full compliance with the international standard may impede mutual assistance based on a requirement of dual criminality (see C.5.2).

a8.13. **Criterion 37.8** – The principle governing the treatment of requests for mutual assistance is that every request must be treated in the same way, using the same investigative powers as if the case had been conducted in Belgium by the Belgian authorities (see R 31).

Weighting and conclusion

a8.14. Belgium lacks clear procedures for establishing the priority and execution of requests for judicial assistance. Moreover, the current file management system does not enable supervision or control of execution of letters of request. **Belgium is largely compliant with R 37.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

a8.15. The application of seizure and confiscation measures as part of mutual legal assistance was considered to be largely compliant with the FATF standard in 2005 due to the absence of a fund for the seized assets and an inability to share confiscated assets (former R 38; Section 6.3, MER 2005).

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a8.16. **Criterion 38.1 – System applicable to requests for assistance outside the EU.** Belgium adopted a law on 20 May 1997 on international co-operation for seizure and confiscation. Mutual legal assistance in this area is governed by the following general principles: (i) a system based on a convention prior to the request; (ii) the request may be refused on certain grounds, including when execution of the request might prejudice sovereignty, security, public policy or other basic interests of Belgium or if the request might prejudice investigations or prosecutions brought by the Belgian authorities.

a8.17. *System applicable to requests for assistance within the EU.* The Law of 5 August 2006 on the application of the principle of mutual recognition of judicial decisions in criminal matters between member states of the EU transposed framework decisions 2003/577/JAI and 2006/783/JAI into Belgian law. This law establishes a single framework for the execution of judicial decisions concerning assets. It sets out reasons for refusing execution of a request, including the absence of dual criminality. The fact that TF is not criminalised in Belgium in full compliance with the international standard may impede mutual assistance based on a requirement of dual criminality (see C.5.2).

a8.18. The ability to take expeditious action in response to a request for assistance concerning the identification of property liable to be seized and confiscated: Belgium is able to respond to such requests for assistance by giving ordinary assistance (see R 37). The OCSC now has wider powers to obtain information of this kind (Law of 11 February 2014) but it is uncertain as to how far these powers apply in responding to a request for assistance.

a8.19. The ability to take expeditious action in response to a request for assistance concerning a request for seizure: Measures for execution of foreign seizure decisions from non-Member States are set out in Chapter III of the Law of 20 May 1997. The law lists the request execution conditions (including dual criminality) and establishes the execution procedure. Procedurally, the judges in chambers (*en chambre du conseil*) of the first-instance court having jurisdiction over the area where the property is located must, before any seizure, make a decision of *exequatur*, when it considers whether the legal conditions have been fulfilled. Such order is made within 5 days of receipt of the request by the judge in chambers. In urgent cases, the investigating judge may order provisional execution of measures, provided the judge in chambers subsequently confirms the measures. The Law of 20 May 1997 requires an in chambers ruling both for obtaining *exequatur* and for authorising transmission of seized documents and goods. In a European context, the Law of 5 August 2006 provides that the competent authority is not SPF Justice but the Royal Prosecutor for the place where the property is located with a view to direct co-operation between the competent authorities, thereby facilitating and improving execution of requests for seizure. The investigating judge must rule on execution of the seizure, preferably within 24 hours and at the latest within 5 days of referral. The authorities state that the procedure provided in the Law of 20 May 1997 is intended to protect Belgian interests (a Belgian investigation concerning the same facts or persons) or those of third parties.

a8.20. The ability to take expeditious action in response to a request for assistance concerning a request for confiscation: Belgium treats requests for confiscation in the same way and within the same period as it treats domestic matters (see R 37).

a8.21. **Criterion 38.2 –** Under Belgian criminal law, confiscation is a punishment dependent on a principal sentence of imprisonment or a fine. It is therefore impossible to impose a confiscation measure without a prior criminal conviction.

a8.22. **Criterion 38.3 –** The Law of 26 March 2003 assigned OCSC to manage international mutual legal assistance for seizures, confiscation and execution of judgments and orders concerning assets linked with offences. OCSC is the authority responsible for the management of seized funds and has had its remit strengthened in this area (see R 4). OCSC is a member of the CARIN network and the designated *asset recovery office* in Belgium. This mechanism provides for an exchange of information between the different national offices of EU Member States, both spontaneously and upon request. Exchange is subject to the procedures in the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States, which has not yet been transposed into Belgian law. The authorities state that OCSC has not signed any agreement with its foreign counterparts.

