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# CONFERENCE OF THE PARTIES

## Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)

# First Assessment Report of the Conference of the Parties to CETS No. 198 on Belgium[1]

[1] Adopted by the Conference of the Parties to the CETS No. 198 at its 8th meeting, Strasbourg, 25 – 26 October 2016

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## A. Background information and general information on the implementation of the Convention

1. Article 48 of Council of Europe Convention No. 198 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism establishes a mechanism for monitoring implementation of the Convention, the Conference of the Parties (COP).

2. The Convention came into force on 1 May 2008, when 6 instruments of ratification were deposited with the Secretary General of the Council of Europe, all of which were from member States of the Council of Europe.

3. The monitoring procedure under this Convention deals with areas covered by the Convention that are not covered by other relevant international standards on which mutual evaluations are carried out by MONEYVAL and the Financial Action Task Force (FATF). At its second meeting in April 2010, the COP adopted an evaluation questionnaire based on areas where the Convention "adds value" to the current international Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) standards.

4. The evaluation questionnaire was sent to the Belgian authorities in March 2014, and their replies, which were co-ordinated by the Belgian Federal Public Service for Justice, were returned in May 2014.

5. A training seminar for proposed rapporteurs took place in July 2015, following which three rapporteurs were selected to assess Belgium's implementation of the Convention.

6. The rapporteurs prepared a draft report as follows: Mr Miha Movrin (Slovenia) on new legal aspects relating to CETS 198, Ms Asya Khojoyan (Armenia) on issues relating to the functioning of the financial intelligence unit and Ms Simona Popa (Romania) on issues relating to mutual assistance in legal matters, assisted by the secretariat of the COP. The COP evaluation report is mainly based on a desk-based review of the Belgian replies to the questionnaire. Publicly-available information in evaluation reports or progress reports adopted by FATF has also been taken into account. This report is not intended to duplicate but rather to complement the work of other assessment bodies.

7. Belgium signed the Convention on 16 May 2005 and ratified it on 17 September 2009; it came into force in the country on 1 January 2010. Upon ratification, it filed two declarations, relating to Articles 33 and 46: the central authority and the financial intelligence unit (see Appendix I).[2]

8. The draft report was considered at a preliminary meeting in September 2016 and was presented to the COP for discussion in October 2016**.**

9. Belgium is a founder member of the Financial Action Task Force (FATF) and this body has carried out four evaluations of the country's compliance with its obligations in accordance with the FATF international anti-money laundering and terrorist financing (AML/CFT) standards. These reports are available on

[2] A list of declarations and reservations to CETS No. 198 is kept up-to-date on the website of the Treaty Office of the Council of Europe at http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/198/declarations.

the FATF Internet site. The most recent evaluation report was adopted in February 2015 and published in April 2015.

10. A non-exhaustive list of the relevant conclusions of the most recent FATF evaluation of the Belgian AML/CFT system at the time of the on-site evaluation visit (30 June – 15 July 2014) would include:

    - Belgium has the basic core elements needed to develop a solid AML/CFT regime. The legal framework technically complies in broad terms but still needs to be adapted to the revised FATF requirements of 2012.
    - The offence of money laundering is frequently prosecuted, notably in connection with economic offences that generate substantial profits because it facilitates confiscation of these funds (fraud, offences related to bankruptcy, benefit fraud and tax fraud).
    - Belgium is also a leader in confiscating property when its legal origin cannot be established, in which case the person can be convicted for money laundering without being convicted for the predicate offence that generated the funds.
    - It is rarer however that cases reveal structured money laundering systems involving third parties who offer their assistance in laundering proceeds from the offences.
    - The financial intelligence unit (CTIF) collects and analyses quality data on money laundering/TF activity and suspicious transactions. The CTIF needs to work more closely with the AML/ CFT supervisors and the businesses and professions covered by the system.
    - The CTIF and law enforcement authorities are competent and have all of the necessary investigative measures at their disposal; however, limited resources prevent them from pursuing all of the possible financial ramifications. Moreover, co-ordination between the various partners in the criminal justice system should be increased to improve detection and prosecution of money laundering.
    - Belgium's partners find the international co-operation it provides to be of good quality. This applied particularly to the area of combating TF and terrorism. In practice, the legal limitations that were found do not appear to have a major impact on the exchange of information.

## B. Measures to be taken at national level

## I. GENERAL PROVISIONS

### 1. Criminalisation of money laundering – Article 9 paragraphs 3, 4, 5, 6

The Convention is considered to offer added value in the following areas:

- The predicate offences to money laundering must, as a minimum, include the categories of offence in the Appendix to the Convention (which puts the FATF requirements on this issue into an international legal treaty [Article 9.4]).
- As to proof of predicate offence, paragraphs 5 and 6 establish new legally binding standards to facilitate the prevention of money laundering: clarification that a prior or simultaneous conviction for the predicate offence is not required [Article 9(5)], and that a prosecutor does not have to establish a specified predicate offence on a particular date [Article 9(6)].
- Suspicion and negligence (the latter of which was also included in ETS141) may be accepted as evidence of intention to commit money laundering [Article 9(3)].

***Description and analysis***

11. Money laundering is a criminal offence under Article 505 of the Criminal Code:

*Article 505 of the Criminal Code (*)*

*The following persons shall be punished by a term of imprisonment of from fifteen days to five years and a fine of from twenty-six to one hundred thousand francs, or just one of these penalties:*
*1. anyone who handles any property (or any part thereof) taken, misappropriated or obtained by means of a serious or lesser indictable offence;*
*2. anyone who has purchased, received in exchange or free of charge, possessed, kept or managed property specified in Article 42.3, when he was aware or should have been aware of the origin of this property at the start of these transactions;*
*3. anyone who has transformed or transferred property specified in Article 42.3, in order to conceal or disguise its unlawful origin or to assist anyone in the commission of the predicate offence to evade the legal consequences of his actions;*
*4. anyone who has concealed or disguised the nature, origin, location, allocation, movement or ownership of property specified in Article 42.3, when he was aware or should have been aware of the origin of this property at the start of these transactions. The offences specified in sub-paragraphs 1, 3 and 4 have been committed even if their perpetrator is also the perpetrator or joint perpetrator of or an accomplice in the predicate offence from which property specified in Article 42.3 derives.*

*The offences specified in sub-paragraphs 1, 3 and 4 have been committed even if their perpetrator is also the perpetrator or joint perpetrator of or an accomplice to the predicate offence from which property specified in Article*

*42.3 derives, when this offence has been committed abroad and cannot be prosecuted in Belgium.*
*Except in the case of the perpetrator or joint perpetrator of or an accomplice to the offence from which property specified in Article 42.3 derives, from a fiscal standpoint, the offences specified in sub-paragraphs 1, 3 and 4 only concern actions taken to commit serious tax evasion, whether or not organised.*
*The bodies and individuals specified in Articles 2, 2bis and 2ter of the Act of 11 January 1993 on prevention of the use of the financial system for the purpose of money laundering or terrorist financing (AML/CFT Act) may rely on the previous provision if, with regard to the offences it specifies, they have complied with their obligation under Section 28 of the Act of 11 January 1993, which lays down the arrangements for communicating information to the financial intelligence unit.*
*The property specified in sub-paragraph 1.1 of this section constitutes the object of the offence covered by this provision, within the meaning of Article 42.1, and will be confiscated, even if the property does not belong to the convicted person, though this penalty cannot be to the detriment of the rights of third parties over property that might be confiscated. The property specified in sub-paragraphs 1, 3. and 4., constitute the object of the offence covered by these provisions, within the meaning of Article 42.1, and will be confiscated from each of the perpetrators and joint perpetrators of and accomplices to these offences, though this penalty cannot be to the detriment of the rights of third parties over property that might be confiscated. If this property cannot be found in the convicted person's ownership, the court shall assess its monetary value and order the confiscation of an equivalent sum of money. In this case, however, the court may reduce this amount to avoid imposing an unreasonably heavy penalty on the convicted person.*
*The property specified in sub-paragraph 1.2 of this article constitutes the object of the offence covered by this provision, within the meaning of Article 42.1, and will be confiscated from each of the perpetrators and joint perpetrators of and accomplices to these offences, even if the property does not belong to the convicted person, though this penalty cannot be to the detriment of the rights of third parties over property that might be confiscated. If this property cannot be found in the convicted person's ownership, the court shall assess its monetary value and order the confiscation of a sum of money proportionate to the convicted person's participation in the offence.*

*Attempts to commit the offences specified in sections 2, 3 and 4. of this article shall be punishable by eight days' to three years' imprisonment and a fine of from twenty-six to fifty thousand francs, or just one of these penalties.*

*Persons found guilty under these provisions may also be prohibited from exercising certain rights, in accordance with Article 33.*

* Conversion to EUR: see the Act of 26 June 2000 on the introduction of the euro into the legislation concerning subjects specified in Article 78 of the Constitution.

12. The fourth FATF mutual evaluation cycle led to the adoption of the evaluation report on Belgium in April 2015. This report concluded that the criminalisation of money laundering was compatible with international standards, as defined in the Vienna and Palermo conventions. It also found that the offence

contained all the relevant material elements, as defined in the Warsaw Convention.

13. Moreover, Belgian legislation stipulates that all crimes (« crimes et délits ») may constitute predicate offences. Ownership is defined broadly, while Article 42 of the Criminal Code also authorises confiscation of the instrumentalities and proceeds of one or more offences. Confiscation may be ordered against each of the perpetrators and joint perpetrators of and accomplices to these offences, even if the property does not belong to the convicted person.

14. It can therefore be concluded that the definition of the offence of money laundering meets the requirements of the Convention.

**Article 9 (3) – *mens rea***

15. Article 9, paragraph 3 of the Convention reads: "*Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this article, in either or both of the following cases where the offender: (a) suspected that the property was proceeds, [or] (b) ought to have assumed that the property was proceeds".*

16. Belgian legislation has opted for a weaker mental element than that of the money laundering offence corresponding to paragraph 3(b). Thus, the offence of laundering applies to situations where the perpetrator was aware or should have been aware of the origin of the property in question. The Belgian authorities have provided an example of such a situation in one particular case (Cass., 21 June 2000, Pas., 2000, n.387; Ghent CA, 9 February 2012).

**Article 9 (4), (5), (6) – The predicate offence**

17. Belgium has not filed a declaration as provided for in Article 9(4) of the Convention. The definition of the offence of money laundering is based on a comprehensive approach in accordance with Article 505 of the Criminal Code, in conjunction with Article 42 sub-paragraph 3 of that Code.

18. All the categories of offences in the Appendix to the Convention are provided for in Belgian legislation and may therefore be considered to be predicate offences to money laundering.

19. It should be noted that Section 5 of the AML/CFT Law of 11 January 1993 includes a specific definition of money laundering for the application of preventive measures. The approach adopted in this area is more restrictive than that of the Criminal Code and money laundering is only considered from the standpoint of property originating in one of the offences listed in the same Act. However, this list does cover all the offences required by international standards and the Warsaw Convention.

**Article 9(5)**

20. Article 9, paragraph 5 of the Convention deals with a major problem concerning money laundering prosecutions, namely that of making a conviction for a predicate offence a prerequisite for a prosecution for money laundering. The Convention requires Parties to ensure that a conviction for money laundering is possible even in the absence of a prior or simultaneous

one for the predicate offence. This provision of the Convention makes it clear that the predicate offence, whether committed in the country or abroad, may be established on the basis of circumstantial or other evidence.

