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Belgium: Report on the Observance of Standards and Codes—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

This Report on the Observance of Standards and Codes on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism for **Belgium** was prepared by the Financial Action Task Force on Money Laundering (FATF), using the assessment methodology adopted by the Financial Action Task Force in February 2004 and endorsed by the Executive Board of the IMF in March 2004. The views expressed in this document are those of the FATF and do not necessarily reflect the views of the government of Belgium or the Executive Board of the IMF.

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Financial Action Task Force
Groupe d'action financière

BELGIUM

Report on Observance of Standards and Codes
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism

21 November 2005

REPORT ON OBSERVANCE OF STANDARDS AND CODES

FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

BELGIUM

1. BACKGROUND INFORMATION

1. This Report on the Observance of Standards and Codes for the *FATF 40 Recommendations for Anti-Money Laundering and 9 Special Recommendations Combating the Financing of Terrorism* was prepared by the Financial Action Task Force. The report provides a summary of the AML/CFT measures in place in Belgium, the level of compliance with the FATF 40+9 Recommendations, and contains recommendations on how the AML/CFT system could be strengthened. The views expressed in this document have been agreed by the FATF and Belgium, but do not necessarily reflect the views of the Boards of the IMF or World Bank.

2. This report provides a summary[1] of the AML/CFT measures in place in Belgium as at the date of the on-site visit (January 2005) or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened. In Belgium, the financial intelligence unit (CTIF-CFI) has noted a shift in money laundering activities in recent years. It has emerged that the proportion of new cases involving layering operations and, to a lesser extent, integration is on the rise. At the layering stage, the methods favoured by criminals are national or international payments via wire transfers or cheques, as well as remittance transactions. At the integration stage, the primary techniques involve investments in real estate, securities or corporate equities. The use of front men and shell companies is also frequent. In the realm of terrorist financing, the most common criminal methods are to use front men, shell companies or bogus companies. Other identified techniques include remittances at bureaux de change and international transfers to banks. Misuse of non-profit organisations has also been noted amongst terrorist groups.

3. The following financial institutions are authorised to conduct financial activities or financial transactions in Belgium and are subject to the AML/CFT (anti-money laundering and combating the financing of terrorism) regime: credit institutions, investment companies, specialists in derivatives, bureaux de change, life insurance companies and insurance brokers, mortgage lenders, investment advisers and brokerage firms, the Belgian National Bank, the *Caisse des Dépôts et Consignations*, the Belgian Post Office (La Poste/De Post, hereinafter "the Post"), natural and legal persons licensed under the Law of 12 June 1991 on consumer credit, natural and legal persons that issue or manage credit cards and financial leasing firms.

4. In Belgium, the following non-financial professions and types of businesses are deemed to fall within the scope of the AML/CFT regime: estate agents, notaries, auditors, bailiffs, lawyers, accountants and tax accountants, chartered accountants and external tax advisers, diamond merchants, private security firms (funds transporters) and casinos.

5. Belgian company law is set forth in the Law of 7 May 1999. Under Belgian law, a business may be set up in one of eight forms. The most common forms are the public limited company (*société anonyme*, or SA); the private limited company (*société privée à responsabilité limitée*, or SPRL); and the co-operative society (*société coopérative*).

6. The Ministries having jurisdiction over AML/CFT issues have formulated a variety of plans and strategies which can be used to convey an overview of the measures put in place, and to take new approaches which could correct certain weaknesses detected in the existing system (among these plans are the Policy Paper on Total Security of 30-31 March 2004 and the 2004-2007 National Security Plan. Both of these plans seek, inter alia, to enhance consultations between the various State agencies

[1] A copy of the full Mutual Evaluation Report can be found on the FATF website: www.fatf-gafi.org.

concerned with terrorism-related issues and to develop and implement a number of targeted actions facilitating detection of money laundering operations).

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

7. Money laundering is a criminal offence by virtue of Article 505 of the Penal Code. In Belgium, the offence of money laundering covers the laundering of the proceeds of any unlawful activity whatsoever, and the perpetrator of the laundering offence can be a legal entity. The penalties incurred for these offences as foreseen by Article 505 of the Penal Code, including for the handling of stolen goods, range from 15 days to 5 years imprisonment and/or from 65 to 2,500 EUR multiplied by additional factors of 5,5. Some 5,000 money laundering cases were submitted to Belgian justice officials between 2000 and 2003, and 800 convictions for money laundering were obtained, from which it may be concluded that the Belgian anti-money laundering system is effective. In this context, it is still important that the authorities responsible for prevention as well as prosecution aspects continue their collaborative efforts.

8. Article 140 of the Penal Code makes it a crime to participate in the activity of a terrorist group, including by providing information or material resources to a terrorist group, as well as by any form of financing of an activity of a terrorist group, with the knowledge that such participation contributes to the commission of a crime or misdemeanour. Article 141 penalises the provision of material resources, including financial aid. The penalties foreseen for offences under Articles 140 to 141 range from five to ten years in prison. To the knowledge of the evaluation team, there have been no convictions obtained – and thus there is no jurisprudence – with regard to the new offences that would permit a true assessment of the effectiveness of the prosecution for terrorist offences in Belgium. Belgium is nevertheless in compliance with the letter of Special Recommendation II. The CTIF-CFI reports having forwarded 64 terrorism- or terrorist financing-related cases to prosecutors in the past four years. Three cases with links to terrorist financing have been submitted to prosecutors: two are in the preliminary inquiry stage, and the third is under investigation.