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a8.23. **Criterion 38.4** – Art.38 of the Law of 5 August 2006 established a rule for sharing confiscated assets. In the event of co-operation with a non-Member State, an asset division clause is provided in Art.8 of the Law of 20 May 1997.

Weighting and conclusion

a8.24. The general procedures for mutual legal assistance in criminal matters apply to identification and confiscation requests, with the same doubts concerning their expedited nature. **Belgium is largely compliant with R 38.**

Recommendation 39 - Extradition

a8.25. Belgium was considered to be largely compliant in 2005 with the FATF standard on extradition, due to the problematic and ineffective procedures for extradition outside the EU (former R 39; Section 6.4, MER 2005). Belgium co-operates with EU Member States by virtue of the European arrest warrant law of 19 December 2003, which came into force on 1 January 2004. Outside the EU, the ordinary principles of extradition apply pursuant to the Law of 15 March 1874, as amended first by the Law of 31 July 1985 and then by the Law of 15 May 2007, and the bilateral and multilateral agreements to which Belgium is a Party. There has been no major change to Belgian extradition legislation since this assessment.

a8.26. **Criterion 39.1** – a) ML and TF offences may give rise to extradition. b) Belgium has clear extradition procedures but which do not enable priorities to be set due to the lack of a request management tool (see C.37.2). Time limits have been established at each stage of the European arrest warrant procedure under the Law of 19 December 2003. Outside the EU, conditions for implementing foreign arrest warrants remain cumbersome and complicated, with the involvement of the judge in chambers and the government (see Section 6.4, MER 2005). Moreover, the fact that TF is not criminalised in Belgium in full compliance with the international standard (see C.5.2) may hamper extradition. c) Execution of requests for extradition is not coupled with unreasonable or unduly restrictive grounds or conditions. In European cases, a Member State does not execute a European arrest warrant if (i) a final decision has already been rendered by a Member State against the same person for the same offence (*ne bis in idem*); (ii) the offence is covered by an amnesty in the Member State of execution; (iii) the person concerned cannot reasonably be considered responsible by the Member State of execution due to his or her age. The 1874 law requires the existence of a treaty between Belgium and the requesting State as a condition of any extradition. The conditions of the EU and Council of Europe treaties comply with the standard.

a8.27. **Criterion 39.2** – Belgium may extradite its nationals and residents in Belgian territory to an EU Member State under a European arrest warrant (if appropriate, on condition that the person concerned is returned to Belgium after conviction to serve his sentence). Outside the EU, Belgium does not extradite its nationals, but the Belgian authorities state that ‘in principle’ prosecution is undertaken if the requesting State is a party to the European Convention on Extradition or has signed a bilateral extradition agreement with Belgium. Belgium can therefore refuse extradition of its nationals (outside the EU) without undertaking to prosecute the conduct upon which the request is based. The refusal criteria are not governed by the law.

a8.28. **Criterion 39.3** – The 1874 law requires that the facts giving rise to extradition are punishable both under Belgian law and under the law of the requesting State. It does not however require that classification of the facts be the same in both countries. The Law of 19 December 2003 provides that a European arrest warrant may be executed without testing for dual criminality in a certain number of cases including ML and TF.

a8.29. **Criterion 39.4** – Belgium has simplified extradition mechanisms for executing the European arrest warrant, which then replace the traditional extradition system. Outside Europe, the extradition procedure is simplified if the person concerned consents to his extradition.

