



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

4. Terrorist financing and financing of proliferation

Effectiveness and technical compliance



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4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings

Suppressing the financing of terrorism

- Activities linked to terrorism and its financing, including the use of NPOs for TF, are subject to investigations and prosecutions commensurate with the risks that Belgium currently runs. Investigations into terrorism also cover TF aspects.
- Co-operation between the different authorities responsible for countering TF is commensurate with the situation and the risks that Belgium currently faces.
- NPOs as a sector have not been made sufficiently aware of TF phenomena and risks.

Application of targeted financial sanctions

- The targeted financial sanctions provided in United Nations Security Council Resolutions (UNSCR) regarding TF and financing the proliferation of weapons of mass destruction (PF) are not applied as prescribed in the FATF Recommendations, particularly in terms of time scales. Belgium has neither made nor received a request under UNSCR 1373.
- In practice, few assets have been frozen in connection with TF or PF.
- Mechanisms and initiatives are in place to inform the private sector of designations. Although targeted financial sanctions appear to be respected in Belgium, no specific measure has been put in place to monitor how well financial institutions and designated non-financial businesses and professions fulfil their obligations regarding targeted financial sanctions in connection with PF.

4.1 Context

4.1. There is a risk of TF in Belgium, even if it is difficult to measure and quantify, given the particular nature of the offence of TF and that of terrorism, to which it is inextricably linked. The majority of the structural and contextual elements influencing both the volume and types of common crime as well as the threats and vulnerabilities relating to ML, as described in this report, also apply, all other things being equal, to terrorism and TF.

4.2. According to information provided to the evaluation team, it appears that terrorist groups and individuals present in Belgium are active mainly in recruiting and collecting funds in Belgium in connection with jihadist movements in countries in the Near and Middle East (see Section 1). Links with presumed terrorist groups in Africa and the Caucasus have also been detected.

4.3. The offence of **terrorist financing** is covered in Art. 140 para. 1 and 141 of the Belgian PC (adopted in 2004). In Art.140, TF is considered as participation in an activity of a terrorist group (referred to in Art.139 PC); and Art.141 criminalises acts committed by a person who, outside the circumstances provided in Art.140, provides material resources with a view to committing a terrorist offence (referred to in Art.137 PC).

4.4. Implementing **targeted financial sanctions aimed at TF and PF** in Belgium is based on the European legal framework provided in Reg. 881/2002 and Reg. 753/2011 (for UNSCR 1267), 2580/2001 (for UNSCR 1373), Reg. 329/2007 (for UNSCR 1718) and Reg. 267/2012 (for UNSCR 1737). Belgium has also taken measures to supplement the legal framework at national level in the area of TF (RD of 28 December 2006).

4.5. In practical terms, the Federal Prosecutor's Office prosecutes all cases of terrorism and TF, and conducts the related investigations. There are also thirteen investigating judges (*juges d' instruction*) who are specialists in this area, and dedicated sections in the police forces and intelligence services. Thus the combatting of terrorism and TF suffers less from the structural problems related to lack of resources in the Belgian legal system.

Table 4.1. Cases involving terrorism prosecuted by the Federal Prosecutor's Office

2008	2009	2010	2011	2012	2013
53	52	65	84	60	150

Source: Statistics from the Federal Prosecutor's Office, 2005-2013

Note: The figures above are for cases prosecuted by the terrorism section of the Federal Prosecutor's Office and not simply those related to offences under Art. 140 and 141 of the Penal Code, but all the investigations had a financial aspect.

4.6. The Belgian authorities explained that the significant increase in cases in 2013 was due to cases linked to terrorist movements in the Near and Middle East.

4.2 Technical compliance (R 5 – R 8)

Recommendation 5 - Terrorist financing offence

4.7. **Belgium is largely compliant with R 5** – While the criminalisation of TF in Belgium responds largely to the requirements in the UN Convention and R 5, there are some technical shortcomings. Financing one or two terrorists with no proven link to one or more specific terrorist acts is not covered by the current definition. The financial penalty of EUR 30 000 is low and its dissuasiveness is in doubt.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

4.8. **Belgium is partially compliant with R 6** – The implementation of R 6 in Belgium is based principally on the EU legal framework. The UN definitions of persons in UNSCR 1988 (relating to the Taliban) and 1989 (relating to al-Qaida) have been transposed into the EU legal framework in Reg. 881/2002 and Reg. 753/2011. Nevertheless, there is a major loophole in the transposition because the mechanism cannot be applied *without delay*, as defined by the FATF. The requirement to freeze assets provided in UNSCR 1373 is implemented at European level by Reg. 2580/2001, supplemented at national level by the RD of 28 December 2006. However, there is no clear procedure allowing other countries to require Belgium to freeze assets in connection with UNSCR 1373.

Recommendation 7 – Targeted financial sanctions related to proliferation

4.9. **Belgium is partially compliant with R 7** – The implementation of R 7 in Belgium is based principally on the EU legal framework. UNSCR 1718 (relating to the Democratic People’s Republic of Korea [DPRK]) and UNSCR 1737 (relating to Iran) have been transposed into European law in Reg. 329/2007 and Reg. 267/2012, respectively. The delay in transposing the UN requirements into European law is a major loophole in the provision, since the ability to freeze the relevant assets *without delay* is fundamental to the system of targeted financial sanctions.

Recommendation 8 – Non-profit organizations

4.10. **Belgium is partly compliant with R 8** – There are shortcomings in the initiatives to inform and raise the awareness of the NPO sector to TF risks. Measures are in place to ensure their transparency, but the supervision of such organisations throughout their existence does not cover all the elements required under R 8. In addition, the nature of ‘proportionate’ sanctions has yet to be established.

4.3 Effectiveness: Immediate Outcome 9 (TF Investigation and Prosecution)*(a) Risks of terrorist financing*

4.11. An initial document entitled *Assessing the threat, risks and vulnerabilities in terrorist financing* was finalised by the competent authorities in February 2014. The document is based largely on the conclusions from the national ML risk assessment for ML (see Section 2). It was prepared on the basis of various sources and from the accumulated knowledge of several of the authorities responsible for countering the terrorist threat. The Belgian authorities indicated that this assessment identifies a number of different risks and typologies and still must be completed and updated (part of the analysis uses information from the OCAM dating from 2011, compiled for the Snapshot of police security 2012-2015 included in the National Security Plan 2012-2015).

4.12. During the evaluation team’s on-site visit, the Belgian authorities indicated that they were focussing their efforts on the terrorist risks associated with certain developments that Belgium was facing, especially in relation to the growing problem of Belgian or Belgian-resident *jihadists* and their return from conflict zones.

4.13. The actions and legal proceedings used to counter terrorism and its financing, as described by the judicial authorities, the State Security Service and OCAM, seem commensurate to the currently identified risks, even though Belgium could not provide the assessors with a full and comprehensive TF risk profile for the country.

(b) Detecting, investigating and prosecuting terrorist financing

4.14. The Belgian authorities at all levels (intelligence, the police and the legal system) take focused action against terrorist activities and those who support them, especially in the allocation of financial resources. The Belgian authorities have carried out few investigations dealing with uniquely TF offences (as an offence by itself, that is, cases where only the aspects of ‘collecting, amassing and providing funds to a terrorist group’

are involved) which were later subject to criminal prosecution. This results from the situation ‘on the ground’. Terrorists (groups and individuals) that have been subject to criminal investigation have not been involved in activities restricted simply to amassing and dispensing financial resources. Among the case studies presented by Belgium, one example from 2010 might be quoted as representative: The convictions targeted the leaders and members of a terrorist group; some of these persons had simply supported the group financially or materially. Most were convicted (one of the accused was acquitted for lack of evidence of intention). It should also be noted that the technical shortcomings in the criminalisation of TF compared with the international standard (see TC Annex, C.5.2.b)) would not have any consequences in practice. The authorities consider that the provisions in the Belgian Penal Code allow them to carry out their functions.

