



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

### **7. Legal persons and arrangements**

Effectiveness and technical compliance



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## 7. LEGAL PERSONS AND ARRANGEMENTS

### Key Findings

Belgium has put in place a series of measures conducive to reinforcing the transparency of legal persons. Basic information and information on beneficial ownership on the vast majority of legal persons is publically available through the information kept by the Banque Carrefour des Entreprises (BCE), although deficiencies as regards to how current the data is are to be noted. The actions of notaries, who authenticate the majority of documents relating to the creation and lifecycle of legal persons reinforces the reliability of this information. The information available essentially gives details on the legal ownership of the company that may coincide with its beneficial ownership. Additional means exist for helping to determine beneficial ownership, namely information obtained by financial institutions and non-financial professions, including, in particular, any publically available information on Belgian listed companies as well as the information on beneficial ownership held within each non-listed Belgian company.

The competent authorities have identified some concrete ML risks and some vulnerabilities in the framework under which legal persons are organised. Nevertheless, the understanding of the risks remains sector-specific. Analysis of such risks has led to various specific measures being adopted. The recent entry into force of a certain number of them and the need for additional hindsight to be able to measure their effect mean that it is not possible to draw conclusions as to whether or not they are fully effective. The authorities are aware of the need to take further measures. The law enforcement authorities who are specialised in combatting terrorism are well aware of the vulnerabilities of legal persons to being misused for the purposes of financing terrorism, although they have not conducted any recent assessment of these aspects.

The development of legal arrangements has been limited in Belgium. For this reason, the authorities have up to now, not begun to identify and assess the vulnerabilities of these structures operating in Belgium in relation to ML. An analysis of the risk of fraud based on the use of foreign legal arrangements by physical persons subject to taxation in Belgium has nevertheless led to tightening of reporting obligations to tax authorities in regard to the existence of links to legal arrangements, including foreign ones. Professional trustees, with the exception of domiciliation companies, are covered by AML/CFT obligations.

The competent authorities in Belgium obtain required basic information and beneficial ownership information on the vast majority of legal persons set up in the country, and the information can be obtained in a timely fashion. Incoming and outgoing international co-operation relating to identifying and to exchanging information about legal persons and arrangements is generally positive.

The sanctions available for non-compliance with information and transparency obligations regarding legal persons are not fully implemented in such a manner as to be effective or dissuasive. Belgium has recently developed its arsenal of sanctions in order to mitigate the ineffectiveness of the implementation of the existing administrative and criminal sanctions. The implementation of these new sanctions is beginning to give some encouraging results.

## 7.1 Background and Context

### (a) Legal persons

7.1. In Belgian Law, the concept of a private-law legal person extends to cover any group of individuals who come together in a common interest. Such legal persons may seek to make profits – companies – or be non-profit-making – non-profit organisations (NPOs).

7.2. Five types of company may be created in Belgium: the *société anonyme (SA)* (public limited company),<sup>1</sup> the *société en commandite par actions (SCA)* (company with liability limited by shares), the *société privée à responsabilité limitée (SPRL)* (private limited-liability company), the *société illimitée (SCRI)* (unlimited-liability co-operative company), and the *société cooperative à responsabilité limitée (SCRL)* (limited-liability co-operative company). Belgian legislation also makes provision for two types of partnership: the *société en nom collectif (SNC)* (general partnership) and the *société en commandite simple (SCS)* (limited partnership).

7.3. The *SPRL* is the form of company that is most common in Belgium. It is a highly accessible structure because it requires only a small amount of starting capital or seed money and a limited number of founders for incorporating it. The securities issued are mandatorily in registered form and they are transferable under specific conditions. The 'starter' *SPRL* makes provision for the amount of capital required to be as low as one euro. This form of the company was created to foster entrepreneurship and to combat the practice of setting up a company abroad with a branch being opened in Belgium. The *SA* is the second most common form of company, chosen, in particular, by large businesses insofar as the securities of this form of company are freely assignable, except in specific situations, unlike the securities of the other forms of company. Together, *SPRLs* and *SAs* account for 93% of Belgian companies.

7.4. The other legal persons are non-profit organisations (NPOs) that can be broken down into:

- Foundations (*fondations*), which may be set up for private purposes when a founder assigns an asset, an estate or some other form of wealth to a specific not-for-profit purpose (e.g. for safeguarding a collection of art works or for keeping a family concern in the family). Foundations can also be of public utility, in which case the asset, estate, or wealth is assigned to achieving a not-for-profit objective of a philanthropic, philosophical, religious, scientific, artistic, educational, or cultural nature;
- Non-profit associations, which are groups of natural or legal persons that have activities that are not carried out for profit (*ASBLs – associations sans but lucratif*), and that may be of international utility (*AISBLs – associations internationales sans but lucratif*).

7.5. Belgium has about 7 000 'large' and 'very large' *ASBLs*, *AISBLs*, and foundations, and about 128 500 'small' *ASBLs*, *AISBLs*, and foundations.

7.6. Forming *SAs*, *SCRLs*, *SPRLs*, *SCAs*, *AISBLs*, and foundations requires an authentic act or memorandum to be drawn up by a notary, who, on such occasions, conducts the due diligence required of him or her by the AML/CFT Law, on the founders and incorporators, and verifies the statutes (articles of association). In Belgium, notaries are public officers appointed by the King and who, by virtue of delegation of authority by

1 European Companies (SEs) are governed by European Council (EC) Reg.2157/2001 of 8 October 2001 on the Statute for a European Company, as transposed into Belgian Law by the RD of 1 September 2004 that permits the creation and management of companies with a European dimension, detached from the strict territorial application of the legislation on companies of the State on whose territory they are created. The rules applicable to Belgian *sociétés anonymes* apply *ipso facto* to European Companies. There were 11 SEs in Belgium in 2013.

the State, perform public-service missions and are required to see that the Law is applied properly. *ASBLs* and *SCRIs* may be incorporated by notarial act, but also by privately signed acts or memoranda.

7.7. All of these entities are required, within a time limit of 15 days, to file a copy of their memorandum/act of incorporation with the registry of the locally competent commercial court. An extract from the memorandum/deed is published in the *Moniteur Belge* (Belgian Monitor), which is Belgium's official gazette, and the entity is then registered with the BCE, which is the Belgian companies register.<sup>2</sup> Belgium has also instituted a system whereby requests for the creation of an association or business may be filed on-line (*système e-greffe*).