21. Belgium has stated that a conviction solely for laundering is possible, even in the absence of a prior or simultaneous conviction for the predicate offence. This matches the conclusions of the 4th FATF evaluation cycle, namely that prosecution of the money laundering offence is not dependent on a conviction for the predicate offence, nor on proof of the predicate offence and of all its constituting elements. However, the FATF report does note that it must be demonstrated that the proceeds were of illegal origin or that they could not have had a legal origin.

22. This conclusion has been borne out by an examination of judgments handed down by the higher civil courts[3] confirming that this provision is applied in practice. The summary account of one of these cases confirms that such practices are also publicly available[4]. The authorities have confirmed that there is a well-established case-law on the subject and that the Court of Cassation's interpretation has had a significant influence in practice.

**Article 9(6)**

23. Article 9, paragraph 6 requires states to ensure that a conviction for money laundering is possible whenever it is proved that the property originated from a predicate offence, without the need to establish precisely which offence. As stated in the explanatory report to the Convention, to facilitate the conduct of proceedings, the Convention's authors thought it important that those undertaking laundering prosecutions should not be required to establish all the factual elements of the predicate offence, if the illegal origin of the property in question could be established from circumstantial or other evidence.

24. Just as has been stated in connection with the analysis of the application of Article 9(3), it can be concluded from the case submitted by the Belgian authorities that a conviction for money laundering is possible if proof of the illegal origin of the property can be inferred from all the circumstances or at least from the fact that the property could not have been afforded from the accused person's official income. Thus, the unlawful origin of the property can be inferred from the fact that there is no credible reason to show that this origin could have been lawful.

***Effective implementation***

25. The financial intelligence unit, the CTIF, has analysed judgments handed down in cases where the unit had reported suspicions of ML/TF covering the period 2008–2012. The analysis shows that in 16% of the cases, the only conviction handed down by the court was for laundering, in 63% it was for laundering linked to one or more predicate offences, in fewer than 1% there was a conviction for terrorist financing and in 20% the convictions were for one or more predicate offences, but with no conviction for laundering.

[3] Cass., 25 September 2001, Pas., 2001, no. 493; Cass., 16 December 2009, Pas., 2009, no. 755; Cass., 12 June 2013, J.T., 2014, p.175 ff.

[4] http://jure.juridat.just.fgov.be/view_decision.html?justel=F-20130612-4&idxc_id=273910&lang=FR.

26. Belgium has produced the following table to demonstrate the effectiveness of the transposition of articles 9(5) and 9(6) of the Convention;

| Offences upheld by the court | Number of judgments in which there was a conviction | % |
|---|---|---|
| Laundering (category 1) | 104 | **16%** |
| Laundering in conjunction with one or more offences specified in the Act of 11/01/1993 (category 2) | 414 | **63%** |
| Terrorist financing (category 3) | 3 | **<1 %** |
| Absence of laundering (category 4) | 151 | **20%** |
| **Total** | **654** | **100%** |
| **%** | **100%** | |

27. The number of convictions for laundering is as follows:

**CTIF**

Between 1/01/2009 and 31/12/2013, **140** convictions were handed down in cases that were opened in response to referrals from the CTIF; **5** cases resulted in a settlement of the criminal proceedings and **107** cases were awaiting committal to the courts; **267** cases were still being investigated; in **16** cases the courts terminated the proceedings; **42** cases were referred to a foreign judicial authority. This represents a total of **577** out of **6 297** cases referred, or just under 9.2% of referrals over this five-year period.

**Breakdown of cases referred between 1/01/2009 and 31/12/2013 by judicial district and action taken by the judicial authorities**

| Parquet | Total | % | Cond.(1) | Renvoi | Instr. | Non Lieu | Transm. | Clas. | Info |
|---|---|---|---|---|---|---|---|---|---|
| Bruxelles | 2318 | 36,81% | 37 | 13 | 78 | 2 | 19 | 1229 | 940 |
| Anvers | 892 | 14,17% | 22 | 14 | 34 | 6 | | 566 | 250 |
| Gand | 300 | 4,76% | 12 | 13 | 5 | 1 | | 134 | 135 |
| Liège | 278 | 4,41% | 6 | 10 | 29 | | 2 | 108 | 123 |
| Charleroi | 269 | 4,27% | 1 | 2 | 14 | | 2 | 58 | 192 |
| Parquet Fédéral | 222 | 3,53% | 4 | 4 | 10 | 2 | 2 | 68 | 132 |
| Termonde | 208 | 3,30% | 4 | 6 | 13 | | | 76 | 109 |
| Hasselt | 179 | 2,84% | 7 | 5 | 3 | | | 126 | 38 |
| Turnhout | 166 | 2,64% | 4 | 4 | 7 | 1 | | 105 | 45 |
| Bruges | 165 | 2,62% | 8 | 7 | 10 | | 1 | 74 | 65 |
| Tongres | 162 | 2,57% | 8 | 5 | 11 | | | 71 | 67 |
| Mons | 155 | 2,46% | 1 | 1 | 8 | | | 40 | 105 |
| Courtrai | 138 | 2,19% | 7 | 2 | 2 | 2 | 4 | 64 | 57 |
| Louvain | 119 | 1,89% | 3 | 3 | 5 | | | 39 | 69 |
| Tournai | 113 | 1,79% | 4 | 4 | 7 | | 3 | 28 | 67 |
| Namur | 112 | 1,78% | 1 | 4 | 8 | | | 25 | 74 |
| Nivelles | 94 | 1,49% | | 1 | 3 | | | 20 | 70 |
| Malines | 85 | 1,35% | 1 | 2 | 3 | | | 9 | 70 |
| Audenarde | 58 | 0,92% | | | 1 | | | 31 | 26 |
| Verviers | 51 | 0,81% | 1 | 1 | 1 | | | 23 | 25 |
| Arlon | 43 | 0,68% | | | 1 | | 3 | 4 | 35 |
| Eupen | 33 | 0,52% | | | 1 | | 5 | 9 | 18 |
| Dinant | 29 | 0,46% | 1 | 1 | 4 | | | 9 | 14 |
| Huy | 27 | 0,43% | 1 | 2 | 2 | | | 10 | 12 |
| Furnes | 26 | 0,41% | 1 | 1 | 2 | | 1 | 10 | 11 |
| Ypres | 25 | 0,40% | 4 | 2 | | 2 | | 8 | 9 |
| Marche-en-Famenne | 16 | 0,25% | 1 | | 4 | | | 2 | 9 |
| Neufchâteau | 14 | 0,22% | 1 | | 1 | | | 4 | 8 |
| **Total** | **6.297** | **100** | **140** | **107** | **267** | **16** | **42** | **2.950** | **2.775** |

*Source*: CTIF

(1) Some of these judgments were the subject of appeals.
(2) In 635 cases, the CTIF had not yet been informed of the action taken by the prosecution authorities

In 5 cases, the accused and the prosecution authorities agreed a settlement of the criminal proceedings.

Key:
Parquet: Prosecution service district (names in French)
Cond.: Conviction
Renvoi: Committal to the criminal court
Instr.: Judicial investigation by an investigating judge under way
Non Lieu: Proceedings terminated by the investigating judge
Transm.: Case referred by the Belgian judicial authorities to foreign judicial authorities
Clas.: Prosecution authorities' decision to take no further action
Info.: Judicial investigation by the prosecution authorities under way

28. The COP rapporteurs took note that the FATF had also considered the effectiveness of money laundering prosecutions in its evaluation. The section on immediate outcome 7 (in accordance with FATF's 2013 methodology[5]) offers a detailed discussion on this specific issue (pages 55-63[6]), and reaches the general conclusion that Belgium has achieved a moderate level of effectiveness with regard to investigations and prosecutions of money laundering.

29. The FATF report made the following recommendations to improve the effectiveness of money laundering investigations and prosecutions:
    - Belgium should define a clear criminal justice policy that identifies the prosecution of money laundering as a priority, and should define the resources necessary for prosecuting and punishing money laundering commensurate with the main risks identified.
    - The prosecution authorities should have appropriate (human and material) resources and technical means (IT, databases) at their disposal for the effective criminal prosecution of money laundering.
    - Judges responsible for money laundering prosecutions should receive more thorough training on the subject and should set priorities so as to achieve greater effectiveness, so that perpetrators are successfully prosecuted and the proceeds of crime are confiscated. Particular emphasis should be placed on detection in the case of money laundering that could be related to cross-border transportation, precious metals and diamonds, and international or predominantly international money laundering cases.

### *Recommendations and comments*

30. In accordance with the case-law and the spirit of the law, prosecution of the offence of money laundering does not depend on a conviction for the predicate offence. However, the authorities are recommended to clarify the relevant legislation to confirm the established case-law.

[5] http://www.fatf-FATF.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf.
[6] http://www.fatf-FATF.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Belgium-2015.pdf.

31. The rapporteurs also underline the important recommendations made by FATF to improve the effectiveness of ML investigations and prosecutions (see paragraph 29); for this purposes the COP evaluation team considers that Belgium has demonstrated, to a satisfactory extent, implementation of Article 9 of the Convention is effective.

## 2. Corporate liability – Article 10, paragraphs 1 and 2

The Convention is considered to offer added value in the following areas:

- A certain form of liability of legal persons, which may be criminal, administrative or civil, has become a mandatory legal requirement when a natural person, acting individually, commits a criminal offence of money laundering for the benefit of the legal person, if the individual concerned has a leading position within the legal person (to limit the potential scope of the liability). The leading position can be assumed to exist in the three situations described in the provisions:

- Under Article 10, paragraph 1:

  *"Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:*
  *a. a power of representation of the legal person; or*
  *b. an authority to take decisions on behalf of the legal person; or*
  *c. an authority to exercise control within the legal person,*
  *as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences"*

- The Convention expressly covers lack of supervision.

### *Description and analysis*

32. The Convention calls for measures to ensure that legal persons can be held liable if three conditions are met. First, a laundering offence must have been committed. Second, the offence must have been committed on behalf of or in the name of the corporate entity. The third condition, which limits the scope of this form of liability, requires the individual concerned to be someone who "*has a leading position*" within the legal person. This "leading position" entails one of three conditions: power of representation of the legal person, or authority to take decisions on behalf of the legal person, or authority to exercise control within the legal person. If one of these conditions is met, an individual can incur the liability of a legal person.

33. Belgium recognises the principle of legal persons' criminal liability, in Article 5 of the Criminal Code:

    *Article 5*

*All legal persons shall be criminally liable for offences which are intrinsically linked to the achievement of their corporate purpose or the defence of their interests, or when there is tangible evidence that the offence was committed on their behalf.*
*When a legal person incurs liability solely because of action taken by an identified natural person, only the person who committed the most serious offence can be convicted. If the identified natural person knowingly and deliberately committed the offence, he or she may be convicted concurrently with the liable legal person.*
*The following shall be treated as legal persons:*
*1. temporary partnerships and undisclosed partnerships;*
*2. companies coming under Article 2, paragraph 3, of the co-ordinated legislation on commercial companies, and companies in the course of formation;*
*3. civil law partnerships that have not taken the form of a commercial partnership or company.*
*The following may not be considered to be criminally liable legal persons for the purposes of this article: the federal State, the regions, the communities, the provinces, the fire and civil protection zones and "pre-zones", the Brussels metropolitan area, the municipalities, joint and intra-municipal areas and entities, the French Community Commission, the Flemish Community Commission, Brussels emergency zones, the Joint Community Commission and the public social assistance centre*s.