9. Belgium has established a sophisticated and comprehensive confiscation and seizure regime, and in this respect the creation of the Central Office for Seizure and Confiscation (COSC) is to be applauded. Nevertheless, the legal regime for confiscation is not sufficiently clear with regard to confiscation of assets of equivalent value, and draft legislation (providing for confiscation from all money laundering perpetrators, co-perpetrators or conspirators of assets of equivalent value if the laundered proceeds are no longer in the convicted party's possession) is in the process of being adopted. Moreover, it would seem important to maintain, if not amplify, current efforts to heighten awareness of seizure and confiscation issues, amongst judges and the police in particular. Lastly, the effectiveness of the confiscation regime is difficult to measure. Available COSC statistics are still only approximate. And yet 172 money laundering-related confiscation and seizure cases have been opened with the COSC over a one-year period, which is satisfactory.

10. The freezing of assets of certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban as a result of Resolution S/RES/1267(1999) and succeeding resolutions has been harmonised at European level by Council Regulation (EC) No. 881/2002 of 27 May 2002. Regulation 881/2002 provides for the obligation to freeze assets belonging to natural persons, groups or entities designated by the Committee created by Resolution 1267(1999) ("the 1267 Committee"). Resolution S/RES/1373(2001) has been implemented at the European level through Common Position 2001/931/CFSP of 27 December 2001 and by Council Regulation (EC) Nº 2580/2001 of 27 December 2001. They provide for mechanisms similar to those of Council Regulation (EC) Nº 881/2002 with regard to freezing the assets of targeted persons or entities. Council Regulation (EC) Nº 2580/2001 does not, however, cover terrorists or members of terrorist groups that are citizens of the European Union and thus does not apply the freezing measures required by S/RES/1373(2001) and SR III. In such instances, Belgium has the possibility of applying all other restrictive measures with the exception of freezing, such as temporary seizure ordered by judicial authorities. Belgium has not developed its own procedure for "listing" but instead relies on the procedures implemented through Council Regulation Nº 2580/2001 (the decision to designate persons or entities whose funds or other assets should be frozen resides with the Council of the European Union which makes its determinations by unanimity). Nevertheless and

moreover because the European regulation does not apply to European terrorists, Belgium should have its own power to freeze the funds or other assets of listed persons or entities when a decision cannot be made at the European level yet the country considers it necessary or when the targeted terrorists are citizens of the European Union. Belgium should thus have its own asset freezing mechanism in order to be fully compliant with SR III.

11. It should be noted that Belgium has not found particular problems related to the European mechanism for designating persons or entities whose funds should be frozen it would seem difficult (without precise, specific data on persons or entities whose listing may have been blocked by the efforts of a single country) to be able to assess the effectiveness of this mechanism, given the information available to an evaluation team. It should be noted finally that the definition of funds and other assets of terrorists that are to be frozen or confiscated as currently stipulated by the European regulations do not cover the full range of assets required in the context of the Security Council or of the FATF (the concept of control over the funds, for example, has not been taken up in Council Regulation Nº 881/2002). Under UN Resolution 1267 (1999), 178 accounts have been frozen in Belgium. After verification and identification, fourteen accounts remain frozen with a total value of 6,348.44 EUR.

12. Created by the Law of 11 January 1993, the Belgian financial intelligence unit (CTIF-CFI) falls under the Ministers of Justice and Finance. The Unit was instrumental in creating the Egmont Group in 1995, and it remains an active member. The CTIF-CFI gathers, analyses and forwards reports of suspicious transactions and other information concerning suspected acts of money laundering or terrorist financing. The CTIF-CFI is empowered to block execution of a financial transaction that has been reported to it for two business days. The CTIF-CFI is also responsible for checking AML/CFT compliance on the part of financial entities not subject to prudential control. The CTIF-CFI shows clear signs of effectiveness and professionalism and has sufficient material and human resources. It constitutes a key element in Belgium's AML/CFT arsenal and appears to assume the responsibility well. It would seem important for the CTIF-CFI, apart from its mission of processing reports of suspicious transactions, to be able to devote time to its other responsibilities, and in particular to checking compliance with professional obligations by financial entities not subject to prudential supervision (even if there are initiatives along those lines).

13. The federal police and its specialised units, including the Central Office for the Fight Against Economic and Financial Crime (OCDEFO), are the authorities responsible for ensuring that money laundering and terrorist financing offences are investigated properly. Belgium is in full compliance with FATF Recommendations 27 and 28. Criminal prosecution authorities do in fact have the necessary powers to carry out their functions. In 2003, the Judicial Police Directorate dealt with 1,214 cases related to money laundering. Various types of training are provided both for the relevant police units and for judges. At the judicial level, the federal prosecutor's office and the College of Attorneys-General play a critical role in combating economic, financial and tax crime. Prosecutors' offices with the highest case loads have financial sections to handle money laundering issues. However, it emerged from the on-site visit that the resources allocated to prosecutors (or at least to some of them), and to the police, do not always seem sufficient to enable them to perform their AML/CFT duties properly. Belgium ought to see to it that this is not the case.

3. PREVENTIVE MEASURES: FINANCIAL INSTITUTIONS

14. The Law of 11 January 1993 specifies the categories of financial institutions that are subject to legal obligations for the prevention of money laundering and terrorist financing, and it provides no mechanism for exempting certain categories of such institutions on the grounds that their money laundering or terrorist financing risk would be sufficiently low. In contrast, the Law of 11 January 1993 makes supervisory authorities responsible for determining how financial institutions should fulfil their legal obligations, depending on the level of risk represented by the customer, the business relationship and the transaction in question.

15. Belgium has made a most noteworthy effort to tailor the (very numerous and highly detailed) obligations in the area of due customer diligence to the 2003 FATF standards – and it has done so in a very short time. The body of requirements is comprehensive and broadly compliant with FATF

standards in this area. In another positive point, it should be noted that the relevant data and documents that institutions must obtain for customer identification purposes are spelt out very clearly and comprehensively in the regulations and circular of the Banking, Finance and Insurance Commission (CBFA), especially with regard to clients that are legal entities and their beneficial owners. Nevertheless, Belgium should endeavour to rectify a number of points. First, consumer credit companies and leasing firms ought to be subject to detailed identification requirements. Belgium allows an exemption from these requirements if the customer is a financial institution established in a European Union or FATF member country[2]. The exemption does not apply if there is a suspicion of money laundering or terrorist financing however. It is important that this exception be included in a document having the force of law.