Weighting and conclusion

a8.30. The extradition procedures do not enable priorities to be established due to the absence of a request management tool and the extradition conditions outside the EU are cumbersome and complicated, which does not guarantee extradition without delay. The lack of criteria for prosecution or otherwise if extradition is refused is also a concern. **Belgium is largely compliant with R 39.**

Recommendation 40 – Autres formes de coopération internationale

a8.31. Belgium was considered to be largely compliant in 2005 with the FATF standard which set out other forms of international co-operation (apart from mutual legal assistance and extradition, former R 40;Section 6.5, MER 2005). The Recommendation was significantly modified in 2012.

a8.32. **Criterion 40.1** – The competent authorities in Belgium are able promptly to provide the widest possible range of international co-operation– both spontaneously and upon request – in the areas of ML, underlying predicate offences and TF.²

a8.33. **Criterion 40.2** – a) International co-operation has a legal foundation (see C.40.1). b) There is no impediment to use of the most effective means of co-operating. c) The CTIF and the Federal Police use clear and secure channels, circuits and mechanisms to facilitate transmission and execution of requests.³ d) The CTIF, AGDA and the Federal Police have clear procedures for establishing priorities and facilitating timely transmission and execution of requests. It has not been established that other competent authorities have similar communication channels and procedures. e) The competent authorities have clear procedures for protecting information received (see C.40.6).

a8.34. **Criterion 40.3** – The CTIF, police authorities, AGDA, BNB and FSMA have signed bilateral agreements, MoUs and protocols to facilitate co-operation with numerous foreign counterparts. There is no indication that these agreements were not signed in a timely manner.

a8.35. **Criterion 40.4** – CTIF provides timely feedback to the competent requested authorities on the use and usefulness of information obtained (see C.40.10).⁴ BNB and FSMA systematically provide feedback to requested authorities (either under bilateral co-operation agreements or pursuant to European law). The Federal Police states that it provides feedback on its TF investigations on request (without any specific legal obligation). AGDA provides feedback on the use and usefulness of information obtained (on request in the case of a spontaneous exchange) on the basis of cited legal instruments governing international mutual assistance, whether administrative or criminal (e.g. Regulation 515/97, Naples II Convention); feedback is also provided when the information provided discloses the commission of offences.

2 **CTIF:** Art. 22 al. 2 and 35 of the Law of 11 January 1993; **Federal Police:** multilateral treaties (Prüm Convention, application Convention for the Schengen Agreement, Interpol and Europol channels, etc.), bilateral treaties with non-Member States; **AGDA:** Reg. 515/97, Naples II Convention and the law on assent of 13 September 2004; other Customs mutual administrative assistance agreements and protocols with non-Member States; Council Directive 2011/16/EU on administrative co-operation in the field of taxation; multilateral Convention on mutual administrative assistance in tax matters as amended in 2010; double taxation treaties and agreements for the exchange of information on tax matters; **BNB** and **FSMA:** art. 36/16 of the Law of 22 February 1998; art. 77 of the Law of 2 August 2002.

3 **CTIF:** Egmont Secure Web, FIU-Net; **Federal Police:** Schengen information system.

4 **CTIF:** Art. 35 of the Law of 11 January 1993, Framework Decision 2000/642/JAI.

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a8.36. **Criterion 40.5** – As for the four points of this criterion, the information provided by the competent authorities discloses no refusal of exchange or any unreasonable or unduly restrictive conditions to exchange of information.⁵

a8.37. **Criterion 40.6** – The competent authorities have established monitoring and protective measures to ensure that exchanged information is only used, save for prior authorisation, for and by the authorities for which the information was sought or provided.⁶

a8.38. **Criterion 40.7** – The competent authorities are obliged to ensure a level of confidentiality appropriate to any request for co-operation and the information exchanged, in compliance with obligations of privacy and data protection.⁷

a8.39. **Criterion 40.8** – The competent authorities are able to make requests on behalf of foreign counterparts and exchange any information with them which could be obtained if such requests were made internally.⁸ Requests for information to CTIF from foreign FIUs (financial intelligence units) are treated as STRs (suspicious transaction reports). It may therefore use all powers in the AML/CFT Law to process such reports.

a8.40. **Criterion 40.9** – CTIF has appropriate legal tools for co-operating with its foreign counterparts on ML, underlying predicate offences and TF (see C.40.1 and C.40.2). CTIF is also active in spontaneous information exchange.