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4.15. **The intelligence services (civil and military), the police forces and the CTIF work to identify terrorist activities and terrorist financing**, although the CTIF seems to produce few suspicious-transaction reports (around 20 per year). According to the authorities interviewed, this number is due partly to the fact that terrorists and their supporters use informal and parallel financial systems such as the *hawala*, and also cash on a large scale. They also make a variety of apparently legitimate transactions, particularly in the markets for used vehicles and precious metals. Other groups are financed almost exclusively by the proceeds of crime (e.g. financing by theft, robbery, extortion). Several cases described by the Belgian authorities share this feature, even if the boundary between TF and organised crime is not always easy to identify. Similarly, the people and countries involved make it difficult to determine with certainty that movement of suspect or irregular money has been used, in whole or in part, for TF or other illegal (or even legal) purposes. Lastly, the authorities have stated that in some cases, terrorist groups appear to be abusing existing NPOs or fictitious ones with reputedly humanitarian aims. In these cases, the investigations focus on those collecting funds, since if someone makes a donation without necessarily knowing the real destination of the money, the element of intention is missing. The amounts are also insignificant (sometimes donations of only a few euros).

4.16. **The competent authorities systematically analyse the financial aspect of terrorist activities** when investigating the activities of terrorist groups or individuals (for instance, how the group’s terrorist and other activities are financed, or their incoming and outgoing flows). They use all the means of investigation open to them, including requesting banking information, bugging, phone tapping, searches and observation. The same authorities may also, if necessary, seek support from the CTIF for these investigations, although at present there is little interaction as regards TF. This is due mainly to the relatively small amounts involved in some cases, but is also related to the source of the case, i.e. how the existence of terrorist activities was reported to the judicial authorities. The CTIF transmits only a few STRs on this type of case.

4.17. Where prosecution for TF is not possible, for instance when some of the elements comprising the offence cannot (or only with great difficulty) be proved (e.g. the intentional element or participation in a terrorist group), some representatives of the authorities interviewed indicated that they prosecuted based on evidence of ML.

4.18. The Belgian authorities’ significant use of international co-operation channels is discussed in Section 8. In particular, the authorities note **good co-operation with the authorities in countries bordering Belgium**. In general, international co-operation works very well in countering terrorism and TF. Requests for mutual legal assistance in order to obtain information or even evidence, including through hearings, and requests for extradition or surrender (European arrest warrant) are made regularly. International police co-operation is also used in these cases. It should nevertheless be noted that when funds are sent to or within countries experiencing regional conflicts or political instability, there are sometimes problems with co-operation in locating information and documents.

4.19. The Belgian authorities have recognised a lack of human **resources** within the State Security Service and in some services of the Federal Police (for instance, the TF Unit, which is responsible for analysing such phenomena, has just two people). The same observations cannot be made regarding investigators in the field, who are drawn from specialist police divisions. On the other hand, the judicial information system is considered outdated and inadequate for magistrates’ needs. These two factors have a negative impact on effectiveness.

4.20. The **shortcomings** noted in Section 3 regarding the length of procedures (due largely to congestion in the courts and, to a lesser degree, the misuse of some appeal procedures, all things being equal) apply to some extent to countering TF.

4.21. These aspects are partly counterbalanced by the good **collaboration** between the authorities responsible for countering terrorism and its financing. There are specialised units with unquestioned commitment and expertise within the Federal Prosecutor's Office, specialised investigating offices, the intelligence services and the police forces.

(c) Sanctions

4.22. Based on the information received by the assessors, the penalties imposed on those found guilty of TF offences appear proportionate, given that the convictions cover terrorist financing together with other offences.

4.23. The Belgian authorities indicated that **to date there have been four convictions in Belgium for TF as the sole offence**. There have also been a number of convictions for TF as one of the elements accepted as participation in a terrorist group (e.g. Brussels 2010, Brussels 2014). Several people have been acquitted. No legal person has currently been convicted of TF in Belgium.

4.24. As to whether the penalties provided and imposed for offences under Art. 140 and 141 of the Penal Code are effective and dissuasive, the Belgian authorities indicated that the sentences handed down under Art.140 vary from a suspended prison sentence of several months to one of several years - up to 20 in one case - and that they are thus significant and certainly dissuasive. When deciding the length of sentence, the courts take into account the criminal record of the convicted person and the likelihood he/she has of being re-integrated into Belgian society. Sentences also regularly include fines and confiscation, as well as extradition. In all cases, an appraisal of the dissuasiveness and effectiveness of the sanctions for TF must take into account the ideology and the degree of indoctrination of some terrorist organisations.

(d) Other measures

4.25. As regards alternative means of combatting TF (i.e. other than criminal prosecution), the Belgian authorities have defined two avenues for mitigating the risks of TF: (i) an administrative authorisation must be obtained from the municipal authorities when funds are collected from the public (controlling to some extent the raising of funds by NPOs); and (ii) natural persons known or assumed to have left national territory for certain combat areas are struck from the register, to prevent welfare grants or allowances being subverted for the purposes of TF. The Belgian authorities have thus refused to renew one person's residence permit and started legal proceedings to withdraw Belgian nationality (for those with dual nationality).

4.26. The Federal Prosecutor's Office, together with the other authorities and agencies dealing with this threat, prepare what are known as 'concept cases'. The aim is to optimise co-operation, co-ordination and information exchange between authorities at federal, local and also European level, and to ensure that the relevant criminal policy is constantly adapted to the threats and typologies encountered.

4.27. **In conclusion**, the tactics and methods used by the Belgian authorities are not exclusively oriented towards the financing aspects of the global terrorist threat, but nothing in the actions that they undertake or in the court judgements that the assessors were able to review indicates that the Belgian authorities are negligent in countering TF. Based on the information provided to the assessors and interviews with the specialists involved, it appears that **the action of the Belgian authorities is commensurate with the actual phenomena and threats**; they are detecting offences and participating actively in countering terrorism. People have been convicted for TF in cases that cover terrorism more broadly.

4.28. **Belgium has achieved a substantial level of effectiveness for Immediate Outcome 9.**

4.4 Effectiveness: Immediate Outcome 10 (Preventive Measures and Financial Sanctions relating to TF)

(a) Targeted financial sanctions

4.29. As regards the implementation of targeted financial sanctions, as was stated in more detail when discussing technical compliance (R 6), the UNSCR 1267 and subsequent resolutions are not implemented in a way that complies with the FATF Recommendations, in particular because the EU's transposition system is too slow to ensure that assets are frozen *without delay* (as defined by the FATF) and no other Belgian measure compensates for it. The mechanism of the so-called 'Belgian' list, provided in the RD of 28 December 2006 to enable Belgium to apply sanctions to persons not (yet) designated at European level, has not yet been implemented. Its effectiveness is thus unproven (at the time of the on-site visit, the Belgian authorities stated that an initial list was being compiled). These delays cast doubt on the ability of the Belgian authorities to freeze rapidly (and effectively) the assets of persons or entities targeted by the UN, and have also a negative impact on the effectiveness of action by the Belgian authorities.

4.30. In practice, few assets have been frozen: one building and one bank account were frozen in 2002 (and still are) under UNSCR 1267. Furthermore, no designation request under UNSCR 1373 has been made either to or by Belgium.

4.31. The mechanism for informing the private sector about listed persons is rather passive (organisations are required to consult the EU Official Journal, the Belgian Official Gazette [*Moniteur belge*] and the web sites of the competent authorities). The CTIF and FPS Finance (see R 6, C.6.5.d) have nevertheless published guidelines for financial institutions and the DNFBPs on their obligations in this matter. A CBFA circular simply reminds financial institutions of their legal obligations in this regard (see R 6, C.6.5.d). FPS Finance claims that the private sector informs itself, in particular by consulting databases established by certain private companies (apart from consulting regularly the official, and in particular the European, lists). This was confirmed by the finance sector representatives met with, who are not afraid to contact the CTIF or the FPS Foreign Affairs in case of doubt (see Section 5.3.d). The BNB and the FSMA check that the financial institutions have implemented an appropriate system or internal procedures to apply the targeted financial measures. The way in which DNFBPs (apart from lawyers) are made aware firstly of the mechanisms for targeted financial sanctions and the measures to take, and secondly of the lists to consult and controls to apply, appears inadequate (see Section 6.3.b).