16. Belgium has instituted a very comprehensive set of measures applicable to politically exposed persons (going so far as to include Belgian citizens in the regulations' scope of application). Nevertheless, stricter acceptability measures for politically exposed persons ought also to be extended to beneficial owners considered PEPs. Lastly, detailed vigilance measures concerning politically exposed persons ought to be applicable to consumer lenders as well as to leasing companies. Belgium is in full compliance with the recommendations involving issues of correspondent and remote banking, improper use of new technologies and resorting to third parties to fulfil certain due diligence requirements. Lastly, it is clear that Belgian legislation allows financial institutions to lift the obligation of professional secrecy – or rather of discretion –in the realm of AML/CFT. The authorities contacted reported having had no difficulties obtaining the requested information.

17. Record-keeping rules in Belgium comply with FATF obligations by requiring that all documents needed to reconstitute transactions be kept, and by all financial institutions. The competent authorities signalled no particular difficulty in obtaining the information they sought. Obligations related to SR VII, which are in compliance with the FATF standard, are prescribed by law; however, the implementation rules are spelled out in a circular that does not have the force of law. The future European regulation on the subject, which will have the force of law, will be directly applicable in Belgian law. The obligation to provide information in respect of wire transfers under SR VII seems to be effectively enforced. This fact was confirmed by large banks and by businesses in which funds transfers are requested by persons who are not regular customers (such as bureaux de change).

18. Belgium has taken the necessary steps to achieve compliance with FATF Recommendations calling for closer scrutiny of all complex transactions and those carried out in countries that do not enforce those same Recommendations, or that do not enforce them sufficiently. On the whole, the Belgian reporting system would seem effective, and most financial institutions report to the CTIF-CFI regularly. In 2003, 9,071 suspicion transaction reports were submitted. Even so, some financial institutions, such as life insurers, life insurance intermediaries, consumer credit companies and leasing firms, appear to have reported relatively fewer suspicious transactions. This can probably be explained in part by the fact that the risks of money laundering and terrorist financing are lower in those sectors. Nevertheless, there is also a problem with the perception of money laundering and terrorist financing risks in some of these professions. It is therefore important that the Belgian authorities continue their briefing programmes for all financial institutions to ensure that reporting obligations are carried out effectively. Belgium has opted for a system of reporting suspicious transactions based on a closed list of predicate offences (a preventive approach which is distinct from a criminal approach targeting all crimes and misdemeanours). In addition, it is true that this list corresponds to the list of predicate offences as adopted by FATF (and is even broader). Belgian authorities justify this choice by their desire to use the preventive system primarily for the most serious offences and not to overwhelm the system with reports that refer to criminal activity judged as less important. It is nonetheless important to ensure that parties subject to the AML/CFT law pay attention to all suspicious transactions. Lastly, Belgium is in compliance with Special Recommendation IV, which deals with the obligation to report transactions suspected to be linked with terrorism.

[2] In the context of Recommendations 5, 7, 9 and 18, the Belgian regime exempts their financial institutions from certain obligations in relation to financial institutions that are located in a member country of the European Union or the FATF. The FATF decided at its June 2005 Plenary meeting to further consider this subject.

19. Belgian law makes adequate provisions for protecting financial institutions and their officers and employees when they have reported their suspicions to the CTIF-CFI in good faith. In no event may they disclose the information forwarded to the CTIF-CFI to the client concerned, or any third party, or inform them that a money laundering or terrorist financing inquiry is in progress. Feedback to financial institutions is satisfactory, even if some financial sector professionals have expressed a desire that the feedback be more detailed.

20. In Belgium, there is currently no reporting requirement concerning cross-border cash flows, and customs agents have been given no specific guidelines with regard to these issues. A reporting obligation will be introduced in the near future (see the proposed Regulation of the European Parliament and the Council on controls of cash entering or leaving the Community). Belgium also does not have a system whereby banks and other financial institutions and intermediaries would report all domestic and international cash transactions above a set threshold to a central national agency. The Belgian authorities indicated that they were not convinced of the usefulness of a broad scale automatic reporting system, preferring that the institutions subject to reporting requirements be responsible for analysing all unusual transactions as defined.

21. The Law of 11 January 1993 requires financial institutions to designate one or more in-house officials whose primary duties would be to establish internal control, communication and centralisation of data in order to prevent, detect and block transactions related to money laundering or terrorist financing. The CBFA has issued circulars with recommendations for auditing and internal control procedures. The Law of 11 January 1993 requires the designated entities to take appropriate measures to make their employees and representatives aware of the provisions of the law. Belgian financial institutions would seem generally to comply with their obligations under Recommendation 15. They have introduced independent internal control mechanisms. However, certain details of these obligations (staff recruitment) are specified in a document that lacks the force of law.

22. With regard to branches and subsidiaries established in States belonging neither to the EU nor to the FATF, the CBFA circular stresses that proper management of reputational risk requires in addition that Belgian financial institutions establish enhanced measures to oversee these branches and subsidiaries in this regard. It is important that Belgian institutions require the branches and subsidiaries concerned to implement prevention mechanisms equivalent to those required by Belgian legislation and regulations. If local legislation prohibits enforcement of these Belgian provisions, the circular states explicitly that the CBFA must be so informed. The provisions of the circular are comprehensive. The CBFA circular requires the branches and subsidiaries of Belgian establishments located in States that do not belong to the EU or the FATF to comply with the equivalent provisions of Belgian law in addition to local law. It is regrettable that the subject is raised only in the circular and not in CBFA regulations. The CBFA indicated that it regularly exercises oversight over foreign-based subsidiaries and branches of Belgian establishments. On the issue of fictitious banks, Belgium is in full compliance with international standards.