7.8. Any legal person governed by Belgian Law, any legal person governed by a foreign law and having a main site in Belgium, and any Belgian branch of a foreign company is required to be registered with the BCE. The requirements regarding publishing, registering, and keeping the information are identical to those for companies governed by Belgian Law.<sup>3</sup>

**Table 7.1. BCE Data on Legal Persons (July 2014)**

Numbers	Type
50	Co-operative companies governed by public law (under the former law)
55	Limited-liability co-operative companies governed by public law
201	Foundations of public utility
559	Limited-liability co-operative companies with a social purpose
1 013	Non-commercial companies in the form of a limited-liability co-operative company
1 037	Private foundations
2 424	Companies with liability limited by shares (SCA)
10 759	Limited-liability co-operative companies (SCRL)
16 528	General partnerships (SNC)
18 736	Co-operative companies (under the former law)
25 056	Limited partnerships (SCS)
116 437	Public limited companies (SA)
135 130	Non-profit associations (including AISBLs)
352 330	Private limited-liability companies (SRRL)

Source: BCE statistics, 30/06/2014

2 Presentation of the Banque Carrefour des Entreprises [BCE] (in French), FPS Economy, see C.24.3. The BCE contains, inter alia, information on: the name, the business or company name of the legal person, the specific designation of various addresses, the legal form and status, the date of establishment and termination of the company, identification data on the founders, delegated officers and other officers (Art. 6 of the law of 16 January 2003).

3 Belgian companies law applies to foreign companies who locate their main sites in Belgium (Art. 110 of the *Code de droit international privé* (Belgian Code of Private International Law)).

### (b) *Legal arrangements*

7.9. Belgian legislation does not allow trusts to be set up. Belgium is not a signatory to the Hague Convention on the Law Applicable to Trusts and on their Recognition. However, trusts set up abroad may be recognised for legal and tax purposes in Belgium.<sup>4</sup>

7.10. Various mechanisms are based on the principle of trust ownership (*propriété fiduciaire*), the main one of such mechanisms being private foundations, which can perform the function of a trust (*fiducie*), even though such a legal arrangement does not exist *per se* in Belgium.

7.11. The services provided by professional ‘trustees’ are, in Belgium, usually provided by financial institutions (in their capacity as investment management companies) or by lawyers, notaries, or the accounting/tax professions, all of whom are required to comply with the obligations of the Belgian AML/CFT Law (see Section 5).

7.12. The authorities emphasised that the use of legal arrangements<sup>5</sup> and of administration of foreign trusts by trustees who are residents are not common practices in Belgium. The national ML risk assessment did not identify specific risks associated with Belgian legal arrangements; however, it did point out the risks related to activities in Belgium involving trusts and companies located in financial centres with little transparency.

### (c) *International context for legal persons and arrangements*

7.13. Belgium is placed well in international rankings of countries that welcome foreign investors or of those countries where it is easy to do business.<sup>6</sup> This is due in part to its location, a business regulatory environment that is favourable to the establishment of companies and an attractive tax situation.

7.14. Belgium is not an international centre for setting up and administration of companies or of legal arrangements. Foreign companies located in Belgium are often commercial subsidiaries or European headquarters. The most represented international companies are from the service sector (law and audit firms, etc.) followed by the media and banking sector.

7.15. The CTIF, through its analysis work on STRs, has identified the use of complex legal structures of foreign companies and trusts. The typologies analyses of the cases transmitted to judicial authorities have been made public to aid persons and institutions covered by the law, and in particular the non-financial professions, to identify ML operations. They also identified the role played by certain tax and financial advisors in setting up fraudulent structures. These involved companies set up under Belgian law, companies and legal arrangements located abroad or even the sale of dormant companies.

7.16. At the European level, Belgium takes part in the initiatives and electronic tools that facilitate co-operation and cross-border access to information on businesses, such as the voluntary network for co-operation between European commercial registers (European Business Register – EBR). It brings together 28

4 Art. 122ff. of the Belgian Code of Private International Law and Art. 2 § 1 13 and 307 § 1, subpara. 4 of the Income Tax Code, CIR 92. (Service Public Federal Finance, nd)

5 By its Law of 30 July 2013, Belgium introduced an obligation for natural persons to declare in their annual tax returns the existence of any legal arrangement of which the taxpayer is a beneficial owner. This measure is applicable as from the tax returns to be filed in 2014 (for income received in 2013). It will make it possible, as of 2015, to have an annual estimation of the number of taxpayers who are beneficial owners of legal arrangements in Belgium.

6 *Ease of doing business index*, World Bank Website (nd)

European countries and territorial entities,<sup>7</sup> giving access to data recorded in the Belgian National Register. the data available on the companies registered in the Belgian register to be cross-checked with the data of the other member of the network. Belgium also participates in the European project resulting from Directive 2012/17/EU of the European Parliament and of the Council on the interconnection of central, commercial and companies' registers.

## 7.2 Technical Compliance (R 24, R 25)

### *Recommendation 24 – Transparency and beneficial ownership of legal persons*

7.17. **Belgium is largely compliant with R 24** – The authorities possess a certain level of information on the ML/TF risks associated with the categories of legal persons that can be incorporated in Belgium, even though that information could be collected and analysed in a more systematic and co-ordinated manner, and some of that information could be kept better up-to-date. As regards the information on beneficial owners, the information of the BCE or that appears in the shares registers kept by companies essentially gives information on the legal ownership of the company that may coincide with its beneficial ownership. Additional means make it possible to help to determine the beneficial owners: through the information obtained by financial institutions and non-financial professions, and in particular notaries, in the course of CDD, or any publicly available information about Belgian listed companies, as well as information on beneficial ownership maintained by each non-listed company pursuant to Art.515bis of the Companies Code. In addition, financial institutions and non-financial professions subject the information that is disclosed to them to a credibility and relevance test, and, in the event of any doubt on either of those aspects, they are bound to take any other appropriate reasonable measure to identify and to verify the beneficial owners.

7.18. Bearer securities were outlawed in Belgium by the Law of 14 December 2005 that came into full effect as of 1 January 2014. As regards nominee agreements, absence of public information on the identity of the person actually holding the share (who may be a foreign company) and of the status of the nominee makes it difficult to do any verification of the shareholder.

7.19. Legal persons (or their representatives) do not incur sanctions for disclosing erroneous or misleading information to professionals covered by the law when they are disclosing information about their beneficial owners. However, the consequences of such acts may lead to sanctions (e.g. the suspension of rights or the sale of shares pursuant to Art.516 of the Companies Code). Because no indications are provided on the sanctions policy applicable when requirements on transparency of legal persons are not complied with, it is difficult to assess how proportionate such penalties are.

### *Recommendation 25 – Transparency and beneficial ownership of legal arrangements*

7.20. **Belgium is largely compliant with R 25** – Due to the limited development of legal arrangements in Belgium, the obligations of R 25 apply primarily to professional trustees who are subject to AML/CFT obligations. Use of trustees who are not professionals and therefore not covered by AML/CFT obligations is apparently not common practice. Financial professions and non-financial professions whose customers are legal arrangements are obliged to identify the representative or agent of the customer and its beneficial owners, and to verify their identities. The general system of sanctions applicable for failing to comply with obligations laid down by the AML/CFT Law is applicable to professional trustees, who are among those professionals covered by the AML/CFT system. There is no clear policy on applicable sanctions that would make it possible to determine whether or not such sanctions are proportionate.

7 Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovenia, Spain, Sweden, and United Kingdom, as well as Jersey, Guernsey, "the former Yugoslav Republic of Macedonia", Norway, Serbia, and Ukraine.