(b) Non-profit organizations (NPOs)

4.32. **The authorities describe part of the NPO sector as presenting a risk of TF** (foundations, on the other hand, do not appear to be a sector at risk in terms of terrorism). Thus the plan on radicalisation (or *Plan R*) from OCAM has since 2005 aimed to detect and monitor radical individuals, groups and media, and includes aspects of TF. The non-profit associations (*associations à but non lucratif - ASBL*) in question either are directly involved because they support certain organisations considered terrorist that are active in the Near and Middle East, with parallel activities (such as education or medical aid); or have no link to terrorist groups but are used by some members to collect funds, sometimes without even the administrators of the organisation being aware of it (see IO 9). There have been no significant actions, either targeted or routine, to impose administrative controls on associations. The sector is supervised for tax purposes because of the special features of associations in this sector (see R 8, C.8.3); however, the NPOs at risk are smaller. Nevertheless, these same authorities consider that the risk of TF related to NPOs has diminished over the last few years (fund raising and events during which money may be collected must be authorised by the authorities). The risk has shifted, partly because terrorists and their financiers are using alternative methods (*hawala*, for instance) or are raising funds by trading some types of goods.

4.33. The representatives from associations interviewed during the on-site visit (from major Belgian non-profit associations) did not seem to be aware of, or even sometimes to understand, the risks of the misuse of NPOs for TF purposes. Although aware of the risks of fraud in unauthorised fund raising, they did not appreciate the reasons why a terrorist organisation might be drawn to create an association. Thus the action taken to raise the sector's awareness is not sufficient (see R 8, C.8.2).

4.34. **The National Security Service monitors in particular the activities of certain NPOs** that could be used by terrorists, and the CTIF sometimes receives STRs involving small associations. Between 2005 and 2010, the Federal Prosecutor's Office undertook a 'proactive' investigation¹ of a list of ASBLs for which there were reasonable suspicions of TF. The investigation succeeded in particular in developing with the court districts concerned a policy supervising the strict application of the law on associations, and resulted in certain NPOs being wound up or normalised. The investigation has not been repeated: although the authorities indicated that they would like to carry out similar investigations, they do not have the necessary human and financial resources.

4.35. **In conclusion**, Belgium has a legal system in place to apply targeted financial sanctions regarding terrorist financing. However, given the technical shortcomings identified (particularly the time scales for applying new sanctions), the effectiveness of the Belgian system is questionable. In practice, very few assets are frozen, although this is not in itself an indicator of inefficiency, as it has not been established that the assets targeted by the sanctions are on Belgian soil.

4.36. Regarding the risk of NPOs being used for terrorist purposes or for TF, there are shortcomings in the administrative controls or transparency requirements for NPOs, awareness raising and targeted actions, but the Belgian authorities have identified the NPOs at risk and monitor continuously their activities and transactions.

4.37. **Belgium has achieved a moderate level of effectiveness for Immediate Outcome 10.**

4.5 Effectiveness: Immediate Outcome 11 (TFS relating to PF)

4.38. An effective system of financial sanctions regarding proliferation depends on the immediate implementation of the UNSCRs, monitoring compliance with the measures imposed, co-ordinated action by the authorities concerned to prevent the measures being circumvented and preventive action. **Belgium does not implement *without delay*** (as required under FATF Recommendation 7) **the targeted financial sanctions** defined in the UNSCRs relating to combatting PF. The implementation of targeted financial sanctions for PF in Belgium are based on the European legal framework set out in Regulation 329/2007 (for UNSCR 1718 concerning the Democratic People's Republic of Korea – DPRK) and 267/2012 (for UNSCR 1737 concerning the Islamic Republic of Iran). These measures apply freezing measures to a broad range of funds and property. These mechanisms suffer from technical problems in the length of time for transposition (see TC Annex, R 7). In practice, delays have been noted in the publication of designated names by the EU, as regards both Iran and the DPRK.²

4.39. The Belgian authorities do not contest that the transposition system is too slow, but say that the problem is largely mitigated by the preventive measures applied by the financial institutions and the DNFBPs. In fact, given the particular nature of the subject and the countries concerned, the private sector – especially banks and insurance companies – are both aware and watchful. Here too, the private sector confirms that it keeps abreast of UN decisions by itself consulting certain web sites, without waiting for transposition into European law. Any transaction would immediately prompt an alert. No violations of the obligations

1 A 'proactive' investigation consists of looking for, gathering, recording and processing data and information based on a reasonable suspicion that criminal acts will be, or have been, committed but are not yet known. It is allowed for a list of offences including terrorism and its financing (Art. 28bis and 90ter CPC).

2 Iran: Reg.522/2013 (implementing Reg.267/2012) was adopted on 6 June 2013 to incorporate a change decided by the Security Council on 20 December 2012.

DPRK: On 2 May 2012, the Sanctions Committee decided to add three names to the UN sanctions list. Four more names were added to the same list on 22 January 2013. Reg.137/2013, including these names on the European list, was adopted only on 18 February 2013.

regarding targeted financial sanctions were found. The Belgian authorities consider the risk of damage to financial institutions' reputation to be high, and this motivates them to comply with these obligations. For other economic players, the UN's system of designations and sanctions **may appear complex**, and many tend to adopt a conservative attitude for fear of violating the law. There are, at present, no or practically no business relationships or commercial transactions with the targeted countries.³ This conservative attitude, although it may be effective, has a negative impact on legitimate transactions (a problem related to *de-risking*). The problem of time scales is also considered to be mitigated because the EU applies sanctions to a significant number of entities that are not designated by the UN, and uses a prior-authorisation procedure for transactions with Iranian organisations, so that any transaction initiated can be delayed while European transposition is in progress (see above).

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4.40. The Belgian authorities consider that even if the UNSCRs are not immediately formally transposed, there is only a very low probability that the delay will affect the effectiveness of targeted sanctions. This remains to be confirmed however, since assets located in Belgium could be used in indirect transactions (that is, with the participation of a third country or persons that have not been designated). In addition, the system for declaring and pre-authorising transactions does not have an impact on assets already located in Belgium that have not been involved in transactions. These measures, despite their positive effect, do not alone satisfy the requirements to identify and deprive the resources of designated persons *without delay*.

4.41. The low risk and conservative attitude of certain players cannot alone be taken as a measure of the effectiveness of a national strategy to prevent and disrupt PF. Such a strategy also requires a robust system for monitoring and supervising financial institutions and DNFBPs as regards their obligations relating to targeted financial sanctions for PF. Although the Belgian authorities seem confident that the private sector applies measures, **they have not been able to supply conclusive evidence that controls have been in place over the last few years**. If the supervisors of financial institutions make sure that institutions have procedures and systems for monitoring FP designation lists, they do not determine whether the systems are implemented effectively. For example, no information was provided on the identification and management of false-positives, a problem that often comes up in an effective system. Moreover, it falls to the police and AGDA to check whether targeted financial sanctions are observed, and checks are made only in the case of a suspected violation (no checks will have taken place). Checks for DNFBPs were not confirmed in this area. It is not possible to decide with certainty why assets frozen under the UNSCR have a low value: the system may be ineffective, or there may be little PF in Belgium.

4.42. **In practice, the amount of frozen funds is rather low** (less than EUR 500 000 for a half dozen accounts). All of these freezing measures concern Iran (there were none for DPRK) for entities designated by the UN or the EU. There was no request for authorisation to access these accounts which were not used in practice.

4.43. Belgium is implementing additional measures in order to prevent proliferation financing and to frustrate attempts to circumvent targeted financial sanctions. Firstly, to ensure compliance with the measures decided by the UN and the EU Council, the National Security Service carries out activities to raise awareness among private businesses and operators. The CTIF also included in its December 2013 Guidelines (for institutions and persons covered by the law) guidance on reporting suspected PF in relation to Iran and the DPRK.⁴

4.44. A prior authorisation from FPS Finance (Treasury Administration) is required to carry out certain transactions (exceeding different thresholds depending on the country concerned) with persons or entities associated with the targeted countries. FPS Finance has processed about 2 500 authorisation requests for

3 According to the statistics on Belgian foreign trade published by the BNB, Belgium exported goods to Iran with a total value (in EUR) of: 271 million in 2009, 369 million in 2010, 364 million in 2011, 198 million in 2012 and 141 million in 2013. Imports from Iran amounted to 86 million in 2009, 104 million in 2010, 89 million in 2011, 21 million in 2012 and 13 million in 2013. There are no exports to or imports from the DPRK.