**Article 10(1)**

34. As noted above, Belgian legislation makes legal persons criminally liable for offences:

    - which are intrinsically linked to the legal person's interest or its defence;
    - when there is tangible evidence that the offence was committed on its behalf.

35. The Convention requires states to establish legal persons' liability when the offence is committed "for their benefit".

36. As can be seen from the above provision, the Criminal Code does not offer a precise definition of how criminal acts are to be imputed to legal persons. According to the Belgian authorities, this is a matter for the courts' discretion, particularly with regard to whether legal persons' liability is incurred by the rules governing the powers granted to their various organs. At least one of the aforementioned three conditions in Article 5, paragraph 1 of the Criminal Code must be met for a legal person to be held criminally liable. This is to ensure that the legislation does not apply this principle of corporate criminal liability too strictly, particularly in cases where individuals with a relationship to a legal person have committed offences purely in their own personal interest and for their own benefit.

37. Article 10(1c) of the Convention, which refers to "an authority to exercise control within the legal person", also applies when the control is exercised under actual operating arrangements rather than explicit legal authority. Belgian legislation does not specify precisely which individuals or bodies might render legal persons criminally liable for their actions.

38. However, the courts have gradually established a non-exhaustive list of criteria to serve as a basis for attributing moral responsibility for an offence to the legal person charged, such as:
    - an offence committed by someone representing the legal person,
    - an offence ordered, directed or accepted by the legal person's *de facto* management,
    - negligence by the legal person, with a causal relationship to the offence: defective internal organisation, inadequate security rules, unreasonable financial constraints (or lack of measures to ensure compliance with social obligations).

**Article 10(2)**

39. The Belgian authorities cite Article 5 paragraph 2 of the Criminal Code as the legal basis for establishing the criminal liability of legal persons in situations where the failure to exercise proper oversight or supervision on the part of an individual performing senior management functions on the legal person's behalf has made it possible for another individual under his or her authority to launder money for the legal person's benefit. According to Article 5 of the Belgian Criminal Code, there is no substantive difference between the liability of a legal person and that of a natural person. Two elements are necessary to establish any person's liability, a mental one (intention or negligence) and a material one. The courts are empowered to assess the mental element with reference to the attitude of the legal person's organs, which may not necessarily correspond to identifiable individuals. This principle facilitates the attribution of criminal liability to legal persons.

40. The legislation appears to be less than exhaustive and could benefit from clarification. However, the rapporteurs also agree that these same legislative provisions have allowed the courts to establish relevant criteria that are compatible with the Convention.

***Effective implementation***

41. The relevant statistics reveal a constant rate of criminal inquiries and investigations of legal persons for money laundering.

**Accused persons involved in "laundering" cases opened by the prosecution authorities between 1 January 2005 and 31 December 2012: individuals and legal persons by year of entry into the system (no & %).**

| | Individuals | | Legal persons | | TOTAL | |
|---|---|---|---|---|---|---|
| | no | % | no | % | no | % |
| **2005** | 2 187 | 96.05 | 90 | 3.95 | 2 277 | 100.00 |
| **2006** | 2 627 | 97.51 | 67 | 2.49 | 2 694 | 100.00 |
| **2007** | 3 424 | 96.91 | 109 | 3.09 | 3 533 | 100.00 |
| **2008** | 2 899 | 97.45 | 76 | 2.55 | 2 975 | 100.00 |
| **2009** | 2 991 | 97.24 | 85 | 2.76 | 3 076 | 100.00 |
| **2010** | 3 358 | 96.94 | 106 | 3.06 | 3 464 | 100.00 |
| **2011** | 3 588 | 97.03 | 110 | 2.97 | 3 698 | 100.00 |
| **2012** | 4 187 | 97.69 | 99* | 2.31 | 4 286 | 100.00 |
| **Total** | 25 261 | 97.15 | 742 | 2.85 | 26 003 | 100.00 |

*Example: In 2012, 99 inquiries were opened into money laundering cases involving one or more legal persons.

| Year of judgments | All offences | | Cases involving joint offences of handling stolen goods and money laundering (Article 505 of the Criminal Code) | | Cases involving the offence of money laundering (Article 505 of the Criminal Code (sub-paragraphs 1, 2., 3. and 4.). | | | |
|---|---|---|---|---|---|---|---|---|
| | **Judgments concerning legal persons** | **Number of legal persons concerned** | **Judgments concerning legal persons** | **Number of legal persons concerned** | **Judgments concerning legal persons** | **Number of legal persons concerned** | ***Judgments concerning legal and natural persons*** | ***Number of legal and natural persons concerned*** |
| 2006 | 2267 | 2019 | 13 | 7 | 12 | 6 | *339* | *241* |
| 2007 | 2566 | 2252 | 11 | 9 | 8 | 7 | *453* | *333* |
| 2008 | 2944 | 2556 | 28 | 19 | 24 | 15 | *350* | *275* |
| 2009 | 2795 | 2386 | 27 | 21 | 23 | 17 | *335* | *247* |
| 2010 | 2303 | 2043 | 6 | 6 | 2 | 2 | *290* | *237* |
| 2011 | 3021 | 2518 | 14 | 12 | 13 | 11 | *348* | *287* |
| 2012 | 2830 | 2411 | 16 | 12 | 13 | 9 | *339* | *260* |
| 2013 | 4554 | 3553 | 11 | 5 | 11 | 5 | *307* | *263* |
| 2014 | 4653 | 3501 | 26 | 12 | 25 | 12 | *368* | *301* |
| 2015 | 3929 | 3213 | 19 | 13 | 18* | 12* | *435* | *328* |

* Example: In 2015, 18 judgments were handed down against legal persons for money laundering offences. Twelve legal persons were involved in these 18 judgments.

### *Recommendations and comments*

42. Although the Belgian legal system appears to have relevant elements concerning the liability of legal persons[7] and the courts appear to be applying the Convention requirements, the rapporteurs recommend Belgium that there should be further clarification, including, where necessary, in the legal provisions, with regard to implementation of Article 10 of the Convention. In particular, this concerns the legal liability for lack of supervision (paragraph 2).

## 3. Previous decisions – Article 11

### *Description and analysis*

43. Article 11 provides for final decisions against a natural or legal person taken in another Party to be taken into account when determining the penalty. To comply with this article, states may make provision in their domestic law for decisions handed down by foreign courts – like for those of domestic courts – to give rise to aggravated penalties. They may also authorise courts, as part of their general power to take individual circumstances into account when handing down sentence, to take account of previous decisions. Under Article 99*bis* of the Criminal Code, previous convictions handed down by a court in another EU member State must be taken into consideration in exactly the same way as Belgian courts' decisions. These provisions are concerned with recidivism.

44. Under Belgian law, recidivism is taken into account when passing sentence, but only on the basis of previous judgments in Belgium or another EU member country.

45. Articles 34ter to 34*quinquies*, 54 to 57*bis* and 99*bis* of the Criminal Code are therefore also applicable in these circumstances. There is no specific provision for taking account of a final judgment taken in another Party to the Convention that is not an EU member State.

### *Recommendations and comments*

46. Belgium has enacted measures to enable its courts and prosecution services, when determining the appropriate penalty, to take into consideration judgments against individuals or legal persons in connection with offences specified in the Convention handed down in another Party, so long as that Party is an EU member State. However, restricting this option solely to EU members is not compliant with the Convention.

47. The Belgian authorities should therefore take the necessary steps to enable courts and prosecutors to take account of previous judgments, irrespective of the State Party in which they were handed down.

[7] Belgium has been rated 'compliant' with the FATF standard on criminalisation of ML, which includes a criterion on liability of legal persons (Recommendation 3). However, the Convention has a more specific scope in this matter.

## 4. Confiscation and provisional measures – Article 3, paragraphs 1, 2, 3 and 4

Compared with other international standards, the Convention is considered to offer added value in terms of confiscation and provisional measures in the following respects:

- Article 3, paragraph 1 introduces a new notion to avoid any legal vacuum between the definition of proceeds and that of instrumentalities, namely: "*Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such* ***proceeds and laundered property*****"***;*

- Provision must be made for confiscation in the case of money laundering and the **categories of offences listed in the Appendix** (and no reservation is possible);

- Article 3, paragraph 3 of the Convention provides for mandatory confiscation for certain offences that generate significant proceeds. Although this is not an obligatory provision, the drafters believe that, given the essentially discretionary character of criminal confiscation in some countries, it may be advisable for confiscation to be mandatory for particularly serious offences, and for offences where there is no victim claiming damages;

- Article 3, paragraph 4 authorises reversal of the burden of proof, following a conviction for a criminal offence, to establish the lawful or other origin of alleged proceeds liable to confiscation [subject to a declaration procedure in whole or in part].

### *Description and analysis*

48. Confiscation is governed by Articles 42, 43 and 43*bis* of the Criminal Code. These authorise confiscation for all offences, thus including money laundering, terrorist financing and all the offences listed in the Convention appendix. Belgian legislation takes a fairly wide-ranging approach to confiscation, meaning that the legal system in this respect is comprehensive and well established. The special confiscation arrangements in Article 42 of the Criminal Code refer to all categories of property. This provision therefore authorises confiscation of the proceeds of a crime, and any income, profits or other benefits obtained from the use of these proceeds. The article also permits the confiscation of instrumentalities.

49. Article 42 also makes confiscation mandatory for all crimes unless otherwise provided for in law. Article 43*bis* lays down the confiscation procedure and the rights of third parties. It also provides for value-based confiscation, in other words the possibility of confiscating an equivalent monetary value when the direct proceeds of an offence cannot be found among the property of the convicted person (article 43*bis* paragraph 2).

**Instrumentalities, proceeds or property whose value corresponds to laundered proceeds and property**

50. Article 42 of the Criminal Code applies to instrumentalities, proceeds of a crime and laundered property. In particular, it extends to "*property forming the*

*purpose of the offence or that has served to commit it or was intended for that purpose; property forming the proceeds of the offence; pecuniary benefits arising directly from the offence; property and securities substituted for them and income from these benefits invested"*. This list is considered to be sufficiently broad-ranging to meet the requirements of the Convention.

51. Confiscation of an equivalent value is governed by Article 43*bis*. When property is no longer in the ownership of the person convicted of the relevant offence, the court must estimate its monetary value and confiscation will then apply to the equivalent sum of money.

52. The Convention makes explicit provision for confiscation of "laundered property" to ensure that in case of "autonomous laundering", the laundered property can be confiscated. Namely, laundered property cannot be classified either as direct or indirect proceeds (in the sense of proceeds of the predicate offence – not of the laundering offence) nor as an instrumentality (in the sense of the proceeds of the predicate offence, not the property used to commit an offence).