### 7.3 Effectiveness: Immediate Outcome 5 (Legal Persons and Arrangements)

#### (a) Information on Legal Persons and Arrangements

7.21. Belgium has mechanisms that identify and describe the various types, forms and characteristics of the legal persons that can be incorporated under Belgian Law. The procedures for incorporating such persons are available to the public via various Internet sites.<sup>8</sup> Similar information is available for foundations and associations.<sup>9</sup> There is no information available and issued by the public authorities relating to the legal arrangements that may be set up in Belgium because they are not structures that are very common in the country.

#### (b) Identification of the risks and vulnerabilities of legal persons

7.22. Various concrete risks and vulnerabilities in the framework under which legal persons are organised have been identified through sectoral analyses by the competent authorities and through the national ML risk assessment (see Section 1). Analysis of statistical information (such as variations in the type of companies incorporated, the periods of activity, and the mean lifespan of certain companies) has also made it possible to detect operational changes in the use of legal persons governed by Belgian Law for criminal purposes.

7.23. Identification of mechanisms through which corporate vehicles are used for criminal purposes makes it possible to understand the vulnerabilities of the Belgian system better: the Federal Police have thus detected networks through which trafficking and sales of companies are handled by certain accounting/tax professions and notaries for fraudulent activities of various types (social security fraud, bankruptcy fraud, organised VAT fraud), marketing of companies with “straw men” or front men, and numerous irregularities with regard to actual registered offices. The Federal Police initiated criminal investigations of those professionals. The authorities have also identified a range of legal and tax consultancy services for pre-incorporation and deeds/memoranda relating to the life of companies that are offered by persons who are not bound to comply with any of the AML/CFT obligations, and that are conducive to misuse of the companies that are incorporated.

7.24. The categories of legal persons, and in particular the categories of companies, that are particularly exposed to misuse have also been identified. In its 2009/2010 annual reports,<sup>10</sup> the CTIF indicated that various types of foreign legal person appear regularly in fraudulent structures, e.g. certain companies grouped together under the generic wording of ‘limited (Ltd)’.<sup>11</sup> In June 2013, monitoring action was proposed to the College for combatting tax and welfare fraud (*Collège pour la lutte contre la fraude fiscale et sociale*) in order to reinforce monitoring and investigation of such activities. The CTIF has also observed the use of shell companies, or companies with fictitious directors and/or having vague business purposes. Criminal investigations initiated by the Prosecutors’ Offices and by the Federal Police confirm that *SPRLs* and *SAs* are clear leaders among the legal forms used by organised crime in Belgium. This observation can be explained firstly because those companies represent 93% of Belgian companies, but also, as regards *SPRLs*, doubtless because of the very accessible nature of this type of entity, further accentuated for ‘starter’ *SPRLs* for which only 1 euro in starting capital is necessary, and which are particularly vulnerable to misuse.

8 For example, Portal [belgium.be](http://belgium.be) (nd) (official services and information), Types of company or, FPS Economy (nd a), Creating an enterprise/Structuring your enterprise project/Forms of company.

9 For example, the notaries website, [www.notaire.be/societes/asbl](http://www.notaire.be/societes/asbl)

10 CTIF Annual Reports, 2008 to 2012 (CTIF, nd). See also: laundering via the use of co-operative financial structures (2011), misuse of non-profit organisations (2013), use of domiciliation companies (2010).

11 Which limits the liability of the managers and shareholders to their shares in the share capital and enjoys favourable tax treatment in certain countries.

7.25. In 2011, the CTIF observed, together with the FPS Economy that business domiciliation was not only handled by chartered accountants and lawyers,<sup>12</sup> but also, increasingly, by domiciliation companies, without any apparent link with persons or institutions covered by the AML/CFT Law. A risk of ML was also noted for this sector, related, in particular, to incorporation of shell companies or to the location of fictitious registered offices. In June 2012, the CTIF proposed regulating these structures and bringing them into the AML/CFT. A study relating to possible means to be implemented – the draft text of which was supplied to the assessment team – was being finalised at the time of the on-site visit.

7.26. The authorities' understanding of the vulnerabilities of legal persons nevertheless remains sectoral, and is not deduced from an overall and updated assessment of all of the forms of legal persons.

7.27. Due to the limited development of legal arrangements, the authorities have, so far, not initiated actions to identify and to assess the vulnerabilities of the legal arrangements operating in Belgium. The recent amendment to the Income Tax Code imposes an obligation on Belgian taxpayers who are physical persons to report their links (as founder or beneficiary) with a legal arrangement, including a foreign one. This amendment is however the result of an analysis of the risk of fraud that is related to use of foreign legal arrangements (see R 25.5).

7.28. The prosecution authorities who are specialised in combatting terrorism are aware of the vulnerabilities of legal persons to being misused for TF purposes, although they have not conducted an assessment of the TF risks associated with the various forms of legal persons. They do however carry out ongoing monitoring of activities and transactions of legal persons that are identified to be at risk. The authorities provided information showing that, several years ago, they undertook targeted actions in the NPO sector. The authorities indicated that they continue to pay particular attention to this point, in particular depending on the activities of the NPOs (see Section 4).

*(c) Measures aimed at preventing the use of legal persons and arrangements for ML/TF purposes*

7.29. The authorities have taken a number of legislative and operational steps to prevent the misuse of legal persons and legal arrangements for ML/TF purposes (see R 24 and R 25). Among these it is important to note in particular the elimination of bearer shares, which became fully effective on 1 January 2014, as well as the procedure for automatic removal from the register (see below).

7.30. The authorities have also undertaken awareness-raising with stakeholders, and particularly with financial institutions and notaries to ensure that they pay particular attention to business conducted with certain types of legal persons. The representatives of the private sector who were met confirmed that, in practice, credit institutions and non-financial institutions are particularly watchful on entering into business relations with certain types of customers (e.g. offshore companies, companies with complex ownership chains and having links with countries having advantageous taxation, and *Stak* governed by Dutch Law<sup>13</sup> for succession planning). Risk profiles have been established for certain forms of company, and for certain target sectors whose activities have been identified (e.g. construction, a sector handling cash). In their sector-specific AML/CFT regulations, the CTIF and the professions have developed specific and non-exhaustive indicators of suspicion for ML activities linked to the use of legal persons and legal arrangements. This approach has made it possible to identify risk situations requiring the watchfulness and due diligence of the professions to be reinforced.

7.31. Inspections are regularly implemented by the FPS Economy in order to identify 'dealers in companies' making use of front men. A blacklist of people suspected of being involved in such dealings is published regularly. An investigation by the Economic Inspectorate (*Inspection Économique*) on the role of fraud facilitators who supply ready-made or off-the-shelf companies (generally *SPRLs* or "starter" *SPRLs*) to

12 Contravening, for these professionals, the rules by which their professions are organised.

13 Hoegen Dijkhof, Dr Hans J. (2013).



fraudsters, using front men, was in progress at the time of the on-site visit. The tax authorities also conducted inspections targeting limited-liability companies over the period 2007-2009, as a pilot action, and then again in 2013.