23. The CBFA is the authority that oversees how the financial institutions under its supervision comply with their AML/CFT obligations. It licenses or registers the financial institutions under its supervision. The various licensing and registration procedures applicable to Belgian financial institutions would appear sufficient to prevent criminals from taking control of these businesses. It should be emphasised that the CBFA considers explicitly that preventing the financial system from being used for money laundering or terrorist financing purposes is an integral part of proper reputational risk management, and that as a result this lies fully within its realm of prudential supervision. The CBFA enjoys broad powers so that it can exercise its control over financial institutions. It would seem that the Commission's powers to impose sanctions are sufficient. The CBFA has opted to make greater use of compulsory measures (e.g. time limits for rectifying detected deficiencies, appointment of a special commissioner, etc.) than of the administrative sanctions (in the form of fines) available to it under the Law of 11 January 1993, its approach being one of prudential supervision and, for cited reasons, of effectiveness. In nine years, only ten administrative sanctions of this type have been imposed (and a majority of them for repeat violations). Nevertheless, the CBFA was unable to provide figures on the imposition of compulsory measures or the formulation of recommendations in cases of non-compliance

with the AML/CFT Act. Collecting such data would be highly useful. As of 1 January 2004, the CBFA had 383 available members of staff (versus 232 on 30 June 2002).

24. As a prudential supervisory authority, the CBFA monitors compliance by credit institutions with the laws and regulations governing their licensing and the conduct of their business. Inter alia, this entails ensuring their proper organisation and operation and monitoring their activity and financial position. On average, credit institutions are audited once every two years, and investment companies every 15 months. In 2004, out of 74 on-site inspections, 36 were devoted to AML/CFT. Bureaux de change are audited at least once a year. Prior to 2004, audits of insurance companies for compliance with the AML/CFT Law were virtually non-existent for lack of funding. New resources have been provided for this activity, and it is important that efforts continue along these lines. Supervision of life insurance intermediaries will be exercised primarily through the supervision of insurance companies. The CBFA provided no information about AML/CFT compliance on the part of mortgage lenders. It must be pointed out, however, that over 85% of all mortgage lending in Belgium is done through insurance companies and credit institutions.

25. The CTIF-CIF is the competent authority for supervising entities and professions not subject to CBFA prudential supervision. The financial institutions in question are: the Post, *Caisse des dépôts et consignations*, consumer credit companies, companies that issue or manage credit cards, and financial leasing companies. At any time, the CTIF-CFI can require the production of any information it deems useful concerning the implementation of AML/CFT legislation by consumer credit companies, companies that issue or manage credit cards, and financial leasing companies, but in doing so it does not take the place of the Federal Department of Economic Affairs (FDEA), which is in charge of supervising those businesses and licensing or registering them. When the CTIF-CFI detects non-compliance, it must report this fact to the FDEA, which is empowered to impose administrative sanctions. While the Post has set up an internal control structure to ensure compliance with the Law of 11 January 1993[3], consumer credit companies, companies that issue or manage credit cards, and financial leasing companies are not subject to supervision regarding implementation of AML/CFT measures (the CTIF-CFI has not yet implemented its supervisory power over them) and are therefore not subject to any sanctions for failure to comply. Even if these sectors have a limited risk of money laundering or terrorist financing, it is important that the CTIF-CFI exercise its supervisory authority over these entities and that the sanctions mechanism be carried out effectively by the FDEA. At the time of the on-site visit, the CTIF-CFI did not appear to have sufficient resources to exercise this supervisory authority (since then, one person has been hired for that purpose).

26. With regard to guidelines, it is important to stress the degree of detail and specificity of the CBFA regulations and the circular that applies the AML/CFT Law. The circular contains a number of provisions that do not exist in the legislation or the regulations however, and these provisions are more detailed. These provisions warrant inclusion in the regulations, because in theory the circular is merely an explanatory document which could not be invoked as grounds for CBFA sanctions. It would also be useful to determine whether the entities under FDEA supervision are exposed to money laundering risk, and, if so, to develop a text detailing how AML/CFT measures should be applied. The AML/CFT annual report, which is sent out to all persons subject to AML/CFT obligations, helps those persons to understand anti-money laundering provisions. The report is relatively comprehensive and describes a great many money laundering and terrorist financing typologies, a typological analysis of rulings and judgements and a presentation of generic cases. The CTIF-CFI has also circulated a list of hints on how to recognise unusual transactions to most of the entities under its jurisdiction.

27. By law, funds transfer services may be performed in Belgium only by the Belgian National Bank, the Discount and Guarantee Institute, the Post, credit institutions, investment companies and bureaux de change. There were 34 bureaux de change in 1997; there were 23 in April 2005. Credit institutions, investment companies and bureaux de change are required, as the case may be, to be licensed by, or registered with, the CBFA, and they are subject to the Commission's supervision. The CTIF-CFI seems

[3] Post offices, subcontractors of the Post Bank, are supervised by the Post's internal audit department. The Post itself is subject to CTIF-CFI supervision with respect to AML/CFT. The Post Bank is itself a credit institution subject to CTIF-CFI supervision.

satisfied with the reports it receives from this sector of activity. On the whole, bureaux de change would seem to comply with their AML/CFT obligations. The CBFA has already detected illegal funds transfer activities (its efforts have led in two instances to cases passed to the Crown Prosecutor). Belgium has therefore made the efforts needed for compliance with Special Recommendation VI.