53. Belgian legislation appears to be compatible with this requirement. In particular, Article 42 of the Criminal Code, taken in conjunction with Article 505 of the Code, authorises confiscation in cases of "autonomous laundering". The relevant provisions of the Criminal Code are quite clear in this respect:

    *Property specified (in sub-paragraph 1.1) of this article constitutes the object of the offence covered by this provision, within the meaning of Article 42.1, and will be confiscated, even if it does not belong to the offender, unless this penalty is detrimental to the rights of third parties over property that might be confiscated.*

    *(Property specified in sub-paragraphs 1, 3 and 4, of this article constitutes the object of the offences specified in these provisions, within the meaning of Article 42.1, and will be confiscated from each of the perpetrators and joint perpetrators of and accomplices to these offences, even if the property does not belong to the convicted person, unless this penalty is detrimental to the rights of third parties over property that might be confiscated. If this property cannot be found in the convicted person's ownership, the court will assess its monetary value and order the confiscation of an equivalent sum of money. In this case, however, the court may reduce this amount to avoid imposing an unreasonably heavy penalty on the convicted person.*

    *Property specified in sub-paragraph 1.2 of this article constitutes the object of the offences specified in these provisions, within the meaning of Article 42.1, and will be confiscated from each of the perpetrators and joint perpetrators of and accomplices to these offences, even if the property does not belong to the convicted person, unless this penalty is detrimental to the rights of third parties over property that might be confiscated. If this property cannot be found in the convicted person's ownership, the court will assess its monetary value and order the confiscation of an equivalent sum of money that shall be proportionate to the convicted person's participation in the offence.)*

54. In order to support this analysis, the rapporteurs also referred to the FATF's findings and recommendations concerning the confiscation arrangements. On

technical compliance side, the FATF report found that "*Belgium has a comprehensive legislative framework for seizure and confiscation. Art. 42ff. PC defines a special regime for confiscation (as an ancillary order to a main sentence); confiscation is thus linked to a criminal conviction. Various types of provisional measures aimed at blocking transactions involving property that could be subject to confiscation are available in Belgium. Seizure allows property, instrumentalities, and proceeds of crime and financial benefits arising directly from offences to be withheld. This is complemented by freezing measures that are available to administrative authorities (including CTIF*)".

**Confiscation applied to offences listed in the Appendix to the Convention – Article 3(2)**

55. Under Article 3 of the Convention, States Parties are obliged to authorise the confiscation of the aforementioned property in connection with the offence of money laundering and all the other offences listed in the Appendix to the Convention. Although paragraph 2 of this article makes it possible to restrict the overall scope of the confiscation arrangements, Parties cannot limit its application as far as the offences in the Appendix are concerned.

56. The Belgian Criminal Code (Article 43 taken in conjunction with Article 42) stipulates that the confiscation arrangements must be applied to all categories of offences:

    *Special confiscation (applicable to property specified in paragraphs 1 and 2. of Article 42) shall always be ordered for crimes. It shall only ordered for petty offences in cases specified by law.*

**Mandatory confiscation for certain offences – Article 3(3)**

57. Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Each Party may include in these offences, money laundering, drug trafficking, human trafficking and other serious offences.

58. Articles 42 ff of the Criminal Code make such confiscation mandatory for certain types of assets and pecuniary benefits. In the case of money laundering, confiscation of assets and pecuniary benefits of unlawful origin is obligatory, on condition that those concerned were aware or ought to have been aware of that origin. This mandatory confiscation cannot be to the detriment of the rights of third parties over property that might be confiscated.

**The burden of proof – Article 3.4**

59. Under Article 3 paragraph 4 of the Convention, Parties can require the perpetrators of serious offences, as defined in their domestic law, to establish the origin of property that might be subject to confiscation. However, according to Article 53 paragraph 4 of the Convention States Parties can declare that they will not apply Article 3.4. Belgium has not made such a declaration.

60. Article 43*quater*.2 of the Belgian Criminal Code requires suspects to make a plausible case for the lawful origin of assets. The replies to the FATF

questionnaire show that, with regard to confiscation, this provision establishes a division of the burden of proof between prosecution and accused. It is for the prosecution to show that there is a significant difference between the financial value of assets obtained lawfully and that of assets obtained in practice, having regard to the accused person's income, when there is serious and concrete evidence that these assets are the proceeds of the offence of which he or she has been convicted or of identical offences, and that the accused person has been unable to provide a plausible alternative explanation.

61. In an actual money laundering case, in a judgment of 28 November 2006 (ref. P. 06.11.N/3), the Court of Cassation stated that, *with regard to the offence of money laundering in Article 505, sub-paragraph 1.3, of the Criminal Code, the prosecution authorities bear the burden of proof for establishing the unlawful or criminal origin of the items in question and the perpetrator's awareness of this fact. Otherwise, it is for the accused himself to decide whether it is appropriate for his defence to disclose the information he has about the origin of these items. The decision that the accused can make in this regard is not to the detriment of his rights of defence concerning the laundering offence of which he is accused.*

62. The Belgian authorities have supplied two judgments[8] confirming the application of the requirement in Article 3, paragraph 4 of the Convention. The apportionment of the burden of proof established by the courts is such that, once the prosecution has produced serious and concrete evidence of the unlawful origin of the assets or property in question, it becomes the accused person's responsibility to supply convincing evidence of their lawful origin.

63. Moreover, it appears that there has been a positive development regarding criminal procedure. The Court of Cassation[9] has ruled that the right to silence is not absolute. The courts can therefore determine, of their own motion, whether witnesses are using this right for other than its legal purpose.

64. This development has had a positive influence on how Article 43*quater* of the Criminal Code is interpreted. The Belgian authorities have supplied information on a very recent case[10] in which a lower court, referring to the case-law of the European Court of Human Rights[11], held that in cases where the origin of property is unclear, particularly ones in which the prosecution is unable to prove that property was of unlawful origin, the silence of the person concerned could be "taken into consideration". This means that, in conjunction with a body of evidence and other factual information, the defendant's silence can help the court to determine the origin of the items in question. It offered the following reasoning:

> … *"although the rights of silence and of non-self-incrimination, and their corollary, accused persons' refusal to collaborate, are explicitly protected by Article 6 of the European Convention on Human Rights and Fundamental Freedoms, these rights are not absolute. While it is manifestly incompatible with these rights to base a conviction exclusively or mainly on defendants' silence or their refusal to answer questions or give evidence, it is equally*

[8] Judgment of the Liège Court of Appeal, (4th chamber), 25 June 2014; Judgment of the Belgian Court of Cassation P.14.1234.F, 15. October 2014
[9] Judgment of 9 December 2014 (P.14.1039.N)
[10] Brussels Court of First Instance, El Hayek case of 29 June 2016
[11] Application no. 41/1994/488/570, John Murray v. United Kingdom of 8 February 1996

*clear that these protected rights cannot and should not prevent defendants' silence from being taken into consideration in situations which undoubtedly call for an explanation from them, in order to determine how much weight should be ascribed to the prosecution case.*

*In this case, the court cannot conceive of any possible lawful origin of the amounts possessed and will consider that these are the proceeds of laundering, within the meaning of Article 505, sub-paragraph 1, 2.of the Criminal Code"*[12].

65. It can therefore be concluded that the Belgian legal system and the cases mentioned are consistent with Article 3(4) of the Convention.

### *Effective implementation*

66. In connection with FATF's evaluation of Belgium in January 2014, the Belgian central office for seizure and confiscation (OCSC) was authorised to supply annual statistics on the numbers of seizures, seizures and confiscations, confiscations of sums of equivalent value and assignments, the value of sums seized and confiscated, and the number of requests for mutual assistance via the ARO and CARIN networks. The Belgian authorities have also supplied information on cases that highlight the effectiveness of the courts in dealing with confiscation, particularly ones relating to money laundering and subsequent confiscation.

67. The relevant statistics (taken from the FATF 2015 mutual evaluation report on Belgium and supplied by the central office for seizure and confiscation - OCSC) show the amount of property seized and confiscated.

**Table: Amounts seized in OCSC cases (EUR)**

| | 2011 | 2012 |
|---|---|---|
| Organised crime | 2 547 116 | 1 418 510 |
| Misappropriation/embezzlement | 3 732 420 | 6 387 482 |
| Money laundering | 91 192 415 | 23 127 457 |
| Drugs | 5 561 511 | 9 162 763 |
| Tax fraud | 5 014 613 | 3 287 444 |

*Source*: OCSC, Evaluation of the threat, risks and vulnerabilities in relation to ML, 16.12.2013; p. 149. Numbers for 2013 were not available.

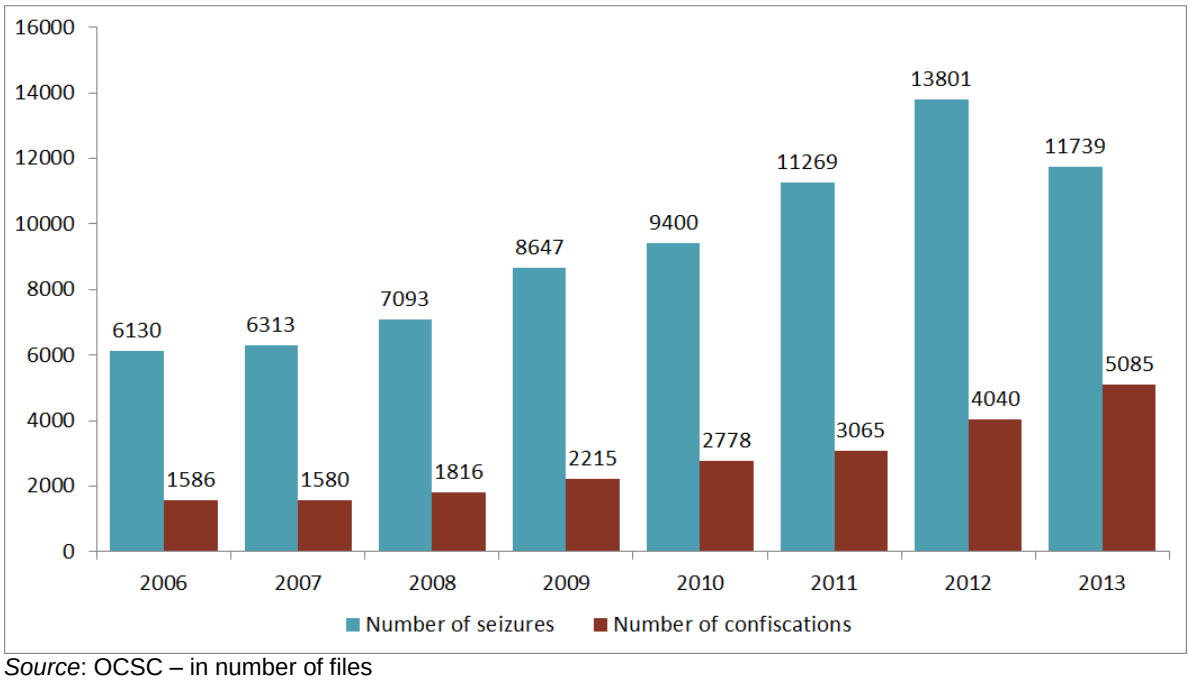
**Table: Number of confiscations of property of a corresponding value by the OCSC (all types of offence)**

| Year | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|---|---|---|---|---|---|---|---|---|
| **Number** | 1 051 | 1 114 | 1 375 | 1 705 | 1 741 | 1 856 | 1 447 | 1 448 |

*Source*: OCSC

[12] El Hayek case (see note no. 6)

**Chart: Number of seizures and confiscations registered by OCSC**




*Source*: OCSC – in number of files

68. The FATF made the following recommendations on how to improve the effectiveness of the confiscation system still further:

- The authorities responsible for seizures and confiscations should be made aware of the importance and priority of confiscating all the proceeds of crime.
- The OCSC's central role in seizure and confiscation should be reinforced as regards both asset management and recovery.
- The Belgian authorities should implement the legal provisions passed to strengthen the confiscation of the proceeds and instrumentalities of ML and predicate offences (Act of 11 February 2014), whether they are located in Belgium or abroad, particularly by carrying out systematic financial investigations and ordering all measures aimed at the successful conclusion of confiscation proceedings. The role of the special judges responsible for enforcement investigations in criminal cases should be clarified.
- Relevant and clear statistics should be held centrally for seizures and confiscations of assets in Belgium and abroad, asset sharing, the offences in which the seizures or confiscations originated (ML and the predicate offences), confiscations related to false disclosures or false declarations at borders, and the amounts returned to victims, so that any necessary adjustments to criminal justice policy can be determined.