*(d) Access, reliability and accuracy of basic information and of information on the beneficial ownership of legal persons*

7.32. Basic information and, to a certain degree, on the beneficial ownership of legal persons registered in Belgium is accessible mainly via the companies/business register, i.e. the BCE. Essentially it contains information on the legal ownership of the legal persons; this may also be used to gain information on beneficial ownership.

7.33. Other mechanisms also help competent authorities to determine beneficial ownership:

- Use of existing information, in particular information obtained by financial institutions and DNFbps, which are required to identify and verify the identity of beneficial owners (Art. 8, AML/CFT Law). Such information must be provided by the customer, and the financial institution/DNFbp then applies the information to a credibility and relevance test.
- Use of information available on large shareholdings in non-listed companies that have issued dematerialised shares; such information is available starting from the threshold of 25%.
- Use of available information on Belgium listed companies indicating share holdings larger than 5%.

7.34. Incorporating or setting up the vast majority of companies, foundations, and *AISBLs* in Belgium, which are recorded in the BCE, requires an authentic act or memorandum drawn up by notary. In the notary's capacity as an authenticating civil servant, the notary can be held liable as to the correctness of the information mentioned in the acts. On drawing up such acts or memoranda, notaries are required to verify the statutes or articles of association and to identify and verify the identities of the incorporators (founders and persons who hold shares). The notaries met with indicated that they check the veracity of the declarations that are made to them not only through the production of supporting documents (identity documents, statutes, etc. see C.10.3), but also on the basis of the consistency and likelihood of the project explained to them, depending on the client profile, his/her environment, etc. When doubts exist as to the truth of the client's status, for example, the notaries interviewed indicated that they meet the client face-to-face and question him/her directly about the project and its objectives, in order to grasp the rationale lying behind it. When the statutes of a legal person are pre-drafted by consultants/lawyers (trust, tax, or accounting/tax consultants/lawyers), they are verified with increased diligence by the notary, in particular if the notary does not know the consultants/lawyers. In addition, the main changes in the lifecycle of companies – amendments to the statutes, changes in the structure, etc. – must also be established and verified by a notary. The information is also forwarded to the registry of the commercial court and published in the *Moniteur Belge* (Belgian Monitor) and in the BCE. It should be noted that assignments of shares are not operations that have to be authenticated by a notary, and they are not therefore mandatorily published and indicated in the public registers. However, they do appear in the register of shares and bonds that the company is required to maintain. Assignments of shares of jointly and severally liable partners in partnerships are published officially.

7.35. The vast majority of financial institutions and DNFbps met indicated that, in practice, they mainly use private databases for determining beneficial owners, such databases affording ease of access to updated and consolidated information. This also enables them to mitigate the insufficiencies of the data in public registers and to supplement the information to which they have access through their (future) customers themselves. In view of the cost involved for these checks, certain professional associations have made free access to certain private databases available to their members. The professionals indicated that they also cross-check information with existing customers or exchange with other financial institutions while complying with data protection measures. By way of example, it was indicated that there were difficulties in determining beneficial owners when they had connections with other countries and when there were chains of entities with complex legal constructions or arrangements. In such situations, and when there is any doubt about the ultimate beneficial owner of the legal person, the financial institutions and DNFbps interviewed all indicated that they refuse the business relationship. It should be mentioned, in this context, that the BNB

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conducted a horizontal initiative to check on identifying/verifying beneficial owners in 2012 and 2013 with all of the financial institutions that it supervises. This was following a deadline provided by the AML/CFT Law for the implementation of the new requirements introduced in 2010. The initiative was conducted in the context of an off-site inspection and led to remedial actions in the form of ‘serious administrative measures’ (correspondence imposing deadlines for taking remedial action and development of corrective action plan) for 14 credit institutions and 9 insurance companies (on the basis of provisions of inspection laws).

7.36. The data held by financial institutions and DNFBPs on beneficial owners would appear to constitute the main source of information for the Belgian authorities. However, that statement should be nuanced, because checks for information on the beneficial owner of a suspicious entity by the competent authorities, be it by FIU, or by some other investigation and law enforcement authority, depend on the case, on the type of company in question, Belgian or foreign, and on the information already available in the databases of the national authorities, etc.

7.37. As regards Belgian companies, the CTIF has access to the BCE that is direct and free of charge, and that is more extensive than the access available for the general public.<sup>14</sup> In addition to consulting that database, the CTIF has pay access to a commercial database. Since 2009, public prosecutors and investigating judges have had access to the information contained in the BCE, and that access was broadened in 2014. Various searches are possible by crossing-checking information available in the National Register<sup>15</sup> and in the BCE.

7.38. Generally, the administrative and judicial authorities feel that they obtain in a timely fashion both basic information and beneficial ownership information of a satisfactory quality. This is in spite of having to use, depending on the needs of the investigation, different channels to obtain it. The private sector discloses information in due time and within the time limits set by the requesting authority. Whenever necessary, the information is collected directly from and/or verified directly with the companies. The work of investigators is made more difficult however by the lack of technical resources and software that would enable them to cross-check existing data (data mining). At the time of the on-site visit, the police no longer had access (for two years) to the database of a company specialised in searching for information on legal persons, since the public contract in question and the award decisions are the subject of legal proceedings.

7.39. For entities registered abroad, the information sources mainly used by the Belgian authorities are the public companies/business register of the country in question, information disclosed following requests made to foreign police authorities or to foreign FIUs, and information from foreign tax authorities. Co-operation through the CTIF is used effectively by the Belgian authorities.

7.40. Belgium is aware of the need to take corrective measures in order to improve the reliability of the information available in the public registers and databases.

- Actions were planned for raising the awareness among the registries of the commercial courts of the problems of quality and lateness of entering the data into their registers and databases. A certain amount of lateness was also observed in the transmission by the registry of the commercial court to the BCE of the amendments filed (in particular, address, directors, manager, business name), and in the absence of a strict time limit within which such amendments should be transmitted.

14 The search possibilities are very broad and searches can be made either on the data of the company itself, or on the basis of the identification of a physical person, all of whose connections to any Belgian company(ies) can then be established. Large numbers of details are then available on the companies (registered office, VAT No., site unit, all of the directors/managers (present and past), declared business activities, information as to any bankruptcy, etc.), and direct links appear to various ‘external sources’, mainly a link to all of the acts relating to the company that have been published in the *Moniteur Belge* and to the *Centrale des bilans* (Balance Sheet Centre) on the website of the BNB that gives direct access to the annual accounts of the company.

15 The National Register is an IT system for recording, storing, and disclosing information on the identification of physical persons. See C.10.5. Service Public Federal Interieur (nd).