a8.41. **Criterion 40.10** – If so requested, CTIF completes and returns a ‘feedback statement’ in respect of information provided by foreign FIUs. Moreover, CTIF states that whenever it uses foreign information as part of a transmission to the Belgian judicial authorities (with the permission of the FIU which provided it), it systematically advises its foreign counterpart of such transmission.

a8.42. **Criterion 40.11** – The AML/CFT Law only enables CTIF to obtain co-operation from another FIU when there is a valid ‘referral by a declaration made by a person defined in the law (see R 20). If it receives a request for information from a foreign counterpart, CTIF may use all the powers granted to it by the AML/CFT Law to deal with suspicious declarations, and may collect any information it is able directly or indirectly to access and obtain.

a8.43. **Criterion 40.12 – BNB and FSMA** have an appropriate legal basis for co-operation with their foreign counterparts.⁹ As for the other financial sector regulatory authorities, neither **FPS Economy** (responsible for

5 **CTIF**: Law of 11 January 1993; **Federal Police**: application convention for the Schengen Agreement, Art. 39 to 46; **AGDA**: Art. 19, Naples II Convention; **BNB**: Art. 36/14, Law of 22 February 1998; **FSMA**: Art. 77 §2, Law of 2 August 2002.

6 **CTIF**: Art. 17, Law of 11 January 1993; Art. 458 CP; **Federal Police**: Art. 44, Law of 5 August 1992; Art. 458 CP; **AGDA**: Art. 34 and S., Reg.515/97; **BNB**: Art. 36/17 §1er 3°, Law of 22 February 1998; **FSMA**: Art. 75 §2, Law of 2 August 2002.

7 **CTIF**: Art. 35, Law of 11 January 1993; Art.458 CP; **Federal Police**: Circulars COL2/2000 and MFO-3; art. 458 CP; **AGDA**: Art. 320 of the general Customs & Excise law; **BNB** and **FSMA**: Art. 36/17, §1er, 3°, and §4, Law of 22 February 1998; Art. 77bis, §1er, b), 3°, and §5, Law of 2 August 2002.

8 **CTIF**: Art. 22 al. 2, Law of 11 January 1993; **Federal Police**: Joint Directive MFO-3 of the Interior and Justice Ministries; **AGDA**: Reg.515/97 and Art. 8, Naples II Convention; **BNB**: Art. 36/17, Law of 22 February 1998; **FSMA**: Art. 77bis, Law of 2 August 2002.

9 **BNB**: Art. 36/16, Law of 22 February 1998; **FSMA**: Art. 77, Law of 2 August 2002. Certain sectoral laws also contain relevant provisions in this field (insurance agents, asset management companies and investment advisors,

monitoring consumer credit companies, financial leasing institutions and diamond traders; see R 26) nor **FPS Finance** (responsible for monitoring Bpost, which provides postal financial services; see R 26) provided information on the international co-operation they are authorised to implement.

a8.44. **Criterion 40.13** – BNB and FSMA are able to exchange domestically-accessible information with foreign counterparts. Pursuant to their respective laws and relevant European directives, they may depart from their obligation of professional secrecy and provide confidential information to competent foreign counterparts under a co-operation agreement. As stated in C.40.12, FPS Economy and FPS Finance are not able to exchange information internationally, as there is no legal basis for doing so.

a8.45. **Criterion 40.14** – Co-operation on supervising banking groups is organised at European level by the establishment of colleges of supervisors which facilitate the exchange of information and operational co-operation¹⁰ (see provisions cited in C.40.13).

a8.46. **Criterion 40.15** – The BNB refers to the provisions of article 36/16 of the Law of 22 February 1998, and states that the relevant measures are contained in laws governing transactions and supervision of banking groups.¹¹ More specifically, sectoral supervisory laws¹² set out the right of the competent authorities of an EEA Member State to seek information themselves in Belgium, after first advising the BNB or FSMA, unless the latter have undertaken such check for a foreign counterpart, in which case the foreign authority may be involved in its verification if it deems it necessary. For competent authorities in third-party States, the verification procedures are governed by the co-operation agreement between the BNB or FSMA and the authority concerned.