***Recommendations and comments***

69. The Belgian legal framework is compliant with the requirements of Article 3 of the Convention. Regarding effective implementation, the data supplied confirms the year by year increase in seizures and confiscations. The cases

provided by the Belgian authorities also point to the conclusion that, overall, there have been a positive progress and trends in the practical application of the confiscation provisions. The rapporteurs also underline the important recommendations made by FATF to improve the effectiveness of the confiscation system (see paragraph 68); for the purposes of this evaluation it is considered that Belgium has demonstrated, to a satisfactory extent, that the implementation of Article 3 of the Convention is effective.

## 5. Management of frozen and seized property – Article 6

Article 6 of Convention introduces a new standard concerning the proper management of the frozen and seized property:

"*Each Party shall adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of this Convention*."

### *Description and analysis*

70. Belgium established the central office for seizure and confiscation (OCSC) in the Act of 26 March 2003. It is responsible for managing seized property at constant value.

71. The OCSC is answerable to the Minister of Justice. The OCSC team comprises 37 staff, including liaison officers from the police and from the Ministry of Finance.

72. The OCSC operates as an intermediary between the prosecutors-general and the Ministry of Finance in the implementation of confiscation decisions. It also investigates the property of convicted persons for the purposes of executing their sentences.

73. The OCSC is also involved in seizure and confiscation training, which is compulsory for future judges. It uses these sessions to discuss good practices and ones to be avoided, with an emphasis on making confiscations more effective. The OCSC also offers training and expertise to authorities abroad and assists them with decision making.

74. The establishment of the OCSC has made it possible to concentrate responsibilities for the confiscation of assets within a single body. In the past, confiscations had had a poor record because these responsibilities were divided and little interest was shown in the activity. Moreover, the cost of managing confiscated assets was too high. According to the Belgian authorities, consultation of the OCSC files could be a reason for a relative reduction in judicial costs.

75. The OCSC's responsibilities for managing frozen and seized property are laid down in articles 28*octies* and 61*sexies* of the Code of Criminal Procedure (CCP).

76. These legal provisions offer a minimum legal basis for the management of frozen and seized assets. However, they contain no details on the general

management arrangements, the decision-making procedure and how to respond to specific seizures (for example, the seizure of occupational or company premises). Furthermore, the OCSC's powers could have been defined more broadly in such areas as its role in the resale of assets, sharing assets with foreign judicial systems in cases involving cross-border movements and organised crime, estimating the value of property, and so on.

77. The most recent FATF mutual evaluation report on Belgium noted that, in practice, the OCSC has observed a marked preference among judges for the rapid disposal of seized property that depreciates rapidly (goods, vehicles, buildings, etc.), enabling these to be replaced by a sum of money.

### *Effective implementation*

78. The following figures show a constant increase in the number of property sales following seizures. These figures appear to indicate that progress has been made in the management of assets over the period shown in the table.

**Table: Number of sales of seized property (to avoid depreciation) for all types of offences**

| Year | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|---|---|---|---|---|---|---|---|---|
| Number | 327 | 259 | 541 | 947 | 1 691 | 1 481 | 2 230 | 2 059 |

*Source*: OCSC

### *Recommendations and comments*

79. Overall, it can be concluded that the current legal system provides a good basis for effective asset management. However, it could not be established whether all the necessary tools are in place to enable the OCSC to fulfil its duties as laid down in Article 6 of the Convention. Therefore, Belgium is recommended to ensure that clear procedures for managing seized property are set, in line with the requirements of Article 6.

## 6. Investigative powers and techniques required at the national level – Article 7 paragraphs 1, 2a, 2b, 2c, 2d

The Convention is considered to offer added value in the following areas:

- Article 7 establishes powers to secure access to or seize bank, financial or commercial records to assist the freezing, seizure or confiscation of property. In particular, Article 7 paragraph 1 provides that "*Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy*";

- Subject to any declaration in accordance with Article 53, Article 7 paragraph 2a authorises measures to establish the identity of account holders to: "*determine whether a*

*natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts*";

- Article 7 paragraph 2b authorises access to "historic" banking information to "*obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account*";

- Article 7 paragraph 2c authorises the "prospective" monitoring of accounts to "*monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts*;" *and*

  Article 7 paragraph 2d authorises measures to prevent disclosure, to "*ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out"*.

- States should also consider extending these powers to other, non-banking, financial institutions.

***Description and analysis***

**Article 7 paragraph 1**

80. According to the Convention, bank secrecy must not pose an obstacle to criminal investigations or provisional measures on the part of State Parties, particularly when the lifting of bank secrecy is requested by a court, a grand jury, an investigating judge or a prosecutor.

81. The obligations referred to in Article 7.1 of the Convention are transposed into Article 46*quater* of the CCP, as follows:

*Article 46quater CCP*

*§ 1. When investigating serious and lesser indictable offences, and when there is serious evidence that offences liable to a primary sentence of imprisonment of one year or a heavier sentence have been committed, the public prosecutor may demand the following information:*
*a) the list of bank accounts, safe deposit boxes or financial instruments as defined in Section 2.1 of the Act of 2 August 2002 on oversight of the financial sector and financial services, of which the suspect is the holder, authorised representative or real beneficiary, and, if appropriate, any other relevant information;*
*b) banking transactions undertaken over a specified period on one or more of these bank accounts or financial instruments, including information about any sending or recipient account;*
*c) data relating to the holders or authorised representatives who have had access to these safe deposit boxes during a specified period.*
*(…)*
*§ 3. The public prosecutor may, in a written decision giving reasons, demand the assistance of the bank or credit institution in order to implement the measures specified in §§ 1 and 2. The bank or credit*

> *institution shall be required to provide its immediate assistance. In the request, the public prosecutor shall specify the form in which the information referred to in § 1 should be communicated.*

82. This means that the public prosecutor can require banks and credit establishments to supply all the information relating to a suspect's bank accounts, financial instruments or safe deposit boxes via a written reasoned decision. Refusal to apply this provision on grounds of bank secrecy is punishable by the criminal penalties laid down in Article 46*quater*. The article does not specify the specific criminal acts to which such measures could be applied but simply refers to crimes (« crimes et délits »). The prosecutor is empowered to demand various types of information – all those specified in detail in Article 46*quater*. Such measures can be applied if there is serious evidence that the offences could give rise to a primary sentence of one year's imprisonment or a heavier sentence.

83. In connection with the definition of bank accounts, bank safe deposit boxes or financial instruments, the Article also refers to the legislation on supervision of the financial sector and financial services.

84. The Belgian authorities assured the Conference of the Parties that the term 'suspect' is not a legally defined term. The way it is understood and applied in practice covers any natural or legal person who is linked to an investigation opened by the prosecutor. In support to this argument, Belgium also underlined the provisions of the Criminal Code (Articles 66 and 67) which describe participation of individuals in a criminal activity. Therefore, the Conference of the Parties concluded that Article 46quater of the CCP allows the Belgian authorities to undertake inquiries aimed at uncovering, tracing and confiscating property of criminal origin, including when it is necessary to trace money flows and collect information in criminal investigations with regard to persons who are not yet officially accused.

**Article 7 paragraph 2**

85. Paragraph 2 of Article 7 obliges states to establish statutory procedures for identifying the accounts of specific account holders and obtaining information from these accounts. Under paragraph 2a, it must be possible to identify the origin of these accounts held by specific account holders, which indirectly requires national legislation establishing procedures for carrying out such investigations. Although states are required to have such procedures in order to comply with the Convention, paragraph 2a leaves them completely free to decide how this should be achieved and imposes no obligations regarding the methods to be used, such as, for example, a centralised record of bank accounts. However, under paragraphs 2b and 2c states must be able to obtain information on and monitor accounts that have already been identified. The wording of the paragraph gives states a broad margin of discretion about how they should meet these requirements.

**Article 7 paragraph 2a**

86. As noted above, the Belgian prosecutor is empowered to ask for a list of bank accounts, safe deposit boxes or financial instrument of which the suspect is the owner, legal representative or real beneficiary and, if appropriate, all related information on the subject (sub-paragraph 1 of Article 46*quater*).

87. Regarding the current procedures in Belgium to facilitate access to this type of information, the following should be noted:

88. In Belgium, all banking, money exchange, credit and savings establishments are required to submit the following information to a central contact point operating under the auspices of the Belgian national bank (BNB): the identity of clients and their account and contract numbers.[13]

89. The Law of 1 July 2016 (sections 123 to 128) amended the provisions of the Code of Criminal Procedure (CCP) and the AML/CFT Law of 11 January 1993 concerning the judicial authorities' access to information held by the BNB.

90. Before the enactment of the aforementioned law, "the judicial authorities had to write to the banks and credit establishments to obtain the necessary information".[14] Now, when the information concerns tax evasion, money laundering or terrorism, the prosecutor can submit a written and reasoned request to the BNB central contact point. In cases involving other types of offence, the prosecutor still has access to suspects' banking information by means of a written request to the banks and credit establishments (Article 46quater (3) CCP). However, the new Article 56*ter* of the CIC authorises investigating judges, even in cases that are not concerned with tax evasion, laundering or terrorism, to request specific information, giving reasons, from the BNB central contact point.

91. Moreover, Section 33 of the AML/CFT Act of 11 January 1993 authorises the CTIF (financial intelligence unit) to ask credit establishments to supply all the information it considers necessary to carry out its duties, and to inform it whether a named person has a bank account or owns assets or securities. The aforementioned Law of 1 July 2016 has also introduced a new Section 36*bis* into the 1993 AML/CFT Act to enable the CTIF, for the purposes of its statutory duties and without prejudice to the powers of the judicial authorities, to make specific and reasoned requests for information from the BNB central contact point.

92. The CTIF can transmit this information to the police. According to the FATF 2015 mutual evaluation report: "*The police can access the information held by the CTIF only in cases where this information has been previously submitted to the public prosecutor's office, notably via liaison officers from the Federal Police who have been seconded to the CTIF. Nevertheless, it is possible to obtain a legal exemption from this general rule. The AML/CFT Law (Art. 33) stipulates that the police can spontaneously provide information regarding investigations underway to the CTIF. If the CTIF has relevant information for the investigators and if there is reliable evidence of ML or TF as defined by law (which, according to the authorities, is the case when the investigation concerns one of the predicate offences described in the law), the CTIF submits the information in its possession to the judicial authorities and will notify the investigators of this submission. Thus the law enforcement authorities (public prosecutor's office, investigating judges and police) can have access to relevant information held by the FIU. For the public prosecutor's offices, it should also be added that the CTIF makes a secure internet connexion available to magistrates designated by the country's 28 public prosecutor's*

[13] Cir 92, art. 322, § 3, al. 1
[14] Doc. parl., Chamber, no. 54-1875/007, Report (justice committee), Introduction by the Minister of Justice, p. 3.