- As regards the BCE, already, since 2011, a specialised unit had been put in place to co-ordinate the quality control of the recorded data by the business formalities centres of the FPS Economy, who are responsible for collecting the data on legal persons and of recording it in the BCE. Access to the database of the BCE has been improved and the list of accessible data has been enriched, including the search functions. The authorities have updated the data by deleting a large number of inactive or dormant companies on the basis of the administrative deregistration procedure adopted in July 2013 (see Section 7.1). The strategy committee of the BCE had just been set up at the time of the on-site visit and will continue initiatives to improve the quality of the data accessible via the BCE. Nevertheless, the BCE remains dependent on the resources available to it to be able to update the database effectively. Various reports from the authorities mention the difficulties that the BCE has in optimally processing the influx of information, in particular notifications of judgements and rulings<sup>16</sup> and other amendments and de-registrations following observations made by the authorities (police, economic inspectorate, public prosecutors' offices).

7.41. Finally, it is regrettable that Belgium has still not set up a central criminal records system for legal persons, although it is foreseen in the Law of 4 May 1999 on criminal liability of legal persons (see Section 3). Therefore, there is no centralised access to information on any criminal convictions, probations and suspensions in reference to legal persons. Furthermore, the absence of reliable statistics on these aspects means that it is not possible to gain insight to the crimes committed by legal persons and consequently the orientation to take as far as a general policy on this issue.

*(e) Sanctions*

7.42. It should be noted that the first “sanction” for lack of transparency is the impossibility of continuing a project to set up a company or to establish a business relationship if the persons in charge of collection and oversight of the information are not satisfied that the information is conclusive, likely, and consistent.

7.43. Although sanctions exist for entering false information, the Belgian authorities are aware that the system of sanctions/penalties for persons who do not comply with the transparency obligations incumbent on legal persons is neither effective nor dissuasive. This is evidenced by the failure of the various competent authorities to apply sanctions, or, in the rare cases when application proceedings have been implemented, by the lack of follow-up both by the public prosecutors' offices and at the level of actual collection of the fines imposed. The established lack of resources at both human and technical (IT) levels has a definite impact on these aspects. Public prosecutors admit they are incapable of giving sufficient priority to investigations/prosecutions for certain acts through lack of resources. This concerns, for example, cases of lack of qualifications required for the directors who are managers, or investigations into fictitious registered offices. In the past, before their capacity declined, certain public prosecutors' offices questioned the directors or managers of companies who did not file their annual accounts, and, either the situation was remedied and a criminal-law settlement was proposed, or the companies were ordered to be wound up. There are no statistics as to the number of court-ordered dissolutions that were ordered. Since the Belgian legislator has, since 2005, decriminalised non-filing of annual accounts with the BNB, the priority given to this subject in the public prosecutors' offices has declined. However, some examples were given of proactive search policies followed by some public prosecutors' offices, with the assistance of the local police, for combatting fictitious or dummy registered offices.

7.44. In order to mitigate the ineffectiveness of implementation of the existing administrative and criminal sanctions and penalties, Belgium has put new procedures in place. The procedure for automatically deregistering companies from the BCE register has started to give concrete results. In 2013, 96 093 businesses were administratively deregistered following the absence of filing of their annual accounts for three consecutive years, and 4 796 were deregistered during the 1<sup>st</sup> half of 2014. That represents about 20% of all of the legal persons registered, and confirms that the reforms put in place should be implemented as quickly as possible in order to reinforce the reliability of the BCE tool. Other procedures recently put in place had not yet been used (e.g. deregistering companies on the basis of a combination or accumulation of criteria) in the

16 Conseil d'État (2003), Art. 23.

absence of implementation procedures, or had been used only to a very small extent (e.g. criminal sanctions). The procedure put in place by the new Code of Economic Law (*Code de Droit Economique*), in force since February 2014, and enabling the administrative authorities to propose administrative settlements had not yet been applied at the time of the on-site visit. The action plan for a more appropriate system for collecting payment of criminal fines, which was adopted by the Belgian Cabinet in July 2014, will also constitute positive progress once it is actually implemented.

*(f) International co-operation for requesting and granting appropriate assistance in matters of identification and of exchange of information on legal persons and arrangements*

7.45. Firstly, it should be recalled that basic information relating to legal persons and certain legal arrangements is available on line and in several languages,<sup>17</sup> which can enable foreign authorities to continue their investigations without necessarily having to wait for a reply from the Belgian authorities. International co-operation, both incoming and outgoing, on identification and exchange of information on legal persons and arrangements seems to be operating well, apart from a few exceptions.

7.46. *Requests addressed to Belgium:* Belgium is capable of providing very broad international assistance. At the request of a foreign authority, the competent Belgian authorities make full use of their competences and powers of access to gather the requested information in a timely fashion and to supply it to the requesting authority (see Section 8 on all of these aspects).

7.47. The replies from the countries asked for feedback on international co-operation with Belgium did not raise any particular difficulties as regards the quality of the information received on legal persons, or the timing delay for the response. The competent Belgian authorities confirmed that they gather basic information and beneficial ownership information in a timely fashion on the vast majority of legal persons set up in the country. However, the reservations expressed above regarding the quality of the information that is kept on Belgian legal persons or legal persons operating in Belgium raise questions about the capacity of Belgium to supply fully reliable and up-to-date information to foreign authorities on these aspects. At the time of the visit, Belgium had not put in place regular monitoring of the quality of the assistance given to foreign authorities relating to legal persons and arrangements.

7.48. *Requests sent by Belgium:* As regards legal persons governed by foreign law, the public prosecutors indicated that they are entirely reliant on police information obtained through international co-operation or through letters rogatory sent to their foreign counterparts. The absence of statistical information on the frequency with which mutual assistance or police co-operation is used, as well as of concrete case examples, leads to the conclusion that there is no proactive approach for regular and fully effective use of these channels by investigative and prosecution authorities. This is the case in spite of the absence of legal obstacles. The competent authorities indicated that they were satisfied with the international assistance received from foreign authorities, with a few notable exceptions, in particular in the context of mutual legal assistance with certain States, including member States of the EU (e.g. the United Kingdom, the Netherlands), and certain jurisdictions, in particular in the Caribbean area. It has happened that legal proceedings instigated for ML could not continue through failure to receive the necessary information from abroad.

7.49. As for international co-operation with other FIUs, it was observed that the quality of information obtained by the CTIF on legal persons and arrangements had improved after a targeted approach was applied. This approach aimed at providing more context for the questions in the request. The CTIF was able, on the basis of concrete cases, to demonstrate that it had obtained useful information on beneficial ownership and legal persons located abroad in cases with an international dimension or complex structures.

7.50. ***In conclusion***, the authorities' understanding of the vulnerabilities of legal persons remains sectoral, and is not deduced from a continuous, overall and updated assessment. The law enforcement authorities who

17 For example: FPS Economy website, European Business Register. FPS Economy (nd b).

are specialised in combatting terrorism are aware of the vulnerabilities of legal persons to being misused for TF purposes and carry out ongoing surveillance depending on the case, although they have not conducted any recent assessment of these aspects.