4 CTIF/CFI (2013), p.25 et s.

Iran, and only around ten have been refused. The Belgian authorities consider that the rate is low because those asking are well informed, and anticipate possible refusals. The Belgian authorities indicated that when FPS Finance gives an authorisation, it informs the UN Security Council as to whether or not the European transposition has taken place. There is also a system for **reporting** particular transactions (for instance, any transaction with Iran over EUR 10 000). Representatives from the financial sector indicated that it was proving difficult to apply enhanced due diligence to the rules on embargoes because the measures were complex and some points required interpretation; and that they would welcome more information. Nevertheless, several STRs dating from 2010 were mentioned, as was a recent CTIF file, which could not be discussed because no decision has yet been made to send it to the judicial authorities. In all, the CTIF has sent several PF-related files to the judicial authorities.

4.45. The State Security Service (SE) and military intelligence (SGRS) play the leading role in countering PF, although the work of FPS Finance and the AGDA should not be understated. The assessors noted the **good co-operation** and co-ordination knowledge of the authorities responsible for combatting this activity, at all levels (regional and federal), and PF is integrated into combatting proliferation. These services also collaborate closely with their foreign counterparts in particular cases (cf. IO 1, chap. 2.3.e).

4.46. **In conclusion**, the Belgian legal system, in conjunction with that of the EU, enables the implementation of UNSCRs relating to targeted financial sanctions to combat PF, but the transposition time scales we observed have a negative impact on the system's effectiveness. Information should be disseminated rapidly, and beyond major financial businesses, even before transposition into European and thus Belgian law; training is needed for all sectors covered by the AML/CFT Law. Checks have not been implemented effectively as to whether obligations relating to targeted financial sanctions for PF are being observed. The actions undertaken to frustrate attempts to circumvent the sanctions regime show that the various competent authorities have the expertise and are knowledgeable in the relevant areas, although it is regrettable that the financial aspect of proliferation is not more emphasised.

4.47. **Belgium has achieved a moderate level of effectiveness for Immediate Outcome 11.**

4.6 Recommendations on terrorist financing and proliferation financing

Investigating and prosecuting terrorist financing (Immediate Outcome 9)

- Belgium should consider allocating more resources, both human and IT, to the services responsible for countering terrorism and its financing, to enable a more proactive approach.
- The Belgian investigation and prosecution authorities should regularly reassess their approach to TF as an offence incidental to terrorism, based on changes in patterns of risk; and continue systematically to analyse the financial aspect of terrorist cases.
- Belgium should update its analysis of TF risks and deepen the risk analysis completed in February 2014: it should contain a more detailed profile of risks and strategy for TF.

Targeted financial sanctions on terrorist financing (Immediate Outcome 10)

- Belgium should implement the RD of 28 December 2006 in order to temporarily freeze the assets of persons designated under UNSCR 1267, while waiting for UN decisions to be transposed into decisions of the EU Council.
- Belgium should plan to fully implement the system for freezing assets at national level by publishing a list of designated names in the context of the RD of 28 December 2006.
- Belgium should ensure that DNFBDs are more aware both of the difference between the lists of high-risk countries and the lists of persons and organisations that are subject to targeted financial sanctions; and of the measures to adopt in the presence of customers appearing on these lists.

- Belgium should take action to raise NPOs' awareness of possible misuse of their organisations for TF purposes, and the enforcement authorities should periodically monitor NPOs which are reasonably suspected of TF.

Targeted financial sanctions on the financing of proliferation (Immediate Outcome 11)

- Belgium should enable targeted financial sanctions relating to PF to be implemented *without delay*, as required by the FATF Recommendations. Belgium should establish a system enabling assets of persons designated under UNSCRs 1718 and 1737 to be frozen temporarily, while waiting for UN decisions to be transposed into decisions of the EU Council.
- Belgium should enhance the mechanisms for informing the financial sector and the DNFBPs of targeted financial sanctions related to PF, to ensure that all players fully understand their obligations.
- Belgium should implement controls checking compliance with the obligations relating to targeted financial sanctions for PF.

4

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4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Recommendation 5 – Terrorist financing offence

a4.1. In 2005 Belgium was judged to be compliant with the FATF standard on the criminalisation of TF (formerly SR II). Belgian law has not undergone any substantial modifications since.

a4.2. **Criterion 5.1** – TF is addressed in Art. 140 Para. 1 and 141 PC (unchanged since their introduction in 2004). Belgian positive law does not, as a general rule, regard TF as a principal offence. Art.140 considers TF to be an instance of participating in an activity by a terrorist group, defined as providing information or material resources to the terrorist group, or as any form of financing of an activity by a terrorist group, with the knowledge that this contribution will assist the terrorist group in committing a crime (*crime ou délit*) (in Belgium or somewhere else). As for a terrorist group, it is defined (Art. 139 PC) as a structured association of more than two people established over time, and which acts in a unified way with the intention of committing terrorist acts as defined in Art.137 PC which contains the offences mentioned in Art. 2(1) b) of the UN Convention for the Suppression of the Financing of Terrorism (TF Convention).

a4.3. Art.141 PC criminalises any person who, outside of those cases spelled out in Art.140 PC, provides material resources, including financial assistance, with the intention of committing a terrorist act as described in Art.137 PC.

a4.4. **Criterion 5.2** – The intent and material elements of TF offences are largely addressed:

- *Intent*. This element is established by the fact that the author should have known that the funds or any material resources would be used for this purpose.
- *Providing or collecting funds directly or indirectly*. Art.140 PC criminalises providing material resources or any form of financing to terrorist group activity. Art.141 PC punishes the provision of material resources, including financial assistance. None of these concepts is defined in the law. The law does not introduce any restriction, namely funds do not have to be provided directly to constitute an offence.
- *Providing or collecting funds used with the intention of committing one or several terrorist acts*. Art.140 PC stipulates that the criminalised act must contribute to the commission of a crime (*crime ou délit*) by the terrorist group, whether or not it is qualified as a terrorist act. Art.141 PC criminalises the provision of financial assistance with the intention of committing a terrorist act.
- *Providing or collecting funds used by a terrorist organisation or by an individual* (even if there is no connection to any specific terrorist act(s)). Collecting or providing funds to one or two terrorists without a connection to any specific terrorist act(s) is not criminalised in Belgium. However, the authorities indicate that measures in the PC make it possible to prosecute and punish both the act of financing a terrorist group (Art. 140 Para. 1 PC) and the act of financing a terrorist acting alone (Art. 141 PC). Providing funds to an individual, although not specifically stipulated, would fall under the category of acts not covered by Art.140 but covered by Art.141. Jurisprudence confirms that assistance to a terrorist group in the absence of a link to a specific terrorist act is punishable, as long as the person who provides this assistance “has knowledge of the terrorist aspiration of the group” (Brussels court 25/06/2012, Brussels Court of appeal 1/12/2010).

a4.5. **Criterion 5.3** – Art.140 PC criminalises providing material resources or any form of financing to terrorist group activity. Art.141 PC punishes the provision of material resources, including financial assistance. None of these concepts is defined in the law, but they seem sufficiently broad to cover all types of funds of illicit origin or otherwise.