*offices and a database of files submitted by the CTIF since 1993. Finally, since the Law of 11 February 2014, the OCSC has very broad powers to obtain information from the CTIF".*

93. Given the relevant provisions, Belgium is in compliance with the Convention with regard to this paragraph.

**Article 7 paragraph 2b**

94. Article 7(2b) foresees the possibility to obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account.

95. Belgian legislation, particularly Article 46*quater* of the CCP, grants the Investigation powers required by Article 7(2b). The article provides a fairly comprehensive description of the prosecutor's use of this investigative tool, which is in accordance with the Convention requirements. Thus the public prosecutor can demand information on banking transactions over a specified period on one or more bank accounts or financial instruments of which the suspect is the owner, legal representative or real beneficiary, including the particulars of any sending or recipient account.

96. In addition, the aforementioned AML/CFT Law of 11 January 1993 (chapter II) requires the obliged entities to apply due diligence measures with regard to clients, real beneficiaries and their clients' transactions. The Law also lays down rules on the retention of documents (Section 15). The 2015 FATF report considered that Belgium was largely compliant with its customer due diligence requirements and compliant with regard to record keeping. It is obligatory for all financial institutions to keep all documents necessary to reconstruct transactions for five years after the transactions are carried out.

**Article 7 paragraph 2c**

97. Belgium has not entered any declaration regarding Article 7(2c), as provided for in Article 53, concerning the power to monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts.

98. The investigative tools required by Article 7(2c) of the Convention are covered by Article 46*quater* paragraph 2a of the CCP:

*Article 46quater CCP*
*§ 2. When the need for information so requires, the public prosecutor may also order that:*
*a) during a renewable period of two months, banking transactions relating to one or more of the suspect's bank accounts, safe deposits or financial instruments will be observed.*

99. Given the explanation provided by Belgium under Article 7 paragraph 2a), the Conference of the Parties was assured that the term 'suspect' is understood in a broad sense, allowing the Belgian competent authorities to carry out the monitoring measures in line with the Convention.

**Article 7 paragraph 2d**

100. Article 7.2d requires states to "ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out".

101. Persons who, by virtue of their position, are aware of an application of Article 46*quater* of the CCP or are involved in the process are required to observe professional secrecy and any violation of this duty is punishable in accordance with Article 458 of the Criminal Code:

*Article 458*

"*Physicians, surgeons, health officers, pharmacists, midwives and all other persons who are required, by the State or their profession, to respect the secrecy of information imparted to them and who, other than in cases when they are required to give evidence in judicial proceedings (or before a parliamentary committee of inquiry) or where the law requires them to disclose these secrets, have revealed this confidential information shall be liable to imprisonment of from eight days to six months and a fine of EUR 100 to 500."*

102. In connection with the prevention of money laundering, Article 33 of the AML/CFT Law of 11 January 1993 authorises the Belgian financial intelligence unit (CTIF) to require financial institutions to supply all the information it considers relevant to carry out its duties. The CTIF can therefore instruct financial institutions to tell it whether a named person has a bank account, property or securities.

103. Article 30 of the AML/CFT Law also prohibits certain specific individuals and bodies from advising the clients concerned or third parties that information has been passed on the CTIF or that an investigation into alleged money laundering or terrorist financing is under way or could be in the future.

**Extension of investigative powers to non-banking financial institutions**

104. Article 7(2) of the Convention provides for Parties to consider extending investigative powers to non-banking financial institutions.

105. The first paragraph of Article 46*quater* of the CCP refers to "financial instruments" as defined in Article 2(1) of the Law of 2 August 2002 on supervision of the financial sector and financial services. According to the Belgian authorities, Section 2(1) covers a range of financial instruments supplied by non-banking financial institutions.

106. From a prevention standpoint, the AML/CFT Law applies to all the financial institutions active in Belgian territory (Article 2 of the Law), and to a significant number of designated non-financial professions.

107. Article 2 covers all the financial institutions plus such non-banking establishments as electronic money institutions, credit card issuers and insurance intermediaries active in the life insurance market.

108. It can therefore be concluded that the Belgian legal system satisfies the Convention requirements in this regard.

***Effective implementation***

109. Belgium has supplied statistics and information on individual cases to show that the investigative powers and techniques referred to in Article 7 are applied in practice. The practioners concerned appear to make appropriate use of the relevant provisions of the Belgian CCP.

***Recommendations and comments***

110. The rapporteurs conclude that Belgium's legal system is broadly compatible with the requirements of Article 7 paragraphs 1 and 2a, 2b, 2c, 2d of the Convention. It should also be noted that the FATF report found that Belgium was in compliance with Recommendations 30 and 31 ("responsibilities of law enforcement and investigative authorities" and "powers of criminal prosecution and investigative authorities").

## 7. International co-operation

### 7.1. Confiscation – Article 23, paragraph 5 and Article 25, paragraphs 2 and 3

The Convention is considered to offer added value in the following areas;

It introduces a new obligation to confiscate that extends to actions *in rem*. Thus, Article 23, paragraph 5 reads;

> "*The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures* ***equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions****, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention*" (in other words transformed or converted property, and so on).

Asset sharing: though Article 25(1) retains the basic concept that assets remain in the country where found, the new provisions in Article 25(2) and (3) require priority to be given to returning assets, where requested, and, if appropriate, concluding agreements on the subject.

***Description and analysis***

111. The application of seizure and confiscation measures as part of mutual legal assistance (MLA) was considered to be largely compliant with the FATF standard in 2005, taking account of the absence of a fund for the seized assets and an inability to share confiscated assets. The FATF 2015 report also concluded that Belgium was largely compliant with the new Recommendation 38. The general procedures relating to mutual assistance in criminal matters

applied to requests for identification and confiscation, with certain doubts about their speed of implementation since Belgium lacked clear procedures for establishing the priority and execution of requests for judicial assistance.

**Article 23, paragraph 5**

112. There are two different arrangements for judicial assistance with confiscation, according to whether the requests take place within or outside the EU. First, it should be noted that in Belgium confiscation is an ancillary punishment to a main sentence of imprisonment or a fine.

113. Outside of the EU framework, Belgium has passed the Law of 20 May 1997 on international co-operation on seizure and confiscation. Judicial co-operation in this field is governed by the following general principles: (i) requests have to be based on a prior agreement and (ii) requests may be refused on certain grounds (see Section 11 of this report). Chapter II of the legislation concerns the implementation of foreign confiscation decisions.

114. Under Article 8 of the 1997 Law, once they are recognised by the Belgian authorities, confiscation orders made by foreign judicial authorities are treated as decisions of the Belgian judicial authorities.

115. Article 4 sets out the conditions that must be met for foreign confiscation decisions to be executed: 1. the decision must be based on a judgment convicting the person against whom the confiscation is ordered; 2. the principle of dual criminality must apply; 3. the sentencing judgment must have respected the rights of the defence; 4. the *ne bis in idem* principle must apply*;* 5. the sentencing judgment must be final and enforceable; 6. the penalty must not have expired according to Belgian law; 7. the property intended for confiscation must be property that was used to commit the offence, the proceeds of the offence or some form of financial benefit derived directly from the offence*.*

116. Within the EU, requests for MLA with confiscation are governed by Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders. This was transposed into Belgian law by the Law of 5 August 2006 on the application of the principle of mutual recognition of judicial decisions in criminal matters between the EU member States. This law also transposed into Belgian law Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence. The legislation therefore offers a single basis for the implementation of judicial decisions relating to property emanating from other EU member States. However, there are no specific provisions on the execution of measures equivalent to confiscation that result in deprivation of possessions but are not criminal penalties.

117. In the light of all the above information, therefore, it is clear that Belgium does not currently recognise confiscation decisions handed down by a foreign state's judicial authorities that are not based on a criminal conviction and cannot apply confiscation measures to such requests from abroad.

**Article 25, paragraphs 2 and 3**

118. The Law of 26 March 2003 established a central office for seizure and confiscation (OCSC) and provided for the management at constant value of seized property and the application of certain financial penalties. In the case of certain assets, it authorises the public prosecutor to make a submission, either on his own motion or at the request of the OSCS, to the investigating judge requesting the alienation of property or its restitution on bail (Article 28*octies* of the CCP). The public prosecutor may decide to restore property, subject to a total or partial guarantee or to specified conditions.

119. Within the EU, Belgium has transposed the EU Framework Decision on the application of mutual recognition to confiscation orders by the Law of 5 August 2006. Article 38 of the Belgian legislation lays down arrangements for allocating confiscated property, the destination of which is decided by the public prosecutor according to the rules in the Framework Decision. In the case of money, amounts of € 10 000 and more are divided 50-50 between the requesting and the executing state. In the case of property other than money, the public prosecutor may order the sale of the assets concerned, in which case the proceeds of the sale are divided on the same basis as are amounts of money, or else transfer the property to the requesting state.

120. Co-operation with non-EU member countries is covered by the Law of 20 May 1997 on international co-operation on seizure and confiscation. Article 8 of the Law, as amended by the Law of 20 July 2006, provides that the Belgian courts *may* decide that all or part of the confiscated property will be assigned to the requesting state or will be sold, with a view to assigning the proceeds to the requesting state. In such cases, the court will take account of the costs of seizure, conservation, assignment, confiscation and transfer.

121. The legislation does not foresee to give priority to the restitution of confiscated property to requesting countries to enable them to compensate the victims of the offence or restore the property to its lawful owners.

***Effective implementation***

122. Belgian law does not recognise the principle of confiscation that is not based on a criminal conviction and has no specific provisions concerning requests for judicial assistance in cases where the foreign authorities are seeking the restitution of property on the basis of a civil court judgment. The OCSC and the Ministry of Justice state that no request has been received concerning cooperation as envisaged by Article 23 paragraph 5 of the Convention.

123. The Belgian authorities have stated that if a state so requests in accordance with Articles 23 and 24 of the Convention, the sharing of property for any purpose may be ordered by the courts and that, in principle, there is provision for total restitution, less procedural costs.

124. The Law of 26 March 2003 establishing a central office for seizure and confiscation makes the OCSC responsible for MLA regarding confiscation. The authorities have stated that it is not possible to obtain directly from the OSCS database usable statistical data on the sharing of confiscated property.

125. The Belgian authorities could not, therefore, supply information in statistical form to show that the principle of the sharing of property is regularly applied in practice. The same applies to assets repatriated as a result of international co-operation to enable a requesting party to compensate the victims of an offence or to restore the property to its lawful owner. According to the FATF mutual evaluation report, only three examples were mentioned of confiscation in Belgium or at Belgium's request with sharing of assets, one of which took place in 2010.