7.51. Competent authorities have identified concrete ML/TF risks and vulnerabilities in the framework of legal persons. Several initiatives have been taken with a view to addressing them; however the recent entry into force of certain of these measures and the need to have more hindsight to fully appreciate their effects means that they cannot yet be considered fully effective. The authorities are aware of the need to take additional steps.

7.52. Basic information and information on beneficial ownership for the vast majority of legal persons is publicly available through information held by the companies register – BCE – although shortcomings should be noted, in particular regarding the reliability of the data and whether they have been updated. Nevertheless, the role of notaries in authenticating the majority of acts relating to the creation and lifecycle of legal persons reinforces the reliability of this information. The information available essentially provides information on the legal ownership of the company, which can coincide with the beneficial ownership. Additional means exist to help in determining beneficial ownership, in particular information obtained by financial institutions and DNFBS or any information publicly available on listed or non-listed Belgian companies. The investigation and prosecution authorities did not provide sufficient qualitative information to permit an assessment of ML/TF investigations targeting legal persons or in those where information on beneficial ownership had been sought for and timely accessed.

7.53. Since the sanctions available for punishing persons who do not comply with information and transparency obligations for legal persons are not fully effective or dissuasive, Belgium has developed its arsenal of sanctions in order to mitigate the lack of effective implementation of administrative and criminal sanctions, and the implementation of these new sanctions is beginning to give some encouraging results.

7.54. The development of legal arrangements has been limited in Belgium. For this reason, the authorities have up to now not begun to identify and assess the vulnerabilities of these structures operating in Belgium in relation to ML. An analysis of the risk of fraud based on the use of foreign legal arrangements by physical persons subject to taxation in Belgium has nevertheless led to the tightening of reporting obligations to tax authorities in regard to the existence of links to legal arrangements, including foreign ones. Professional trustees are generally covered by AML/CFT obligations.

7.55. International co-operation, incoming and outgoing, in relation to identification and exchange of information on legal persons and arrangements seems to work well.

7.56. **Belgium has achieved a moderate level of effectiveness for Immediate Outcome 5.**

### 7.4 Recommendations on Legal Persons and Arrangements

- The competent authorities should improve their knowledge of the risks and vulnerabilities of all of the forms of legal persons and arrangements in the country, including the type of crime committed by legal persons, by developing a horizontal analysis of these aspects, and by deepening and updating the aspects related to TF risks.
- Belgium should fully implement the measures already identified, in particular relating to the rules applicable to professionals involved in acts relating to the lifecycle of companies (e.g. services being offered by intermediaries who are not bound to comply with AML/CFT obligations, domiciliation companies), as well as in the area of sanctions.
- Belgium should consider whether it would be appropriate to extend the scope of the information collected by the existing public registers, when necessary, so as to fully include and verify information on the beneficial ownership of legal persons.



- Belgium should use the recorded data more effectively, in particular by making sure that the competent investigation authorities have the capacity and the resources necessary to enable them to do cross-checks with the existing data (data mining).
- Belgium should, without delay, put in place the criminal records system for legal persons, as provided for in the legislation of 1999.
- Belgium should continue to reinforce the reliability and the updating of the relevant information on legal persons in the public registers of the court registries and of the BCE, and on legal arrangements, in particular through measures aimed at reviewing the registration procedures; to introduce strict deadlines for the submission of information on the changes to the company; to review the aspects of oversight of the essential data supplied and of the appropriate means and resources of the competent authorities.

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## 7. LEGAL PERSONS AND ARRANGEMENTS

### Recommendation 24 – Transparency and beneficial owners of legal persons

a7.1. Belgium was considered in 2005 to be partially compliant with former R 33 due to a lack of transparency and insufficient supervision of bearer bonds (para. 719ff. MER 2005). The types of legal persons relevant to R 24 in Belgium are companies, foundations and associations (described in Section 7).

a7.2. **Criterion 24.1 – a)** Belgium has mechanisms for identifying and describing the various types, forms and features of entities which may be incorporated under Belgian law, including foundations and associations, and *b)* procedures for creating such entities and methods for obtaining and preserving basic information and that concerning their beneficial owners. Such information is made available to the public via several websites.<sup>1</sup>

a7.3. **Criterion 24.2 –** Belgium has not assessed horizontally the ML/TF risks associated with different categories of legal persons formed therein. The national analysis of ML threat, risk and vulnerability nonetheless contains relevant information on the potential use of legal persons for criminal purposes (use of dormant, ‘shell’ and sham companies). The Federal Police also point to the vulnerability of SMEs, including *SPRLs* (due to the small amount of capital required for incorporation). Comparable information is also available, but less so concerning TF risks, especially for the NPO sector (see R 8). The authorities therefore have a certain amount of information on ML/TF risks associated with the categories of entities which may be incorporated in Belgium, even though such information could be collected in a more systematic and co-ordinated manner and certain information kept updated.

a7.4. **Criterion 24.3 –** Basic information concerning all types of legal person is kept in a filing with the registry of the Commercial Court within whose jurisdiction the company’s registered office is located. This information is also published in *Moniteur belge* (the official journal) and accessible via the BCE,<sup>2</sup> the Belgian companies register. The BCE database is available to the public with a search facility in French and Dutch.

a7.5. **Criterion 24.4 –** In Belgium, all companies limited by shares must keep a register (usually at the registered office) for each category of registered security it issues, including separate registers for shares and bonds (Art. 460 and s. *Code des sociétés* – Belgian company law). The name and number of shares in partnerships are included in their articles of association. Information concerning the holder(s) of dematerialised securities is kept by an approved account depository (see C.24.11). For associations, a register of members must be accessible at the association’s registered office (Art. 31, Belgian Law of 27 January 1921). A Belgian foundation has neither members nor shareholders, but the name of each founder must be included in its articles of association (Art. 27, Law of 27 January 1921).

a7.6. **Criterion 24.5 –** The provisions of AML legislation apply on creation of a legal person, for which act authenticated by a notary is required (*SA, SCRL, SPRL, SCA, AISBL* and foundations). The notary who prepares and verifies the articles of association must also verify the identity of the entity’s founders and any person lawfully holding shares in the company (Art. 7, AML/CFT Law). According to the risk involved, the notary is also obliged to keep the collected identification data updated. He also verifies and makes amendments to the articles of association and changes in the entity’s operation (registered office, legal status, identity of shareholders, founders, directors, etc.), excluding share transfers. Such documents must be filed in the registry of the Commercial Court and published in *Moniteur belge*, and are then accessible via the BCE. The Commercial Court registry carries out a formal check of the filed information for any legal person not created

1 For example [www.belgium.be/fr/economie/entreprise/creation/types\\_de\\_societe/](http://www.belgium.be/fr/economie/entreprise/creation/types_de_societe/) or [http://economie.fgov.be/fr/entreprises/vie\\_entreprise/Creer/#.Uue7IE01j4](http://economie.fgov.be/fr/entreprises/vie_entreprise/Creer/#.Uue7IE01j4).