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a4.6. **Criterion 5.4** – The law does not require *in theory* that the funds be used to commit the TF offence. The authorities indicate that it is not necessary to have committed or to have planned to commit a terrorist offence as defined in Art.137 PC for an offence to have occurred. With regard to the specificity of the terrorist acts financed, as inducted under Criterion 5.2, Art.140 does not require *in theory* that the funds be linked to a particular terrorist act, whereas Art.141 seems linked to a specific act. The authorities, however, indicate that the offences set forth in the PC make it possible to go after persons who provide to the terrorist organisation or to a terrorist acting alone, any assistance, notably financial, without which no terrorist act would be possible. This is why there is a specific punishment applicable to persons who ‘aid’ a terrorist organisation without knowing in advance which specific terrorist act will or will not be committed. This interpretation has not been confirmed (or overturned) by jurisprudence concerning assistance to terrorists not acting within a terrorist group.

a4.7. **Criterion 5.5** – Belgian law recognises the principle of freedom of evidence. According to consistent jurisprudence from the Court of Cassation, except where the law stipulates a particular mode of proof or limits the conclusive force of a piece of evidence, the judge may base his or her beliefs on all properly obtained elements which the parties were able to freely dispute. Thus it is possible for the intent of the TF offence to be inferred from objective factual circumstances.

a4.8. **Criterion 5.6** – The sanctions applied to the offences described in Art. 140 to 141 PC are 5 to 10 years of imprisonment and a fine of EUR 600 to EUR 30 000.¹ Accomplices to an offence are sentenced to the sanction immediately below, in compliance with Art. 80 and 81 PC. While the imprisonment fines seem to be proportionate and dissuasive, the pecuniary penalties which are capped at EUR 30 000 do not seem dissuasive.

a4.9. **Criterion 5.7** – The criminal liability of legal persons called for in Art.5 PC applies to the TF offence. The criminal sanctions applicable to legal persons are: a fine, special confiscation, dissolution, prohibition from conducting business relating to the corporate purpose, the closure of one or several sites, the publication or dissemination of the decision (Art. 7a PC). The fines applicable to legal persons range from EUR 180 000 to EUR 1 440 000 (Art. 140 Para. 1 and 141 PC). The range of applicable sanctions seems relatively broad and the sanctions available seem sufficiently dissuasive.

a4.10. **Criterion 5.8** – As a separate offence, TF is subject to the rules in the PC that criminalise attempts (article 51). The acts of complicity listed in Art.2(5) of the TF Convention are also covered by Belgian law (Art. 66 and 67 PC on co-accomplices).

a4.11. **Criterion 5.9** – In Belgium, TF offences constitute ML predicate offences because Art.505 PC refers to the material benefits derived from any offence.

a4.12. **Criterion 5.10** – Beyond traditional territorial jurisdiction, Belgian law provides for active personality jurisdiction (*compétence personnelle active*) with regard to terrorist offences: the law applies to all persons of Belgian nationality as well as to persons whose primary residence is in Belgium (Art. 6 and 12 PC). Belgium has also stipulated its jurisdiction over terrorist offences committed abroad by non-Belgians, but only when these offences are committed against a Belgian national or Belgian institution or an institution of the EU (Art. 10b and 12 CCP).

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Weighting and conclusion

a4.13. Collecting or providing funds to one or two people does not seem to be covered by the TF offence if the connection to a specific terrorist offence cannot be established (C.5.2). Furthermore, the maximum pecuniary penalty of EUR 30 000 does not seem dissuasive (C.5.6). **Belgium is largely compliant with R 5.**

¹ Legal indexed value (see note at R.3).

Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing

a4.14. In 2005 Belgium was deemed to be partially compliant with FATF standard pertaining to targeted financial sanctions related to terrorism (formerly SR III). Indeed, the definitions of funds or other property to be frozen or confiscated that appear in the European regulations (which are self-executing in Belgium) did not cover all the definitions set forth by the Security Council or FATF. Moreover, pursuant to UNSCR 1373(2001), Belgium did not have the power to freeze funds or other property belonging to an entity or person whose entry on the list created by Regulation 2580/2001 had not been decided at the EU level or when the terrorists in question were citizens of the EU (MER 2005, Para.161 to 197). Since then, the last two points were resolved by the RD of 26 December 2006 (confirmed by the Law of 25 April 2007). UNSCR 1267, split in 2011, is now covered by two European regulations: Regulation 881/2002 on Al-Qaida and Regulation 753/2011 on Afghanistan.

a4.15. **Criterion 6.1 in relation to designations pursuant to UNSCR 1267 (1988 and 1989).**

- a. With regard to authorities that are competent to propose persons for designation to the UN Committees, all the agencies represented in the Ministerial Committee for Intelligence and Security have the ability to propose the examination of a designation or de-listing request through the Ministerial Committee for Intelligence and Security, notably on the basis of assessments by OCAM. The final decision is taken at the political level (Council of Ministers) and all communication with the Security Council is conducted through the permanent mission of Belgium to the UN.
- b. All the agencies represented in the Ministerial Committee for Intelligence and Security can identify targets for designation and propose them for examination by the CRS based on their respective competencies and on the rules that govern each agency (e.g. OCAM is competent for acts that may threaten Belgian interests). Several OCAM confidential circulars organise the co-ordination and exchange of information between the relevant competent authorities. It has not been proved that the UNSCR 1373 criteria are followed in all cases.
- c. The standard of proof by which the competent Belgian authorities decide on designation are not known. However, proposals for designation in Belgium are not conditional upon the existence of a criminal proceeding, in keeping with the standard.
- d. As Belgium has not made a proposal for designation since December 2002, it has not had to put into practice the procedures and standard forms for listing adopted by the 1267/1989 Committee or 1988 Committee or the revised rules concerning the reasons for listing, statement of case, etc. Thus the matter is not relevant.
- e. In 2003, based on information conveyed by the Belgian government, the names of two natural persons were added to the lists in annex of the Security Council Resolution (23 January 2003; see MER 2005, Para. 166-167). As the Belgian government has not submitted any proposal for designation since 2002, the level of detail in the proposals is not relevant.

a4.16. **Criterion 6.2 in relation to designations pursuant to UNSCR 1373** (measures at the European level and at the national level are applicable).

- a. At the European level, the EU Council is responsible for proposing the designation of persons or entities (Regulation 2580/2001 and Common Position 2001/931/CFSP). At the national level, the Ministerial Committee for Intelligence and Security is responsible for proposing freeze measures to the Council of Ministers (RD of 28 December 2006). The proposals are submitted to the Council via the permanent mission of Belgium to the UN.

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- b. The mechanisms described in conjunction with Criterion 6.1(b) also apply to designations relating to UNSCR 1373.
- c. Concerning requests received, the verification of their reasonable basis is handled at the European level by the 'Common Position 2001/931/CFSP on the application of specific measures to combat terrorism' Group (CP 931 Working Party) at the EU Council which examines and evaluates the information to determine whether it meets the criteria set forth in UNSCR 1373.² At the national level, the RD does not make explicit arrangements for the verification of designation requests received, but the Belgian authorities indicate that the requests can be submitted to FPS Foreign Affairs which will send it to the Ministerial Committee for Intelligence and Security (for application of the procedure set forth in Art.3 of the RD of 26 December 2006).
- d. The CP 931 Working Party assesses whether the request is sufficiently substantiated, namely that it is founded on accurate information that establishes that the person or entity meets the designation criteria set forth in Art.1 Para. 2 and 4 of the Common Position 2001/931/CFSP and takes a decision based on reliable and credible evidence without it being conditional on the existence of an investigation or conviction (therefore based on 'reasonable grounds'). At the national level, no rule addresses the standard of proof.
- e. At the European level, there is no formal mechanism that allows for asking non-EU member countries to give effect to the EU list. In practice, some countries (notably those in the process of becoming EU members) are invited to abide by all new CFSP decisions. It is the President of the Council (the Member State that chairs most of the meetings of the Council, including those of the CP 931 Working Party) that contacts the country through the Secretariat of the Council. All designations must be sufficiently substantiated to identify the person to be designated and exclude those having similar or similar-sounding names (Art. 1(5), 2001/931/CFSP). At the national level, there is no formalised procedure under which Belgium could ask another country, including the EU countries, to give effect to freezing measures undertaken in Belgium.

a4.17. **Criterion 6.3:**

- a. The competent authorities have powers and mechanisms enabling them to identify persons or entities that might meet the criteria for designation. At the national level, the Law of 10 July 2006 relating to threat analysis stipulates that OCAM support services are required (subject to criminal sanctions) to convey to it, at their own initiative or upon request, all pertinent information (and must also assign experts to it). At the European level, all the EU Member States are required to share with one another all the pertinent information in their possession in application of the European regulation on the freezing of assets. They must work together by mutual agreement, through police and legal co-operation mechanisms in criminal matters, to achieve the most extensive level of assistance possible to prevent and combat terrorist acts.³
- b. The designations must take place 'without prior notice' ('ex parte') being given to the person or entity identified⁴. The authorities indicate that the designation that was executed in 2002

2 All the Council CP working parties are comprised of representatives of the governments of Member Countries. The criteria set forth in Common Position 2001/931/CFSP are compliant with those stipulated in UNSCR 1373.