126. At the national level, the Belgian authorities state that it is possible for confiscated property to be awarded to the victims if a court so decides (under Article 43*bis* sub-paragraph 3 of the Criminal Code), but that such awards are not automatic. Article 44 of the Belgian Criminal Code also provides for the restitution of property to its lawful owners, again subject to a court decision. In practice, according to the authorities, such restitution involves the intervention of the OCSC or court registries. There is no information on the extent to which such interventions take place in connection with requests from other Parties under Articles 23 and 24 of the Convention.

127. The authorities have also stated that giving priority to assigning confiscated assets to the victims has recently been the subject of draft legislation tabled in the Belgian federal parliament.

### *Recommendations and comments*

128. Belgium is recommended to establish arrangements allowing the country to co-operate with States Parties for the purposes of executing confiscation decisions that are not based on a criminal conviction, in accordance with Article 23 paragraph 5 of the Convention.

129. Belgium's domestic law authorises the restitution of confiscated property to applicant parties. However, there is no provision of the law, nor any evidence produced, to show that the Belgian authorities see such restitution as a priority to enable the requesting state to compensate the victims of the offence or restore the property to its lawful owner.

130. Belgium is therefore recommended to ensure that it gives priority consideration to such restitution.

131. Belgian law also permits the sharing of confiscated property, since the courts can decide that all *or part* of the confiscated property will be assigned to the requesting state. This provision is thus applied on a case by case basis, and in the absence of more detailed information, it is difficult to draw any conclusions about its effective implementation.

132. The Belgian authorities should ensure that they are able to provide valid statistics on the practice of international co-operation in these two areas.

### 7.2. Investigative assistance – Article 17 paragraphs 1, 4, 6; Article 18 paragraphs 1 and 5; and Article 19 paragraphs 1 and 5

The Convention is considered to offer added value in the following areas:

- It empowers Parties to provide international assistance in respect of requests for information on whether subjects of criminal investigations abroad hold or control accounts in the requested State Party. Article 17 paragraph 1 reads "Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts". This provision may be extended to accounts held in non-banking financial institutions and such an extension may be subject to the reciprocity principle.

- It also empowers Parties to provide international assistance in respect of requests for historic information on banking transactions in the requested Party (which may also be extended to non-bank financial institutions and such extension may also be subject to the principle of reciprocity). Article 18 paragraph 1 provides that "On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account."

- Finally, the Convention is considered to add value by empowering Parties to provide international assistance on requests for prospective monitoring of banking transactions in the requested Party (which may be extended to non-bank financial institutions). Article 19 paragraph 1 reads "Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party".

***Description and analysis***

**Article 17 paragraph 1**

133. The Belgian Law of 9 December 2004 on international judicial assistance in criminal matters authorises Belgium to implement requests for mutual legal assistance (MLA). Article 3 of the 2004 Law requires the Belgian authorities to provide judicial assistance in criminal matters "as extensively as possible under the current Act and applicable international law". More precisely, requests from competent foreign authorities for MLA shall be executed in accordance with Belgian law and, where applicable, the international legal instruments in force linking the requesting state to Belgium (Article 6(1)). Furthermore, Article 4(1) of the same law introduces the **principle of reciprocity**, which will apply if there is no international legal instrument linking Belgium to the requesting party.

134. Belgium has ratified the Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. It has also ratified the European Convention on Mutual Assistance in Criminal Matters (1959) and its two additional protocols, which

have enabled Belgium to lay the foundations for effective co-operation in this field.

135. The central figure with responsibility for mutual assistance is the Ministry of Justice. The exception to this is MLA with an EU member State, when the assistance may be furnished directly by the competent institution (Article 5 of the Law of 9 December 2004). The legislation includes no specific provisions concerning States Parties to conventions which Belgium has ratified.

136. Under the Convention, the dual criminality principle may apply as a condition for MLA. However, this principle does not apply to requests for assistance in cases of non-coercive action (see Article 28 paragraph 1(g) of the Convention).[15] In Belgium, coercive measures are defined in the CCP as ones that entail a legal exception to fundamental rights (prosecution, seizure, arrest and remand in custody, telephone tapping and direct and indirect interception of communications, surveillance and undercover operations).

**Article 17, paragraphs 1 and 4**

137. Article 46*quater* §1 of the CCP describes the procedure how to obtain information on bank accounts, safe deposits boxes in banks, financial instruments (as defined by the Law of 2 August 2002) and the banking transactions record of specific pre-determined accounts over a specified period. The Belgian CCP also establishes a minimum threshold, namely that requests will be acted on if there is a serious likelihood that the offences concerned could give rise to a primary term of imprisonment of one year. The rapporteurs consider this to be an appropriate threshold, which cannot therefore be deemed to be an obstacle to the application of this measure. This investigative method does not require the authorisation of a judge and can be used by the prosecution service.

138. A more detailed description of the powers inherent in Article 46*quater* of the CCP – particularly the right to consult the national bank's database –is set out in section 6 of this report (analysis of Article 7 of the Convention).

139. Article 17(4) of the Convention is an optional provision, which leaves it to Parties to decide whether the same conditions should be applied to requests under paragraph 1 of Article 17 and requests for search and seizure.

140. The Belgian authorities have explained that under Article 46*quater* of the CCP, requests to obtain lists of bank accounts (and implicitly uncover and identify their specific features), in so far as they are not considered to be coercive measures, could be executed without the involvement of the courts. However, requests for searches and seizures require a judicial order since they are deemed to be coercive measures. It could therefore be concluded that Article 17(4) is not applied in Belgium.

**Article 18 paragraph 1**

141. Belgian legislation, and more specifically Article 46*quater* of the CCP, explain how information on bank accounts and banking operations carried out over a specified period on specific accounts can be obtained. The purpose of a

[15] According to the explanatory report to the Convention, "coercive action" must be defined by the requested Party (para. 223).

request for assistance may not simply be to obtain the list of bank accounts, safe deposit boxes or financial instruments of which the suspect is the owner, legal representative or real beneficiary, together where appropriate with all the associated relevant information. It may also concern the banking transactions that have been carried out over a specified period on one or more of these bank accounts or financial instruments, including information on any issuing or receiving accounts, and on the owners or representatives who, over a specified period, have had access to these safe deposit boxes.

**Article 19 paragraph 1**

142. The first paragraph of Article 19 obliges Parties to establish a reliable mechanism for monitoring future bank transactions on a previously identified account over a specified period. The provision "*leaves it to each Party to decide if and under what conditions the assistance may be given in a specific case*".[16]

143. Paragraph 2a of Article 46*quater* of the CCP authorises the public prosecutor to ensure that, when the needs of the inquiry so require, « *during a maximum renewable period of two months, bank transactions relating to one or more of the suspect's bank accounts, safe deposit boxes or financial instruments will be observed* ».

144. Although the explanatory report to the Convention offers no more details about the length of the specific period, it would be appropriate to consider that it should be neither too long nor too short, in other words sufficient to allow all the necessary information to be obtained. Moreover, only experience will tell what is the optimal period to be required to monitor bank transactions linked to one or more suspects' bank accounts.

**Article 17 (6), Article 18 (5) and Article 19 (5)**

145. The public prosecutor can ask banking or non-bank financial institutions for measures determined in Article 46*quater* of the CCP. The same procedure is applicable to all financial instruments defined in Article 2(1) of the Law of 2 August 2002 on the supervision of industry and finance and of financial instruments.

***Effective implementation***

146. The Convention requires States Parties to establish reliable machinery to implement the execution of requests for MLA. More specifically, the mechanism must allow information to be supplied to facilitate the traceability and identification of the bank accounts of any natural or legal person under criminal Investigation, including the accounts of which that person is the true economic beneficiary. This applies irrespective of whether those accounts are held by a natural person, a legal person or a body acting in the form of, or on behalf of, trust funds or other instruments for administering special purpose funds, whose settlers' or beneficiaries' identity is unknown.[17]

[16] Explanatory Report to the Convention, paragraph 149.
[17] Explanatory report to the Convention, paragraphs 135 and 136.

147. To ensure that these measures function effectively, Article 46*quater* of the CCP requires financial institutions to carry out their responsibilities without delay. Failure to provide assistance is punishable by up to one year's imprisonment and/or a maximum fine of EUR 10 000.

148. Moreover, although this is not a Convention requirement, Belgium has established a centralised bank register (see section 6 of this report), which reduces the time needed to identify accounts and makes the co-operation arrangements more effective.

149. According to the authorities, it is difficult to give a suitably prompt response to requests for assistance that arrive incomplete. In such cases, the requesting State is asked either to supply the missing information or to make a new request.

150. It is difficult to determine with certainty the number of requests for MLA dealt with by the Belgian authorities. The statistical analysis is complicated because certain supplementary requests may be linked to the same initial request and because the rule that a copy of the request should be transmitted to the central authority is not always complied with in practice.

151. Furthermore, the Belgian authorities have stated that the database managed by the central authority only includes the basic information concerning requests for MLA, such as case name and dates of reception and conclusion. It is therefore impossible to determine the number of requests received related to the measures covered by Articles 17, 18 and 19 of the Convention.

152. In any event, the Belgian authorities have confirmed that in practice the requests (both incoming and outgoing) are based on a whole range of legal sources, and thus of international conventions. No requests have been received based solely on Convention CETS No. 198.

153. The statistics supplied show that in 2014, the Belgian Ministry of Justice registered 39 outgoing and 20 incoming requests concerning money laundering. Of the 20 received, 14 were dealt with before 9 September 2016. In 2015, the Ministry of Justice registered 49 outgoing and 21 incoming requests concerning money laundering. Of the 21 received, 13 were dealt with before 9 September 2016: 4 of them in 2015 and 9 in 2016.

### *Recommendations and comments*

154. Belgium uses the domestic arrangements that the CCP makes available to meet the requirements of the Convention regarding requests for MLA.

155. The Belgian authorities are encouraged to improve the availability of detailed statistics on MLA, to allow better evaluation of the effective implementation of the measures covered by Articles 17, 18 and 19 of the Convention.

### 7.3. Procedural and other rules (Direct communication) – Article 34 paragraphs 2 and 6

The Convention is considered to add value in that it introduces the possibility of direct communication prior to formal requests. According to Article 34 paragraph 6:

"*Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party*."

***Description and analysis***

156. Belgium provides for means of communication for mutual legal assistance purposes in the Law of 9 December 2004 on the international transmission of personal data and information for judicial purposes and on international mutual legal assistance in criminal matters, amending Article 90*ter* of the CCP. Chapter 2 of the Law, particularly Article 7, lays down the general principles of such judicial assistance:

*Article 7*

*§ 1. Requests for mutual legal assistance in criminal matters from the Belgian judicial authorities to the competent foreign authorities will be transmitted, via the Federal Public Service Justice, through diplomatic channels. The resulting documentation will be returned by the same means.*
*Requests for mutual legal assistance in criminal matters from the competent foreign authorities to the Belgian judicial authorities will be transmitted through diplomatic channels. The resulting documentation will be returned by the same means.*
*§ 2. However, if provided for in an international instrument linking the requesting State and Belgium, requests for mutual legal assistance in criminal matters and the resulting documentation in return will be transmitted either directly between the Belgian and competent foreign judicial authorities for delivery and execution, or between the justice departments concerned.*
*§ 3. A copy of each request transmitted or received by a Belgian judicial authority will be sent to the Federal Public Service Justice.*
*§ 4. When a request for mutual legal assistance in criminal matters transmitted or received by a Belgian judicial authority concerns a case that could pose a serious threat to public order or be detrimental to Belgium's essential interests, a report will be sent immediately to the Minister of Justice by the federal prosecutor or, if an investigating judge or a crown prosecutor initiates the request, via the public prosecutor.*
*(…)*

157. Thus, as stipulated in the first paragraph of the Article, the rule is that incoming and outgoing requests are transmitted through diplomatic channels, via the Federal Public Service Justice, which is the central Belgian authority. The exception, in paragraph 2, concerns situations where, if an international instrument linking the requesting State and Belgium allows it, requests for MLA in criminal matters and the resulting documentation in return will be transmitted either directly between the Belgian and competent foreign judicial authorities, or between the justice departments concerned.