4. PREVENTIVE MEASURES: DESIGNATED NON-FINANCIAL BUSINESSES & PROFESSIONS (DNFBP)

28. The customer due diligence obligation and the record-keeping requirement are applicable to non-financial businesses and professions by virtue of the Law of 11 January 1993. Both of these provisions are applicable in all circumstances to estate agents, private security firms (funds transporters), diamond merchants, notaries, bailiffs, auditors, chartered accountants, external tax advisers, certified accountants and certified tax accountants. For casinos, the due diligence obligation applies in respect of customers who "wish to carry out a financial transaction in connection with their gambling". Operation of an online casino is not authorised in Belgium.[4] For lawyers, this same obligation applies when they:

29. Assist a customer with the preparation or execution of transactions involving: (1) the purchase or sale of real estate or commercial enterprises; (2) the management of funds, securities or other assets belonging to the customer; (3) opening or managing bank accounts, savings accounts or portfolios; (4) arranging for the contributions needed to constitute, administer or manage companies; and (5) the creation, administration or management of trusts, companies or similar structures; or,

30. Act for and on a client's behalf in any financial or real estate transaction (Article 2ter).

31. The identification and verification obligation applies under the same circumstances as those applicable to financial professions, with the exception of casinos in respect of customer identification (only such customers as "wish to carry out a financial transaction in connection with their gambling" must be identified, and not all casino customers in general). The terms of application of these obligations as they relate to politically exposed persons have not yet been determined. This is also the case for remote transactions and business relationships. By law, financial institutions alone may use intermediaries or third-party introducers to fulfil customer-related diligence requirements. The record-keeping obligations described in the Law of 11 January 1993 are applicable to all designated professions – financial and non-financial.

32. It is important that the authorities of non-financial professions develop terms of application of AML/CFT legislation that reflect the specificities and constraints of each profession. This will determine to a large extent whether AML/CFT implementation by those professions will be effective or not. It should also be noted that Belgium has made diamond merchants subject to AML/CFT obligations, but not other merchants in precious metals or precious stones. The Belgian authorities justify that decision by the existence of a prohibition against cash payments to any merchant in excess of 15,000 EUR.

33. The provisions of the Law of 11 January 1993 relating to Recommendations 11 and 21 apply to non-financial businesses and professions on the same terms as they do to financial professions. In addition, estate agents, funds transport companies, diamond merchants and casinos have a legal obligation to prepare written reports on atypical transactions as described above. Their reports must be forwarded to the designated money laundering official and kept on file for five years. Notaries, bailiffs, auditors, chartered accountants, external tax advisers, certified accountants and certified tax accountants and lawyers are not required to prepare written reports on the specified transactions. This exemption would not appear justified in the case of professionals operating in large undertakings.

34. All professions (except diamond merchants, who have been subject to these obligations only since 2004) have already reported suspicious transactions to the CTIF-CFI[5] but in widely varying proportions. For most of these professions, training and dialogue are necessary in order to clarify their AML/CFT obligations.

[4] FATF decided at the June 2005 Plenary to study the issue of internet casinos to clarify AML/CFT obligations in relation to this activity.

[5] It should be noted that for 2004, CTIF-CFI received 13 reports from lawyers and 264 from notaries.

35. The Law of 11 January 1993 requires estate agents, funds transport companies, diamond merchants and casinos to designate one or more in-house compliance officers. They are responsible for ensuring compliance with the Law of 11 January 1993 in their firm. Notaries, auditors, chartered accountants, certified accountants and tax accountants, as well as lawyers, are not required to appoint an AML/CFT compliance officer, while such a requirement would seem appropriate when those professions are exercised within large undertakings.

36. The disciplinary authorities of each non-financial profession are authorised to impose administrative sanctions on the professionals they supervise for non-compliance with the obligations laid down by the Law of 11 January 1993. For the moment, the self-regulating bodies of a number of non-financial professions (the Professional Institute of Estate Agents, the Institute of Chartered Accountants and Tax Advisers, the Institute of Accountants and Tax Accountants) lack the means for effective control over their members' compliance with AML/CFT legislation (they have the power to impose disciplinary sanctions but not always the means to control automatically whether their members are complying with the law). For its part, the Provincial Chamber of Notaries has supervisory and disciplinary powers, but enforcing AML/CFT compliance is not the purpose of those powers. Only the Institute of Auditors seems to have the power to check compliance with AML/CFT legislation. Nor is it certain that these organisations have enough resources to fulfil their mission (technical and human resources would seem generally insufficient). In the case of estate agents, the CTIF-CFI is competent for exercising supervision over AML/CFT compliance. It does not appear to have exercised that authority to date.

37. With regard to diamond merchants and funds transport companies, it is respectively the FDEA and the Federal Department of the Interior that are empowered to impose the sanctions provided for in Article 22 of the AML/CFT Law. The CTIF-CFI is the competent authority for supervising compliance with that legislation, and it informs the federal departments of any failure by diamond merchants or funds transport companies to fulfil their legal obligations in the realm of AML/CFT. Nevertheless, it emerged from discussions during the on-site visit that such a sharing of responsibilities (which remains only theoretical as long as the CTIF-CFI has not deployed its supervisory authority) is not fully understood by all of the authorities involved. It would seem important for all of the competent authorities in this area to consult with each other on these issues and to define clearly their respective powers. It should also be stressed that the Professional Institute of Estate Agents has not discussed with the CTIF-CFI how it could utilise the supervisory power vested in it under the AML/CFT Law.

38. There are no provisions spelling out the terms of application of the various obligations under the AML/CFT Law, similar to the CBFA's regulations applicable to the financial sector. This would be especially relevant for diamond merchants, estate agents, notaries, the accounting professions and lawyers. However, the list of indicators of money laundering transactions established by the CTIF-CFI contains indicators specific to each non-financial profession (except for cash-in-transit companies and diamond merchants). It should also be stressed that certain self-regulating bodies are beginning to formulate such guidelines.

5. LEGAL PERSONS, LEGAL ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

39. The names of company directors and officers may be consulted at the registry of the Commercial Court. More specifically with reference to company ownership, with the exception of public limited companies (*sociétés anonymes*, SAs) and partnerships with shares (*sociétés en commandite par actions*, SCAs), other types of companies may issue registered shares or securities only, and a register of those shares and securities must be kept at the head office. Judicial authorities may therefore have access to that register to determine the owners of shares, and where control of the company lies.