3 Reg. 881/2002 Art. 8; Reg. 754/2011, Art. 9; 2580/2001, Art. 8; and CP 2001/931/CFSP, Art. 4.

4 Reg.1286/2009 Para. 5 of the Preamble and Art. 7a(1).

occurred without prior notice. The Court of Justice of the EU confirmed the exception to the general rule of prior notice of decisions so as to avoid compromising the effectiveness of the freezing measure.

a4.18. **Criterion 6.4** – Targeted financial sanctions are not implemented ‘*without delay*’, which is not compliant with UNSCR 1988 and 1989. A significant delay between the date of designation by the UN and the date of its transposition into European law⁵ arises systematically because of the time needed for consultation between the various competent agencies at the European level and for the translation of the designation into all the EU languages. In 2013, these delays in transposition ranged from 7 to 29 days for the transposition of UNSCR 1989 and from 7 days to 3.5 months for the re-transcription into European law of UNSCR 1988.⁶ A new designation is considered urgent and will therefore be processed faster, while other changes (e.g. de-listing) are considered less urgent and can thus be transposed less quickly. The national freezing measures do not contain any explicit obligation to implement the freeze ‘*without delay*’ and have never been used to compensate for delays incurred at the European level. Conversely, targeted financial sanctions, in application of UNSCR 1373, are implemented by Council regulations (taken in application of Regulation 2580/2001) that are implemented immediately and directly in Belgian law. As a result, these sanctions are implemented ‘*without delay*’. Similarly, freezing measures decided at the national level are to be implemented immediately from the day they are published in the Belgian Official Journal.

a4.19. **Criterion 6.5** – Belgium has the following powers and mechanisms to ensure the implementation of targeted financial sanctions:

- a. Pursuant to UNSCR 1988 and 1989, European regulations establish the obligation to freeze all the funds and economic resources belonging to a person or entity designated on the European list.⁷ It is apparent, however, that because of significant delays in the transposition of UN designations (see C.6.4), freezes are not implemented ‘*without delay*’, and this delay can result in de facto prior notice to the persons or entities in question. For designations under UNSCR 1373, it should be noted that the regulations are self-executing in all Member States and that no prior notice is to be given to the designated persons or entities.⁸ EU nationals are not subject to the freezing measures set forth in Regulation 2580/2001. They are only subject to police and legal co-operation measures in criminal matters.⁹ Art.75 of the Treaty of Lisbon (2007) allows the freezing of assets of designated EU nationals, but the EU has not yet implemented this provision. To address this shortcoming, at the national level in Belgium, Art.2 of the RD of 28 December 2006 calls for the freezing of funds and economic resources owned by persons and entities targeted by the European regulation (including the EU nationals who are mentioned in it) and Art.3 applies to persons who are not targeted by the European mechanisms but would nevertheless be included in a list established by the Ministerial Committee for Intelligence and Security (at this time there no names on this list). Thus Belgium has implemented both sections of the second recommendation made in the

5 Regulations 881/2002 for designation pursuant to UNSCR 1988 and 753/2011 pursuant to UNSCR 1989.

6 During the third cycle of mutual evaluations, these delays ranged from 10 to 60 days.

7 Regulations 881/2002 Art. 2 (1), 1286/2009, Art. 1 (2), 753/2011, Art. 3, and 754/2011, Art. 1.

8 Reg.2580/2001, Art. 2 (1) (a).

9 EU nationals are persons whose origins, primary activities and objectives are in the EU. Art. 4 of CP 2001/931/CFSP and the footnote on page 1 of the Annex.

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2005 report. Persons who do not abide by the freezing measures set forth in the European regulations are subject to sanctions at the Belgian level.¹⁰

- b. Pursuant to UNSCR 1988 and 1989, the freezing obligation extends to all the funds or other assets defined in R 6, namely funds owned by designated persons (natural or legal) as well as funds controlled by them or by persons acting on their behalf or on their orders. These aspects are covered by the notion of 'control' in Regulations 881/2002 Art. (2), and 753/2011 Art. 3. With regard to UNSCR 1373, the freezing obligation under Regulation 2580/2001, Art. 2(1)(b) and under the RD of 28 December 2006 is not extensive enough.
- c. At the European level and in compliance with the UNSCR, the regulations prohibit EU nationals and all other persons or entities present in the EU from making funds or other economic resources available to designated persons or entities.¹¹ At the national level, the RD of 28 December 2006 prohibits making funds or economic resources available to persons or entities listed at the European level or in Belgium, in compliance with the obligations of R 6.
- d. Designation decided at the European level are published in the Official Journal of the EU. No other communication mechanism (of a more proactive nature) is in place (such as sending automatic notifications to financial institutions and non-financial professions). At the national level, the Belgian Federation for the Financial Sector (Febelfin) sends circulars to its members whenever a new embargo is announced (see <https://www.febelfin.be/fr/embargos>), a list that is referenced in a 2011 CBFA circular.¹² Moreover, FPS Finance and FPS Foreign Affairs dedicate a page on their web sites to the topic of financial embargos. On 18 May 2009, FPS Finance published in the Official Journal a notice to affected persons to remind them of their obligations; this notice was reprinted in a message from the CBFA to its members in July 2009. The web site of the CTIF has a page dedicated to the topic of freezes and addresses the matter of suspicious activity reports related to the application of measures to freeze terrorist assets in its Guidelines. Finally, certain non-financial professional associations tell their members about changes made to the lists.
- e. The natural and legal persons targeted by the European regulations must immediately provide all information that can foster compliance with relevant regulations to the competent authorities of the Member States in which they reside or are present, as well as to the Commission, either directly or through these competent authorities.¹³ The RD of 28 December 2006 establishes an equivalent obligation, namely to submit this information to FPS Finance, Treasury Administration (Art. 8).
- f. The rights of bona fide third parties are protected at the European and Belgian levels.¹⁴

a4.20. **Criterion 6.6** – Procedures published in the EU and Belgian Official Journals organise the de-listing and unfreezing of funds of persons and entities who no longer meet the criteria for designation.

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10 Regulations 753/2011 Art. 12, 881/2002 Art. 10, 2580/2001 Art. 9, and Law of 11 May 1995 Art. 4 (see MER 2005 Para. 189).

11 Regulations 881/2002 Art. 2(2), 753/2011 Art. 4, and 2580 Art. 2(1).

12 PF, April 2010, amended in March 2011.

13 Regulations 881/2002, Art. 5.1 and 2580/2001, Art. 4.

14 Regulations 881/2002 Art. 6; 753/2011 Art. 7; 2580/2001 Art. 4; and RD of 28 December 2006, Art. 8.

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- a. De-listing requests are co-ordinated by the FPS Foreign Affairs and its representative at the UN or via the European Commission.
- b. Pursuant to UNSCR 1373, the Council revises the list at regular intervals (CFSP Art. 6); modifications to the list under Regulation 2580/2001 are self-executing. At the national level, Art.5 of the RD of 28 December 2006 establishes a procedure for requesting removal from the Belgian list. Each request for review must be submitted to the Minister of Finance, who forwards the request without delay to the Ministerial Committee for Intelligence and Security for examination within 30 days. During examination, the Ministerial Committee for Intelligence and Security can ask OCAM to update its assessment. The ministerial committee then sends a proposal to de-list or to maintain a name or to add information for approval by the Council of Ministers.
- c. Pursuant to UNSCR 1373, it is possible to review a designation decision before a court or an independent competent authority in application of Art.263 line 4 of the Treaty on the Functioning of the EU. At the national level, ordinary law applies: the designation decision is an administrative decision that can be challenged before Belgian courts.
- d. and e. For designations pursuant to UNSCR 1988 and 1989, designated persons and entities are notified of their designation and the reasons, as well as its legal consequences; they have the right to request a review of the designation in court. At the European level, there are procedures that provide for de-listing names, unfreezing funds and reviews of designation decisions by the Council of the EU. Thus this review can be brought before the UN Ombudsman & Mediation Service for the examination of de-listing requests, in compliance with UNSCR 1988, 1989 and 2083, or, where applicable, before the focal point created by UNSCR 1730 pursuant to UNSCR 1988. Belgium can also submit de-listing requests to UN entities.
- f. The procedures described in sub-criteria (a) to (e) apply to the unfreezing of funds or other assets of persons or entities whose name is the same as or similar to that of designated persons or entities who are inadvertently affected by a freeze mechanism. The Belgian authorities indicate that following the identification procedure executed in conjunction with the police and National Security resources, the Treasury can authorise the unfreezing of funds or economic assets relating to a false positive.
- g. De-listing and unfreezing decisions taken in accordance with European regulations are published in the Official Journal of the EU and the updated list of designated persons and entities is published on a dedicated site. Decisions for removal from the Belgian list and to unfreeze are published in the Belgian Official Journal (but the matter is a hypothetical one given that there are no names on the Belgian list and existing instructions do not mention them).