2 <http://economie.fgov.be/fr/entreprises/bce/#.VFHg7fldVik>.

by a notary's authentic act.<sup>3</sup> Ownership of securities is registered by their holder in the company register. Lack of such registration renders any transfer of securities unenforceable against third parties.

a7.7. **Criterion 24.6** – The information recorded in the share register or BCE mainly provides information on legal ownership of the entity which may match its beneficial ownership. Several mechanisms enable discovery of beneficial owners: 1) *use of existing information, including that obtained from financial institutions and non-financial professionals* such as notaries (Art. 8 AML/CFT Law), while noting that access to such information is dependent on the data provided by the client companies themselves. The introduction of a provision into the *Code des sociétés* extending the obligation to declare holdings of 25% or more in unlisted companies issuing dematerialised shares<sup>4</sup> also enables relevant information to be obtained; 2) *use of any information available on listed Belgian companies*, including via the obligation to publish major holdings in a company under which the identity of holders of over 5% of the share capital is revealed (Law of 2 May 2007). Access to BCE also allows tracking of the ownership chain for entities registered in Belgium. Financial institutions and non-financial professionals are obliged to test such information for credibility and relevance (Art.8 §3 al.2). If the test proves positive, the financial institution or non-financial professional then verifies the identity of the beneficial owners taking appropriate measures adapted to the risk. If a financial institution or non-financial professional doubts the credibility and relevance of the information provided, it will take any other reasonable and appropriate measure to identify the customer's beneficial owners and verify such identities. There is no legal restriction on timely access to such information by the competent authorities when the evidence points to a breach of AML/CFT obligations.

a7.8. **Criterion 24.7** – The precise nature of beneficial owner information obtainable from covered professionals may be determined when the information is capable of being verified by official sources (see C.24.6 – authenticated act, declaration of major holdings, registers of listed companies, etc.). As for updating, legal persons are firstly obliged to provide the financial institutions and DNFBPs with which they have dealings with the identity of their beneficial owners and with an update of such information when requested. There is neither a time-limit for provision of updates nor penalty for failing to provide the information (apart from possible termination of the business relationship). Covered professionals are themselves obliged to update their customer identification data, according to risk (see R 10 and R 22). These professionals are secondly obliged to verify the 'credibility and relevance' of information provided to them by legal persons, i.e. that the information received complies with the law and that there is no inconsistency, element or factor which discredits the information provided and leads to doubts as to its veracity (see R 10).

a7.9. **Criterion 24.8** – Managers and directors of legal persons are obliged to provide complete basic data and available information about beneficial owners (without the need for specific authorisation in the case of companies) and to provide any other form of assistance to the competent authorities (Art. 527, Companies Code on the general liability of managers and directors). Such information must be accessible at the company's registered office, i.e. in Belgium, even though there is no condition of residence for a representative in the Companies Code.

a7.10. **Criterion 24.9** – The file for each legal person is kept for 30 years at the registry of the Commercial Court and the BCE. 'Paper' files are then transferred to the royal archives (*Archives générales du Royaume*). Information relating to customer identification is kept by the financial institutions and non-financial professions in compliance with the FATF standard (see R 11 and R 22). Data in the share register is kept

3 The court registry is not permitted to verify the lawfulness of clauses in the articles of association or the content of minutes of general meetings or the board of directors. The possibility of extending the supervisory powers of court registries to ID data for managers/directors representing legal persons is under discussion.

4 However, the declaration received by the company pursuant to Art. 515bis, Company Code, may only be a starting point in certain cases enabling the company concerned to concentrate on declarations of holdings exceeding 25% in its research for information to be provided to due diligence professionals. This would be the case where a declaration to the client company is made by a corporate shareholder. These declarations supplement existing sources of information. In seeking the identity of its beneficiaries, the client company may also thereby refer, for example, to the register of shareholders or lists of attendees at its general meetings.

throughout the entity's lifespan. Actions against legal persons are time-barred after 5 years; the documents must therefore be kept for 5 years after winding-up (Art. 198, Companies Code, and art. 25 and 41 of the Law of 27 June 1921 for associations and foundations).

a7.11. **Criterion 24.10** – Competent authorities and especially law enforcement authorities have the necessary powers to obtain access to information kept by companies and other legal persons, including that kept in the registers (see R 31). There is no legal or regulatory restriction on timely access to basic and/or beneficial owner information by these authorities when the evidence points to a breach of AML/CFT obligations.

a7.12. **Criterion 24.11** – The Law of 14 December 2005 on the elimination of bearer bonds was brought into force in stages and became fully applicable on 1 January 2014. The identity of Belgian shareholders is now known, due to a dual system: (i) the registered share system, enabling a company to identify its shareholders as it must now keep a share register; (ii) the dematerialised share system under which the identity of a holder of securities is known to the account depository.<sup>5</sup> The concept of 'securities' in the 2005 law extends to share subscription rights (Art. 2 1°).

a7.13. **Criterion 24.12** – Certification of shares<sup>6</sup> in Belgium is similar to 'nominee shareholding' in terms of legal structure although its objectives and certain features differ. Under Art. 503 §1er, al. 3, Companies Code, the issuer of certificates relating to registered shares must make its status known to the company which issued the certified shares, which enters such status in the register concerned, before any exercise of voting rights if the certificates relate to dematerialised securities. Unless otherwise provided, the certificate issuer may not transfer the securities associated with the certificates. No transfer of securities associated with the certificates may be made if the issuer has made a public offering (Art. 503, §1<sup>er</sup>, al. 5).

a7.14. Belgium also allows *directors* to act on behalf of others ('nominee director'). If such directors are legal persons, they must appoint a permanent representative to carry out their duties for and on behalf of the legal person (Art. 61 §2, Companies Code). The identity of the director must be filed at the Commercial Court registry, published in *Moniteur belge*, registered with the BCE and appear in the company register. Appointment and removal of the permanent representative are only subject to the same publication rules as if he exercised these duties on his own behalf.

a7.15. Shares in Belgium may also be registered in the name of a nominee ('nominee subscription'). This arrangement is based on a nominee agreement (Art. 7 §2) of which the financial institution must be informed as part of its due diligence obligation. The nominee's identity is verified from information kept in the register of shareholders which refers to the nominee agreement (Art. 7 §2, AML/CFT). However, the identity of the real shareholder (which might be a foreign company) does not appear in public registers or in the company's register. Neither the status of the nominee nor its identity is disclosed. Such lack of publication hampers discovery of the identity of the shareholder. Nominee-held shares in Belgium are not therefore subject to sufficient measures to ensure that their use not is being abused.

a7.16. **Criterion 24.13** – Any legal person which has not filed the full text of its Art. of Association in the registry of the Commercial Court within three months of the date of the acts is subject to a fine of between EUR 50 and EUR 10 000 (Art. 90 and 91, Companies Code). Moreover, unregistered companies do not acquire legal personality. Absence of or delay in filing with the Commercial Court registry incurs a fine of between EUR 25 and EUR 250 per month's delay (Art. 256(1) *Code des droits d'enregistrement, d'hypothèque et de greffe*). The Law of 16 January 2003 establishing the BCE also imposes administrative and criminal sanctions for non-compliance with its provisions, especially its registration obligations (Art. 62 §2 and 5, and art. 63).