40. SAs and SCAs may issue securities in registered, bearer or book-entry form. The form of shares and provisions governing their transfer are stipulated in the by-laws, which are on file with the Court. If shares are in registered form, the judicial authorities may determine who owns and controls the company by obtaining a copy of this register. If shares are in bearer form (and except for listed companies), it is impossible to obtain ownership and control information from the register that is kept at the head office, since by definition in such cases the company tracks only the number of shares issued and not the holders

thereof. This lack of transparency would certainly seem to pose a problem for judicial authorities investigating suspected money laundering offences (or other forms of organised crime).

41. On the positive side, it should be noted that on 4 March 2005 the Council of Ministers agreed to a timetable for doing away with bearer shares. In the very near future, issuing companies will be able to opt for book-entry shares. It will be impossible to issue anonymous securities after 31 December 2007. Securities issued after the publication of the Law implementing the decision to abolish bearer shares will have to be dematerialised by 31 December 2013 at the latest or deposited to an account.

42. In Belgium, legal arrangements as defined by the FATF in its 2003 Recommendations (e.g. express trust, trust, *Treuhand* or *fideicomiso*) do not exist. Recommendation 34 therefore does not apply.

43. A major reform recently amended the organic statutes of tens of thousands of Belgian, foreign and international associations active in Belgium, as well as public service associations. The reform has several main aspects, including "transparency" (highly detailed by-laws and membership registers, registration packets filed with the registry of the Commercial Court) and enhanced control (accounting rules tailored to risk). The efforts Belgium has deployed in this area should be emphasised. Taking a preventive approach, counter-terrorism authorities are striving to understand the legal structures and financial mechanisms used by terrorist organisations, and the process also factors in issues relating to charitable organisations. The authorities may also co-operate with the CTIF-CFI and other government agencies in this regard. Moreover, the CBFA circular requests financial institutions to take into account the vulnerability of non-profit organisations to misuse for terrorist financing. The CTIF-CFI has already dealt with cases concerning associations implicated in terrorist financing (detected as a result of movements in the associations' bank accounts).

44. In addition, the law governing non-profit associations empowers the competent authorities to find out about and oversee them (e.g. publication of by-laws and membership registers, mandatory reporting of accounts with a public authority). These supervisory mechanisms could undoubtedly be used even more effectively to ensure that funds collected are not diverted in a manner conducive to the activities of terrorists or terrorist organisations, in particular by heightening the awareness of those who audit the tax aspects of the accounts on file. Lastly, the measures in place are still too recent for their effectiveness to be assessed.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

45. With rare exceptions, Belgium has implemented the Vienna and Palermo Conventions, as well as the International Convention for the Suppression of the Financing of Terrorism. The same holds true for the United Nations resolutions stipulated in Special Recommendation I.

46. On the whole, co-operation between the various agents responsible for carrying out AML/CFT measures in Belgium would appear to be done bilaterally and on an ad hoc basis. Organisations generally arrange meetings when problems arise or issues need clarification. With regard to multilateral consultations, the mechanisms in place are relatively formal, and the CTIF-CFI remains unofficially the co-ordinating body for AML/CFT measures. There are plans to hold an annual meeting between prosecutors' offices and the CTIF-CFI, under the aegis of the financial expertise network, in order to achieve real synergy between the preventive and prosecution approaches. This initiative is a welcome one. It is important that the competent authorities pursue, and even step up, their consultations (in this regard see the need for dialogue between the CTIF-CFI and the competent federal departments in respect of the supervision of organisations and persons subject to no prudential control). Explorative work could be carried out with the authorities or representatives of certain non-financial professions (such as the Professional Institute of Estate Agents, the National Chamber of Notaries, the FDEA, and so on) concerning difficulties in enforcing the law, CTIF-CFI's expectations for suspicious transactions reports, and means of supervising various professions.

47. In Belgium, mutual legal assistance measures are in place for investigations, prosecutions and related procedures concerning both money laundering and terrorist financing. It should be pointed out that Belgium does not make existence of an international treaty a prerequisite to lending mutual assistance in criminal cases. In dealings between Belgium and the countries that are its main partners in

criminal co-operation, the Convention Applying the Schengen Agreement allows for requests for mutual assistance and related operational documents to be sent directly between the judicial authorities concerned. The treaties to which Belgium is a party pose the principle of dual criminality. Nevertheless, that principle applies only with regard to mutual legal assistance requests that involve compulsory measures.

48. Belgium is in broad compliance with its mutual legal assistance obligations (in particular with respect to the identification, seizure and confiscation of assets). Yet the effectiveness of mutual legal assistance is still dependent on the existence of a convention, even if a new law (of December 2004) provides an initial response to this gap. The law having entered into force only in January 2005, it is not yet possible to gauge its effectiveness. Since the adoption of this law a demand for mutual legal assistance related to tax matters can no longer to denied. It also emerges from the on-site visit – representatives of the Federal Department of Justice were very clear on this – that the dual-criminality obstacle is still a problem (draft legislation to be approved by Parliament in application of an EU framework decision ought to address this issue). This was acknowledged to be one of the main impediments to smoothly functioning mutual legal assistance in Belgium. Lastly, Belgium ought to consider establishing a fund for seized assets. It should also look into the advisability of sharing confiscated assets.