a4.21. **Criterion 6.7** – At both the European and national levels, there are procedures in place to authorise access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of expenses, or for extraordinary expenses.¹⁵

Weighting and conclusion

a4.22. The ability to ensure asset freezing ‘without delay’ is the fundamental difference that distinguishes targeted financial sanctions from seizure measures arising from an ordinary criminal proceeding. Consequently, the shortcomings described for criteria 6.2(e), 6.4 and 6.5a are especially important.

Belgium is partially compliant with R 6.

¹⁵ Regulations 881/2001, Art. 2a, 753/2011, 2580/2001, Art. 5-6), and RD of 28 December 2006, Art. 6.

Recommendation 7 – Targeted financial sanctions related to proliferation

a4.23. The obligations pertaining to R 7 were introduced when the FATF standards were revised in 2012 and therefore were not included in the 2005 evaluation of Belgium. Belgium primarily relies on European legislation for the implementation of R 7. UNSCR 1718 concerning the Democratic People’s Republic of Korea is transposed into European law by Regulation 329/2007, and Council decisions 2013/183/CFSP and 2010/413. UNSCR 1737 concerning the Islamic Republic of Iran is transposed into European law by Regulation 267/2012.

a4.24. **Criterion 7.1** – R 7 requires the implementation of targeted financial sanctions “without delay”, meaning in this context, ‘ideally, within a few hours’. Although European regulations are implemented immediately in all EU Member States upon the publication of decisions in the Official Journal of the EU, there are delays in the transposition into European law of UN decisions (a detailed analysis of these delays appears in R 6). However, the problem is alleviated in the case of targeted sanctions relating to proliferation, because UN designation are rare and the EU applies sanctions to a large number of entities that are not concerned by a UN designation. Moreover, the European procedure for prior authorisation of transactions with Iranian entities also allows authorities to refuse authorisation for any transactions with entities designated by the UN but not yet designated at the European level.

a4.25. **Criterion 7.2** – The Treasury Administration within FPS Finance is the competent national authority in charge of implementing and enforcing targeted financial sanctions.

- a. European regulations are applicable to all natural persons who are EU citizens and to all legal persons established or formed under the law of a Member State or associated with a commercial transaction carried out in the EU (Regulation 267/2012, Art. 49 and Regulation 329/2007, Art. 16). The freezing obligation is activated upon publication of the regulations in the Official Journal of the EU. The delays in transposition described above raise the question of compliance with the obligation to execute freezing measures ‘without prior notice’, which deprives the European regulations of any surprise effect.
- b. The freezing obligation applies to all types of funds.
- c. The regulations prohibit making available, directly or indirectly, funds or economic resources to designated persons or entities or for their benefit, unless otherwise authorised or notified in compliance with the relevant UN resolutions (Regulation 329/2007 Art. 6.4 and Regulation 267/2012 Art. 23.3).
- d. The lists of designated persons and entities are communicated to financial institutions and DNFBPs through the publication of a consolidated list on the EU site at: http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf. The EU also published EU Best Practices for the effective implementation of restrictive measures.¹⁶ In 2009, the Treasury Administration published a notice in the Belgian Official Journal to reiterate obligations relating to the enforcement of restrictive measures (see R 6). The CTIF mentions the obligations relating to R 7 on its web site and in its Guidelines and regularly publishes on its web site warnings about certain sensitive regions or persons affected by embargos. FPS Foreign Affairs also provides a dedicated page on sanctions, including a Manual on Trade with Iran for businesses.¹⁷ The authorities indicate that the Belgian Federation for the Financial Sector sends circulars to its members whenever a new embargo is issued and reminds them of their notification obligations (<https://www.febelfin.be/fr/embargos>). This site provides a chronological inventory of European freezing decisions by country or topic. Information about the updated

16 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011679%202007%20INIT>.

17 http://diplomatie.belgium.be/fr/politique/themes_politiques/paix_et_securite/sanctions/.

lists can also be communicated to professionals via professional associations (as may be the case for the accounting/tax and legal professions), but these practices do not seem to be harmonised or systematic.

- e. The natural and legal persons targeted by the European regulations must immediately provide all information that will facilitate observance of the EU regulations, including information about the frozen accounts and amounts (Regulation 329/2007, Art. 10 and Regulation 267/2012, Art.40). In addition, the European regulations ask financial institutions, in the framework of their dealings with banks and financial institutions domiciled in Iran, as well as with their branches and agencies abroad, that if they suspect or have good reason to suspect that funds are associated with financing the proliferation of sensitive nuclear activities or with the development of vectors for nuclear weapons, they should quickly report their suspicions to the FIU or to another competent authority designated by the Member State in question (Regulation 267/2012, Art. 32 and Regulation 329/2007, Art. 11a).
- f. The rights of bona fide third parties are protected (Regulation 329/2007, Art. 11 and Regulation 267/2012, Art. 42).

a4.26. **Criterion 7.3** – EU Member States are required to take all necessary measures to ensure that the EU regulations on this matter are implemented and to determine a system of effective, proportionate and dissuasive sanctions (Regulation 329/2007, Art. 14 and Regulation 267/2012, Art. 47). The Law of 13 May 2003 relating to the implementation of restrictive measures adopted by the EU Council against some States, persons and entities, stipulates that, without prejudice to the application of more severe sanctions, offences relating to the measures contained in the regulations on proliferation are punishable by imprisonment ranging from eight days to five years and by a fine of EUR 25 to EUR 25 000 (Art.6). Art.7 stipulates: ‘Without prejudice to the powers of judicial police officers and AGDA agents , agents commissioned for this purpose by the competent minister are tasked with investigating and prosecuting, even alone, violations of the measures taken under the present law’. No agents have been commissioned. Therefore the police and AGDA are solely responsible for investigating offences, but it is not established whether they have adopted measures to monitor compliance with the laws implementing the obligations created by R 7.

a4.27. The Belgian authorities indicate that because the AML/CFT Law does not explicitly address combatting PF, the sanctions set forth under Art.40 of the law could not be applied in the case of non-compliance that is specifically and exclusively related to the organisation and internal audit obligations meant to ensure compliance with European regulations on the proliferation of weapons of mass destruction. Nevertheless, in such a situation, because the same procedures and internal audits would have to simultaneously ensure compliance with the European regulations on the freezing of assets of terrorists and terrorist organisations, the financial institution in question would be automatically and simultaneously in violation of these obligations and could be sanctioned for that reason. Based on these legal considerations, the [CBFA circular](#) specifies that both the customer acceptance policy (point 5.1) and the due diligence requirements relating to business relationships (points 6.1.1 and 6.1.2) must enable financial institutions to ensure that they will satisfy their obligations with regard to financial embargos. The effectiveness of this mechanism still needs to be assessed (see MER) and the shortcomings in the monitoring and sanctions scheme that are identified in R 26, R 28 and R 35 are relevant in the context of R 7. Still, the application of sanctions for a single instance of the non-application of freezing decisions without systemic failure has not been established.

a4.28. **Criterion 7.4** – The European regulations establish measures and procedures for submitting de-listing requests in cases where the designated persons or entities do not meet or no longer meet the designation criteria.