a8.47. **Criterion 40.16** – The BNB and FSMA must obtain prior authorisation from the requested supervisory authority for any disclosure or use of exchanged information. When BNB and FSMA receive confidential information, the information is covered by their legal obligations concerning professional secrecy. The information may only be used for the purpose of the enquiry for which it was provided. It may not be used for other purposes or transmitted to other persons or authorities without permission from the authority which provided it.¹³

a8.48. **Criterion 40.17** – The **Federal Police** services are able to exchange domestically-accessible information with their foreign counterparts for intelligence or investigation purposes in ML cases, underlying predicate offences and TF, including for identifying and tracing the proceeds and instruments of the crime (see C.40.2 and C.40.3). Council Decision 2007/845/JAI of 6 December 2007 concerning co-operation between

mutual fund companies).

10 Directive 2009/111/EC of 16 September 2009; Directive 2009/138/EC of 25 November 2009; Law of 28 July 2011; Law of 25 April 2014 (Art. 158 to 162 and 319 to 326); Law of 6 April 1995 (Art. 95, §5ter and §5quater); RD of 12 August 1994 (Art. 9bis to 13).

11 Law of 25 April 2014 Art. 158 to 162 (foreign branches of Belgian firms) and 319 to 326 (branches of foreign firms in Belgium); Law of 6 April 1995 (Art. 95, §5ter en §5 quater); RD of 20 December 1995 (Art. 9); Law of 9 July 1975 (Art. 70); Law of 21 December 2009 (Art. 47).

12 Credit institutions: Art. 217, §2 and 324, Law of 25 April 2014; insurance companies: Art. 70 and 91septies, §3 of the Law of 9 July 1975; stockbrokers: Art. 13, RD of 12 August 1994 and Art. 9, RD of 21 December 1995; re-insurers: Art. 87, §3 of the Law of 16 February 2009; payment institutions: Art. 42 of the Law of 21 December 2009; investment management companies and investment advisers: Art. 95, §§5, 5ter and 5quater of the Law of 6 April 1995 and Art. 9bis to 13 of the RD of 12 August 1994; collective investment fund companies: Art. 241, §5 of the Law of 3 August 2012 and Art. 9bis to 13 of the RD of 12 August 1994.

13 **BNB:** Art. 36/17, §3 and §4, Law of 22 February 1998; **FSMA:** Art. 77bis, §4 and §5, Law of 2 August 2002.

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asset recovery offices of the Member States in the field of tracing and identification of proceeds from or other property related to crime provides for prompt exchange of information enabling effective combatting of cross-border organised crime.

a8.49. **Criterion 40.18** – Police co-operation takes place particularly within the legal framework of conventions signed by Interpol, Europol or Eurojust with third-party countries.

a8.50. **Criterion 40.19** – Joint investigation teams (JITs) are established by the Law of 9 December 2004 on international mutual legal assistance in criminal matters, which incorporates into Belgian law the provisions of the Council Act of 29 May 2000 establishing the convention on mutual legal assistance in criminal matters between EU Member States, and Council Framework Decision 2002/465/JAI of 13 June 2002 on joint investigation teams. In Customs cases, the joint investigation team is one of the special forms of cross-border co-operation established by Part IV of the Naples II Convention.

a8.51. **Criterion 40.20** – As for exchanges of information between non-counterpart authorities, indirect exchange with CTIF is not expressly provided in the AML/CFT Law. The authorities state that such exchanges are nonetheless possible. There is no formal mechanism enabling the Federal Police to make such exchanges. No mechanism exists for exchange of information between foreign non-counterpart authorities and customs.

Weighting and conclusion

a8.52. Exchange of information between non-counterpart authorities is not clearly provided for in Belgium. Moreover, two of the supervisory authorities (FPS Economy and FPS Finance) lack the capacity to co-operate with foreign authorities having comparable powers. **Belgium is largely compliant with R 40.**



A8

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	Office Central de la lutte contre la Délinquance Économique et Financière Organisée (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	Service Général du Renseignement et de la Sécurité (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