49. Extradition to Member States of the European Union is governed by the Law of 19 December 2003 on European arrest warrants. This Law institutes a European arrest warrant that can be executed without verification of dual criminality in respect of a number of criminal acts, including money laundering and terrorism. Outside the European Union, it is the traditional principles of extradition that apply. Extradition cannot be based on a political crime or misdemeanour. In addition, extradition may be granted only in respect of offences punishable under both Belgian and the foreign law by a custodial sentence for a maximum duration exceeding one year, or by imprisonment for at least one year, as is the case for money laundering and terrorist financing offences in Belgium. The law also requires that the underlying offence for extradition be punishable under both Belgian law and the law of the requesting country. It is not, however, required that the legal characterisation of the facts be identical in both countries. Belgium does not allow its citizens to be extradited outside the European Union. At the EU level, in order to ensure the speed and effectiveness of extradition procedures, time limits have been stipulated at each stage of the procedure. In a conventional case, the conditions for executing foreign arrest warrants are ponderous and complex. Provisions governing European arrest warrants have enabled substantial progress to be made in the realm of extradition – progress of which Belgium and its European partners have reaped the benefits. In contrast, extradition procedures still applicable outside the EU remain problematic in terms of effectiveness. Efforts ought to be made to streamline those procedures and enhance their effectiveness.

50. In connection with its prudential supervision powers, collaboration by the CBFA with foreign prudential authorities is provided for, on terms consistent with the Commission's professional secrecy obligations and the applicable legal exceptions thereto, by bilateral co-operation agreements known as memoranda of understanding (MOUs). The terms of this co-operation cover all prudential concerns, including internal controls to prevent money laundering and terrorist financing, along with compliance with the applicable legislation and regulations. The CBFA has neither formulated nor received any formal request for AML/CFT assistance involving other financial supervisors in the past four years. No FATF country has reported any particular difficulties in its dealings with the CBFA.

51. CTIF-CFI is able to extend the broadest possible international co-operation to its foreign counterparts. To this end, there are clearly defined provisions, mechanisms and channels to enable and facilitate direct, rapid and constructive information exchange with foreign counterparts in each country. The CTIF-CFI is authorised to conduct different types of investigations on behalf of its foreign counterparts. It also makes use of the model memorandum of understanding formulated by the Egmont Group. At present, the CTIF-CFI works regularly with 63 similar foreign organisations. It would seem that the requests for assistance submitted to the unit are generally deemed satisfactory.

52. Co-operation between the police authorities of the various States is governed essentially by international agreements and administrative arrangements bearing little formality. The police can report

to foreign police departments the information they have gathered from the central bodies that in each country are in charge of international police co-operation. In addition, thanks to the Schengen agreements, there is now a computerised database documented by the member countries, whose police may consult the files in an automated manner. Additionally, police co-operation is enhanced through Interpol and Europol. The OCDEFO can exchange information with corresponding authorities abroad. Nevertheless, information on cases under investigation is exchanged between police departments via letters rogatory.

53. Statistically, Belgium collects a significant amount of information, but further efforts are warranted, inter alia as regards: (1) the number of requests for assistance satisfied or denied by the CTIF-CFI; (2) the number of times CTIF-CFI reports information to foreign authorities spontaneously; (3) all mutual legal assistance and extradition requests (including requests concerning the freezing, seizure or confiscation of assets) formulated or received in respect of money laundering or underlying offences and terrorist financing, the nature of requests, acceptance or denial of those requests and the amount of time taken to respond.

Recommended Action Plan to Improve the AML/CFT System

AML/CFT system	Recommended action (in order of priority)
2. Legal system and other related measures	
Confiscation, freezing and seizure of the proceeds of crime (R.3)	Clarify the confiscation legal regime in matters relating to the confiscation of property of equivalent value. Refine the statistics devised by the COSC with a particular view to better measuring the effectiveness of the Belgian system. Increase the effort made to train magistrates and police services and to enhance their awareness in matters of seizure and confiscation.
Freezing of funds used for the financing of terrorism (SR III)	In the context of S/RES/1373(2001), Belgium should have the power to freeze funds or other assets of a person or entity in situations where listing pursuant to Regulation 2580/2001 cannot be decided at the European Union level or when the targeted terrorist is an EU citizen.
The Financial Intelligence Unit and its functions (R.26, R.30 & R32)	Regarding Recommendation 32, improve the keeping of statistics (compile the number of requests for assistance met or rejected by the CTIF-CFI and the statistics on information sent spontaneously by the CTIF-CFI to foreign authorities).
Law enforcement authorities, criminal investigation authorities and other competent authorities (R.27, R.28, R.30 & R.32)	Regarding Recommendation 30, ensure that the resources allocated both to public prosecutor's offices and to the police are sufficient to ensure that they fulfil their AML/CFT functions properly;
3. Preventives Measures – Financial Institutions	
Customer due diligence, including enhanced or reduced measures (R.5 to R.8)	Regarding Recommendation 5: (1) Consumer credit and leasing businesses should have detailed identification obligations (on the model of those devised by the CBFA); (2) The non-application of the identification exemption when the client is a financial institution established in the country of the EU or an FATF country in the event of suspicions of money laundering or the financing of terrorism should be included in a text that has the force of law. Regarding Recommendation 6: (1) The stricter acceptance measures for politically exposed persons should be applied to beneficial owners who themselves qualify as PEPs; (2) the detailed diligence measures to deal with politically exposed persons should apply to consumer credit businesses and leasing businesses;
Record keeping and wire transfer rules (R.10 & SR VII)	Obligations relating to SR VII should be included in a text having the force of law (this will be the case once a European regulation has been adopted).
Reporting of suspicious transactions and other reporting (R.13, R.14, R.25 & SR IV)	Regarding Recommendation 13, ensure that the low level of reporting in certain sectors is not due to a lack of awareness and/or less supervision of the sectors concerned.
Other reporting (R.19 & SR IX)	Regarding SR IX, It is important that Belgium provide itself with a system for detecting the physical transportation of cash (in the broad sense) across its borders.
Internal controls, compliance, audit and foreign branches (R.15 & R.22)	All of the obligations relating to R.15 and R.22 should be spelled out in a text which has the force of law.
System of regulation and supervision – competent	Regarding Recommendation 17, despite the existence of a sanctions regime applicable to issuers or