- a. The EU Council communicates its designation decisions, including the grounds for inclusion, to the designated persons or entities who have the right to comment on them. If this is the case or if new substantial proof is presented, the Council must reconsider its decision. Individual de-listing requests must be processed upon receipt, in compliance with the applicable legal instrument and EU Best Practices for the effective implementation of restrictive measures. Designated persons or entities are notified of the Council decision

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and can use this information to support a de-listing request filed with the UN (notably via the Focal Point established pursuant to UNSCR 1730/2006). When the UN decides to de-list a person, the Commission modifies the lists in the annexes of the European regulations without the person in question having to request it (Regulation 329/2007, Art. 13.1 (d) and (e) and Regulation 267/2012, Art. 46). The listed persons or entities can file an appeal with the European Court of Justice to challenge the decision to add them to the list.

- b. There is a procedure by which financial institutions notify the Treasury as soon as they observe the name of one of their customers on the list. The procedure involving the Treasury is a procedure for identity verification and information exchange with the police and National Security. It is not certain that these procedures are publicly known.

a4.29. **Criterion 7.5:**

- a. The European regulations permit the payment to the frozen accounts of interests or other sums due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that these amounts are also subject to freezing measures (Regulation 329/2007, Art. 9 and Regulation 267/2012, Art. 29).
- b. Furthermore, concerning freezing measures taken pursuant to UNSCR 1737, special provisions authorise the payment of sums due under a contract entered into prior to the designation of such person or entity, provided that this payment does not contribute to an activity prohibited by the regulation (and *de facto* the Resolution), and after prior notice is given to the UN Sanctions Committee (Regulation 267/2012, Art. 24 and 25).

Weighting and conclusion

a4.30. As for R 6, the ability to ensure asset freezing *without delay* is the element that distinguishes targeted financial sanctions from other measures relating to criminal proceedings. Therefore criteria 7.1 and 7.2 are fundamental components of R 7. **Belgium is partially compliant with R 7.**

Recommendation 8 – Non-profit organisations (NPOs)

a4.31. In 2005 Belgium was deemed to be compliant with the standard pertaining to NPOs (formerly SR VIII; Para. 747 and s. MER 2005). In Belgium, the non-profit organisation (NPO) sector as defined in the Recommendations *Glossary* includes: 1) public interest foundations and private foundations (see R 24), and non-profit associations (NPAs) that are groups of natural or legal persons pursuing altruistic goals and include international non-profit associations (INPAs).

a4.32. **Criterion 8.1** – Since 2004 Belgium has not conducted or updated an examination of its NPO sector with regard to AML/CFT and the potential abusive use of the sector for criminal purposes. Nevertheless, the assessment of the TF threat conducted in February 2014 provides some information about the vulnerability of certain types of NPOs in relation to TF. The CTIF also has information on this matter.

a4.33. **Criterion 8.2** – An initiative to educate the NPO sector about the problem of TF was carried out in the national press in September 2012 by the Minister of Justice. A newsletter meant to inform NPOs about this issue was disseminated. In the fight against TF, in 2005 the Federal Prosecutor's office opened a proactive investigation into a list of NPOs about which there were TF suspicions. No similar action has been carried out since that date. It would be advisable to conduct such initiatives on a more continuous and structured basis with entities from the NPO sector, notably those identified to be at higher risk.

a4.34. **Criterion 8.3** – The Law of 2 May 2002 which organises the NPO sector sets out elements to promote transparency (see C.8.4), notably the keeping of a file on each foundation and NPA/INPA that is maintained by the Commercial Court Registry. The larger NPAs, INPAs and foundations are subject to the

same accounting rules as commercial enterprises¹⁸ and the ‘smaller’ ones are subject to simplified accounting rules. All are subject to audits by the tax authorities. Furthermore, NPOs, regardless of their size, must request authorisation to receive donations and bequests in excess of EUR 100 000. The existing measures help to promote transparency regarding the functioning and management of NPOs and to encourage public confidence, but in a limited manner with regard to small NPOs.

a4.35. **Criterion 8.4** – The obligations described below apply to ‘large’ NPOs. NPOs are required to *a)* maintain information on the purpose and objectives of their stated activities and the identity of person(s) who direct their activities (senior officers and board members). This information is published in the Belgian Official Journal and submitted to the BCE and are therefore available to the public. Information about the identity of persons who control or own NPOs must be collected by financial and non-financial professions pursuant to their AML obligations (see *e*). *b)* The annual financial statements of ‘large’ associations and foundation are filed with the BNB. *c)* The NPOs are required to entrust one or several registered auditors with auditing their financial situation, annual financial statements and the conformity of their operations with laws and statutes. The registered auditor can refuse to certify the accounts or may do so with reservations when irregularities are observed. In the context of detecting ‘false NPOs’ that conduct *de facto* for-profit activities, an audit of the statutes of the activities actually carried out and of the accounts kept by the legal person can be conducted by the tax authorities. *d)* The creation of an NPO triggers the opening of a file with the Commercial Court (see C.8.3). The articles of association of these NPOs and changes to them are published in the Belgian Official Journal. *e)* The requirements of the AML Law regarding the identification of the effective beneficiaries of legal persons apply to NPOs (see C.10.10). *f)* NPOs, INPAs and foundation, regardless of their size, are required to retain accounting documents pertaining to their activities for a period of 7 years. These documents are available to the competent authorities. Nevertheless, the information gathered is not sufficient to guarantee that all the funds are duly accounted for and used in compliance with the stated purpose and objectives of the NPOs.

a4.36. **Criterion 8.5** – Under the Law of 2 May 2002, NPOs can be sanctioned with invalidity, non-allocation of donations (for the case of associations) or dissolution (notably in the event of non-compliance with the requirements to publish information in the Belgian Official Journal, including financial information). During its audits of NPOs, the tax auditor may report facts to the public prosecutor’s office and impose a range of criminal and administrative sanctions. It should be noted that the application of such sanctions does not exclude, where applicable, parallel civil or administrative procedures – which may include dissolution – or criminal procedures against NPOs or persons acting on their behalf. Because of their legal personality, NPOs are in particular criminally liable for offences they commit in pursuit of their corporate purpose or in promoting their interests or on their own behalf. The audits conducted by the Registry of the Commercial Court when an NPO is formed or over the course of its existence, as well as audits of its accounts by the BNB (see C.8.4.b) amount to purely formal audits of the information communicated and do not allow for the verification of whether the funds are used in accordance with the stated purpose and objectives of activities. National Security conducts investigations into INPAs and public interest foundations, but at the stage when they are created and register their legal personalities. The proportionate nature of sanctions applicable to NPOs is not entirely established. The quality and regularity of efforts to ensure NPOs fulfil their obligations are also not demonstrated.

a4.37. **Criterion 8.6** – (a) Mechanisms exist to promote co-operation, co-ordination and information sharing at the national level between the authorities that have relevant information on NPOs. This is notably the case between National Security, the Federal Police and the CTIF (see R 29). Nevertheless, these mechanisms do not seem entirely satisfactory to the extent that they are organised, for the most part, on an informal basis. *b)* The documents pertaining to NPOs held at the Registry of the Commercial Court and published in the Belgian Official Journal can be accessed quickly by the competent authorities in the framework of prevent actions or investigations. *c)* The mechanism for filing suspicious transaction reports (see R 20) can also help notify the authorities and open investigations, where applicable, into NPOs suspected of ML/TF. These same authorities

18 These categories are defined according to criteria pertaining to the number of employees, total revenue and balance sheet (BNB, nd).

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can exercise their investigation powers to access information about NPOs that is held by financial and non-financial institutions (see R 31).

a4.38. **Criterion 8.7** – Belgium uses the traditional procedures and mechanisms for international co-operation to respond to third country requests regarding Belgian NPOs or assets in Belgium suspected of financing terrorism. Belgium has not established any specific point(s) of contact – the CTIF and the public prosecutor’s office perform this role in practice – to respond to requests for international information, its 2012 awareness campaign having been limited to communicating a list of the Belgian authorities that can be contacted for any question relating to NPOs.

Weighting and conclusion

a4.39. The initiatives to raise awareness among NPOs about TF are insufficient, as are initiatives pertaining to the periodic reassessment of their TF vulnerability, which are key elements in the prevention of misuse in this exposed sector, as acknowledged by the overall risk assessment conducted at the national level. Furthermore, there are also shortcomings in the monitoring of NPO transparency, notably those at most risk. **Belgium is partially compliant with R 8.**

Bibliography

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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