5 As from 1 January 2014, the law provides that remaining bearer securities will be automatically converted to dematerialised securities and registered in the share register, unless the issuer (the company) decides to convert them to registered securities and register them in its name. Finally, if the holder of the securities is still unknown on 1 January 2015, the securities concerned will be sold by the issuer.

6 See Section 7.1 (b).

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Company directors are liable to their companies and third parties for prejudice caused by breach of the company's Articles of Association and for mismanagement by failing to keep share registers of *SAs* and *SCAs* or of *SPRLs*, *SCRLs*, *SCRIs* (Art. 263, 408, 528 and 657, Companies Code). Case law expressly provides that a company which fails to fulfil its legal obligation to keep a share register is liable to any shareholder prejudiced thereby. The Companies Code also imposes criminal sanctions in the event of deliberately erroneous or misleading entries in share registers (Art. 348, 388 and 649): imprisonment for between one month and three years and a fine of EUR 26 to EUR 3 000 (Art. 496 PC). The sanctions contained in the Penal Code also apply to partnerships. Sanctions also apply in relation to obligations dealing with non-listed companies (Art. 516). Nullity of an association (and therefore its liquidation) or of a foundation may be declared if the Articles of Association do not contain required legal clauses. Legal persons (or their representatives) are not liable to penalties for simply having passed on erroneous or misleading information about their beneficiaries to professions subject to due diligence when such information is provided by their beneficial owners (Art. 8, AML/CFT Law), but the consequences of such acts may incur sanctions. The lack of information concerning sanction policy hampers assessment of the proportionality of punishment.

a7.17. **Criterion 24.14** – The competent authorities have measures for international co-operation and investigative powers which may be used to exchange information about companies, shareholders and beneficial owners. Directive 2012/17/EU on the interconnection of central, commercial and company registers, which Belgium is in the process of implementing, should improve access to such information. An analysis of R 37 and R 40 does not disclose any particular obstacle liable to impede this type of exchange of information. No legal or regulatory provision prevents swift transmission of such information to foreign competent authorities.

a7.18. **Criterion 24.15** – For international criminal mutual assistance, Belgium has mechanisms to assess the quality of information it obtains (by the investigating judge who initiated the request and each public prosecutor's department) enabling discovery of any structural problem in co-operation with another country. Besides the judicial mechanisms, the CTIF has tools and resources enabling supervision and control of the quality of international co-operation.

### *Weighting and conclusion*

a7.19. **Belgium is largely compliant with R 24.**

## **Recommendation 25 – Transparency and beneficial owners of legal arrangements**

a7.20. In 2005, it was considered that the FATF standard dealing with the transparency of legal arrangements did not apply to Belgium as it had no such structures (former R 34). The changes made in R 25 provide that the country must apply minimum transparency requirements even if it does not legally recognise trusts. R 25 therefore now applies to Belgium, even though an *express trust*, as known to the English-speaking world, cannot be created in Belgium (see Section 7 of the main report).

a7.21. **Criterion 25.1** – The requirements set out in a) and b) do not apply to Belgium. c) Financial and non-financial professions whose customers are legal arrangements are subject to obligations of identifying their representatives and beneficial owners, verifying the identity of the latter and keeping all collected data for 5 years (Art. 7, 8 and 13, AML/CFT law). Pursuant to the general rules of tax law, professional trustees are also obliged to keep all information enabling determination of their income, including information concerning the trusts they administer.<sup>7</sup>

a7.22. **Criterion 25.2** – The professions approved to act in Belgium as professional *trustees* are covered professions (notaries - Art. 3.1, AML/CFT law, accountancy professionals – Art. 3.4, lawyers - Art. 3.5 a) 5 ) are obliged to update, according to risk and whenever they are advised that their data is no longer up-to-date, customer identification data, including any related to trusts and fiduciary or other legal arrangements

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<sup>7</sup> Global Forum, Peer review report: Phase 2, practical implementation of standards, Belgium, 2013.

(see C.24.7). This includes information on beneficial owners, initially subject to ‘credibility and relevance’ verification (Art. 8 §3 and §2) (see R 10 and R 22). However, updating on the basis of risk does not establish that the information is updated promptly and kept as up-to-date as possible.

a7.23. **Criterion 25.3** – The AML/CFT Law requires the identification and verification, via supporting documents, of the identity of the customer’s representatives, i.e. persons acting in any capacity for and on the customer’s behalf (Art. 7 §2). Legal arrangements are also obliged to provide information concerning their beneficial owners to financial and non-financial professions with which they have a business relationship or with whom they transact on an ad hoc basis (Art. 8 §3).

a7.24. **Criterion 25.4** – No legal or regulatory provision prevents professional *trustees* from communicating information concerning a legal arrangements to the competent authorities or professions subject to due diligence.

a7.25. **Criterion 25.5** – Competent authorities and especially prosecution authorities have the necessary powers to obtain access to information kept by trustees, including covered professions (see R 31). Moreover, as from the 2013 tax year, the tax authorities hold information from the tax return of physical persons who are founders, beneficial owners or potential beneficial owners of legal arrangements, including foreign ones.<sup>8</sup> There is no legal or regulatory obstacle to the competent authorities having prompt access to this information.

a7.26. **Criterion 25.6** – The competent authorities have measures for international co-operation and investigative powers which may be used to exchange information about trusts. An analysis of R 37 and R 40 does not disclose any particular obstacle liable to impede this type of exchange of information. No legal or regulatory provision prevents swift access of such information by foreign competent authorities.

a7.27. **Criteria 25.7** – Professions in Belgium acting as professional *trustees* and which are subject to the AML/CFT system are legally liable for any breach of their obligations.

a7.28. **Criterion 25.8** – The sanctions imposed by the AML/CFT Law for violations of the due diligence and record-keeping obligations apply to all covered professions, including professional *trustees* (Art. 40). There is no clear policy on applicable sanctions enabling determination of their proportionality. No legal or regulatory provision prevents swift access of such information by competent authorities.

### *Weighting and conclusion*

a7.29. Due to the limited development of trusts and legal arrangements in Belgium, the obligations of R 25 apply principally to professional *trustees* which are generally subject to the AML/CFT obligations. The activities of non-professional trustees not covered by AML/CFT obligations are not significant. **Belgium is largely compliant with R 25.**

8 Art. 307 para. 1 sub-para. 4, Income Tax Code, as amended by the Law of 30 July 2013 introduces an obligation for Belgian taxpayers to declare any legal arrangement of which they (or their spouses and children) are founders, beneficiaries or potential beneficiaries. This covers trusts, fiduciary structures and foreign structures which are either subject to no or low tax, a list of which was established by Royal Application Decree of 19 March 2014.





## ACRONYMS

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

## ACRONYMS

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