AML/CFT system	Recommended action (in order of priority)
authorities and SROs (R.17,R. 23, R.29 & R.30)	managers of credit cards other than credit institutions, to leasing companies and to consumer credit companies, it is important that Belgium make these sanctions effective in the cases envisaged by the law. Regarding Recommendations 19 and 23: (1) It is important that issuers or managers of credit cards other than credit institutions, leasing companies and consumer credit companies be subject to supervision regarding the AML/CFT obligations; (2) the CTIF-CFI should exercise its power to supervise compliance by institutions and professions not subject to prudential supervision with their AML/CFT obligations. Regarding Recommendation 30: (1) It is important that resources continue to be dedicated to ensuring effective supervision of compliance with the AML/CFT Law in the field of insurance; (2) it is important that such supervision apply to mortgage businesses; (3) the CTIF-CFI should be provided with sufficient resources to carry out the supervision of compliance with the AML/CFT obligations at institutions and entities not subject to prudential supervision.
Ongoing supervision and monitoring (R.23, R.29 & R.32)	Regarding Recommendation 23, it is important that the insurance sector be subject to compliance supervision regarding AML/CFT obligations (the inspection programme which started in 2005 should be extended, if not enhanced). Regarding Recommendation 32, it is important that the CBFA have statistics enabling it to determine the number of cases in which use was made of prudential enforcement measures taken with a view to remedying shortcomings regarding AML/CFT.
4. Preventives measures - Designated non-financial businesses and professions	
Due diligence and record keeping (R.12)	Regarding compliance with Recommendation 5, it is important that the procedures for applying the AML/CFT Law with particular respect to the requirements governing the identification of legal persons (including beneficial owners) be laid down in all non-financial professions. Regarding compliance with Recommendation 6, it is important that the supervisory authorities draft texts implementing the Law which spell out in more detail the particular measures for identifying PEPs for all non-financial professions. Regarding compliance with Recommendation 8, it is important to draft texts implementing the Law which spell out in more detail for non-financial professions the specific measures appropriate to face the increased risk that exists with a client who is not physically present for identification purposes.
Monitoring transactions and relationships (R.12 & R.16)	Regarding Recommendation 12 (compliance with Recommendation 11), notaries, company auditors, external auditors, certified accountants, certified tax accountants and lawyers should be obliged to draw up written reports on unusual transactions (especially in large structures). Regarding Recommendation 16 (compliance with Recommendation 21), notaries, company auditors, external auditors, certified accountants, certified tax accountants and lawyers should obliged to draw up written reports on transactions involving natural and legal persons, including financial institutions, residing in NCCT countries when these transactions have no apparent economic or lawful justification (especially in large structures).
Reporting of suspicious transactions (R.16)	In the context of compliance with Recommendation 13, it is important that the obligation to report suspicious transactions be properly implemented by non-financial professions. Training and dialogue are necessary with all of these professions.
Internal controls and compliance and audit (R16)	In the context of compliance with Recommendation 15: (1) Notaries, company auditors, external auditors, certified accountants and tax accountants and lawyers should be subject to the requirement to appoint an AML/CFT compliance officer (especially those working in large structures); (2) Training and enhanced awareness initiatives must be stepped up.
Regulation, supervision and monitoring (R.17, R.24 & R.25)	Regarding Recommendation 17, for non-financial professions (with the exception of casinos) it is important that self-regulatory organisations be provided with sufficient regulatory resources to exercise their sanctions power. Regarding Recommendation 24: (1) Systems for overseeing and supervising compliance with AML/CFT obligations should be established in all non-financial professions; (2) It is important that self-regulatory organisations and the CTIF-CFI have adequate resources to fulfil their function. Regarding compliance with Recommendation 25: (1) It is important to draw up implementing texts setting out how the various obligations of the AML/CFT Act apply for the benefit of all non-financial professions; (2) Where it is felt necessary by professionals it is important to draw up guidelines on compliance with AML/CFT obligations.
5. Legal persons and legal arrangements & non-profit organisations	
Legal persons – Access to information on beneficial ownership and control (R.33)	Improve knowledge of the ownership and control of SAs that issue bearer shares. Dematerialisation of shares should not be left to the discretion of the issuing company (legislation to that effect is currently being drafted).

AML/CFT system	Recommended action (in order of priority)
6. National and international cooperation	
National cooperation and coordination (R.31)	The CTIF-CFI and Federal Department of Economic Affairs should step up their dialogue regarding the supervision of institutions and persons that are not subject to any prudential supervision.
UN Conventions and Security Council Resolutions (R.35 & SR I)	Regarding Recommendation 35: (1) It is important that Belgium adopt the necessary measures to deal with the question of the cross-border transportation of cash and near-cash (Articles 15, 17 and 19 of the Convention of Vienna and Article 7.2 of the Convention of Palermo); (2) It is important that Belgium ensure the effectiveness of its extradition and mutual legal assistance measures (Articles 9 and 12 of the Convention). Regarding SR I, it is important that Belgium ensure the effectiveness of the measures taken in connection with SR III (the fact that the definitions of funds or other assets intended to be frozen and confiscated in the European regulations applicable in Belgium are less comprehensive than those adopted for Security Council purposes could have an impact in terms of effectiveness).
Mutual legal assistance (R.32, R.36-38, SR V)	Regarding Recommendation 32, statistics should be compiled relating to matters of mutual legal assistance. Regarding Recommendation 36, it is important that Belgium ensure the effectiveness of its mutual legal assistance regime, especially in the absence of a bilateral agreement. Regarding Recommendation 37, it is important that Belgium ensure that the obstacle of dual criminality in mutual legal assistance matters does not cause problems. Regarding Recommendation 38, Belgium should consider setting up a fund for assets seized or the sharing of confiscated assets. Regarding SR V, see previous recommendations.
Extradition (R.32, R.37, R39 & SR V)	Regarding Recommendation 32, statistics should be available on extradition requests. Regarding Recommendation 39, it is important that Belgium ensure the effectiveness of the extradition procedures applicable outside the EU. Regarding SR V, see previous recommendations.