158. Under paragraph 3, a copy of each MLA request received or sent by a Belgian judicial authority is passed on to the Belgian central authority.

159. In conclusion, Belgian legislation authorises direct communication if the international law in force so permits. Article 34(2) of the Convention authorises direct correspondence. However, in their replies to the questionnaire, the Belgian authorities have stated that sending MLA requests directly is the rule within the EU and the Council of Europe, *so long as the second Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg 1959) applies*.

160. MLA requests must be transmitted through the justice ministry to obtain authorisation for their execution, unless an international convention provides otherwise. According to Article 873 paragraphs 1 and 2 of the Belgian Judicial Code:

"The court or judge that has been asked for judicial assistance is required to execute it.

However, and unless international conventions provide otherwise, requests for judicial assistance from foreign judicial authorities can only be implemented following authorisation from the Minister of Justice".

In situations where an international convention provides for direct communication between the judicial authorities concerned, this provision is compatible with the Convention.

161. Article 5 of the Belgian legislation on international mutual legal assistance, as an exception to Article 873 (2) of the Judicial Code, states that the aforementioned authorisation is not necessary for the execution of requests for MLA in criminal matters from the competent authorities of the EU member States.

162. Belgium has ratified the European Convention on Mutual Assistance in Criminal Matters (CETS No. 30, Strasbourg, 1959) and its two additional protocols (Strasbourg, 1978 and 2001). Article 4, "Channels of communication" of the second Protocol to the 1959 Strasbourg Convention[18], enables States Parties to communicate directly requests for MLA between judicial authorities, and not just in urgent cases. In March 2009, Belgium made a declaration pursuant to Article 4 paragraph 8 of the Protocol, whereby it requires the transmission of any MLA request, except when it is urgent, to the central authority for mutual assistance in criminal matters of its Federal Public Service Justice. At all events, in the case of Belgium, the direct communication option in urgent cases provided in Article 34(2) of the Convention is also provided for in the second Protocol.

[18] Article 4: "Article 15 of the Convention shall be replaced by the following provisions:

'Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels'".

163. To make MLA more effective, Article 6 paragraph 4 of the Law of 9 December 2004 on international mutual legal assistance requires Belgian judicial authorities to advise the competent foreign authority immediately if a request cannot be executed for legal reasons. The Belgian authority must give reasons for its decision, stating, if appropriate, the conditions under which action could have been taken. This paragraph also obliges any Belgian authority responsible for dealing with a request for assistance to inform the relevant foreign authority immediately if that assistance cannot be given within the time specified in the request, setting out the reasons for the delay and when a response can be expected.

### *Effective implementation*

164. Belgium has informed the rapporteurs that MLA requests are regularly transmitted by the judicial authorities through direct contacts. Direct correspondence is thus used in practice and a copy of each request received or transmitted is sent to the central authority for any follow up. Furthermore, Belgian authorities, during the pre-meeting, advised that, in practice, the draft requests were always discussed in advance among judicial authorities and among police, with the aim to better prepare the formal request.

165. While in principle the central authority receives a copy of each directly transmitted request, in practice an unknown number of requests remain unreported, making it difficult to compile reliable statistics.

166. According to the Belgian authorities, a period of three to four months is generally required to deal fully with a request for mutual assistance of average complexity.

167. The authorities' assessment of the urgency of a request on its reception is usually based on whether the suspects or persons charged have been remanded in custody, though other factors may be taken into account.

168. If a request for assistance is likely to be refused, in accordance with the grounds for refusal in Article 4(2) of the MLA legislation, the competent judicial authority forwards the request to the ministry of justice, which then informs the requesting state that it is totally or partially impossible to process the request.

169. The Belgian authorities have told the rapporteurs that the application of Article 873 of the Belgian Judicial Code does not take account of the provisions of Article 34 of the Convention. This means that MLA requests from States Parties that are non-EU member States are forwarded to the ministry of justice for authorisation of execution, even though this is incompatible with the Convention. The authorities maintain that this practice does not affect the effectiveness and rapidity of MLA proceedings. The number of requests not receiving execution approval is apparently very limited. Nevertheless, it has to be noted that this practice implies an additional step in the communication proceedings.

170. Requesting authorities from EU member countries communicate directly with the competent Belgian authorities, thanks to the applicable legal instruments. In addition, there is a specific convention applicable to the Benelux member countries, the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters of 27 June 1962.

171. Belgium has explained that the establishment of an efficient database linking the prosecution service, investigating judges and the central authority could, in the future, significantly increase the effectiveness with which Article 34 paragraph 6 is applied.

172. The contact details of the competent judicial authorities are available in the documentation of the Council of Europe's Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC), particularly in its country file and in its European Judicial Atlas.

173. However, in its country file - "National procedures for mutual legal assistance in criminal matters: updated 18/05/2015"[19] - Belgium included an "important remark" namely that since April 2014, the judicial landscape has been reshaped, with the pre-existing 27 judicial districts regrouped into 12 divisions. Since the implementation of the new "landscape" was still ongoing in mid-2015, the Belgian authorities stressed that the exact "clustering of judicial competences", particularly regarding international cooperation in criminal matters, was still not clear throughout the country. For the time being, therefore, requesting states were advised to contact the Belgian central authority before transmitting judicial assistance requests directly to a prosecutor's office. Once the reorganisation is finalised in practice, the new geographical distribution of responsibilities should facilitate and expedite the execution of requests for assistance, particularly with the aid of specialist units established within the regrouped prosecutor's offices.

### *Recommendations and comments*

174. In principle, Convention CETS No. 198 itself provides an operational framework for co-operation between the Parties so no additional international agreement is needed to deal with direct communication.

175. Belgian law does permit direct communication between judicial authorities, in accordance with Article 34(2) of the Convention. In practice, though, in the case of contacts with judicial authorities from Parties that are not EU member States, prior authorisation for execution is still required from the ministry of justice.

176. There is still a need for more detailed information, particularly in statistical form, on direct communications concerning requests for MLA sent and received by Belgium to assess the implementation of this Convention provision. Belgium is therefore encouraged to improve the system of keeping statistics also in relation to direct requests.

177. The so-called reshaping of the country's judicial landscape and the Belgian authorities' advice to the judicial authorities of other State Parties to the Convention to first contact the central authority raises concerns about the current effectiveness of direct communication with Belgium. The Belgian authorities are advised to give priority to determining the precise "clustering of judicial competences" within the country and to communicating the relevant information in clear form to foreign judicial authorities in the Council of Europe.

[19] http://www.coe.int/t/dghl/standardsetting/pc-oc/Country_information1_en_files/Belgium%20Revised%20Template%20-%20MLA_en.pdf.

178. To sum up, it is recommended to Belgium to raise awareness among judicial authorities on a regular basis regarding the possibilities for direct communication with the competent authorities of State Parties to the Convention.

## 8. International co-operation – Financial Intelligence Units - Article 46 paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12

Article 46 of the Convention is considered to offer added value in that it establishes "detailed machinery for FIU to FIU cooperation, which is not subject to the same formalities as judicial legal cooperation". The relevant provisions are:

**Paragraph 1** *Parties shall ensure that FIUs, as defined in this Convention, shall co-operate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.*

**Paragraph 2** *For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved.*

**Paragraph 3** *Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.*

**Paragraph 4** *Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.*

**Paragraph 5** *When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.*

**Paragraph 6** *An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.*

**Paragraph 7** *Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.*

**Paragraph 8** *When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.*

**Paragraph 9** *Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any*

*refusal to grant consent shall be appropriately explained.*

**Paragraph 10** *FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.*

**Paragraph 11** *The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.*

**Paragraph 12** *The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.*

***Description and analysis***

**Article 46**

179. In 2005, Belgium was found to be compliant with the FATF standard pertaining to the authority and powers of the FIU (formerly Recommendation 26). In the technical compliance annex of its April 2015 mutual evaluation report, FATF again concluded that Belgium was compliant with the new Recommendation 29.

**Article 46 paragraphs 1, 2 and 3**

180. The Belgian financial intelligence unit - the CTIF – was set up under the Law of 11 January 1993 on prevention of the use of the financial system for purposes of money laundering and terrorist financing (hereinafter 'Law').[20] The legislation and regulations relating to the CTIF's activities also include:

- the Royal Decree of 11 June 1993 on the composition, organisation, functioning and independence of the CTIF;
- the ministerial decree of 17 June 1993 laying down the remuneration arrangements of the members of the CTIF and the maximum amount of its budget.

181. With regard to international co-operation, the CTIF operates according to the rules laid down in the Egmont group's guiding principles and in the EU Council Decision of 17 October 2000 concerning arrangements for co-operation between financial intelligence units of the Member States in respect of exchanging information.

182. Under Article 22 of the Law, the CTIF is an administrative authority with legal personality. It is placed under the joint administrative supervision of the justice and finance ministries, though neither has any authority to intervene in the CTIF's exercise of its right to decide whether or not to submit case files to the

[20] As amended by the acts of 18 January 2010, 26 November 2011, 25 February 2013, 11 July 2013, 15 July 2013, 19 April 2014, 25 April 2014, February 2016, by the programme acts of 29 March 2012 and 27 November 2012, and by the royal decrees of 6 May 2010, 3 March 2011 and 2 June 2012.

prosecution service. The CTIF has broad autonomy both administratively and with regard to carrying out its responsibilities.

183. The CTIF's main task is to collect, analyse and transmit the information it receives, to determine whether there are serious indications of the laundering of assets derived from one of the predicate offences referred to in the legislation or serious indications of terrorist financing. The list of offences in Article 5 paragraph 3 of the Law covers all the predicate offences of money laundering in the appendix to the Convention (see Section 1 of this report - Criminalisation of money laundering – Article 9).

184. The CTIF is equipped to provide the widest possible measure of international co-operation in connection with money laundering, its predicate offences and terrorist financing, whatever their judicial, administrative or any other status. This is confirmed by information supplied by Belgium in this evaluation and in FATF's evaluation and monitoring reports.

185. The legislation only allows the CTIF to seek the assistance of another FIU when a matter is brought properly before it, through a report from a reporting entity, as defined in the legislation, or any other form of communication from a competent authority, such as the federal prosecution service and officials of the State administrative departments.

186. The CTIF's power to exchange information without the need for a prior request, in accordance with the Convention or various memoranda of understanding, derives from Articles 22 and 35 of the legislation. Since 2012, the CTIF has spontaneously communicated information relating to at least 96 cases or case files to foreign FIUs, for example when:

a) The CTIF, after analysis, decides to transmit to the judicial authorities a case file showing links with a third country. It automatically informs the foreign FIUs from which it has obtained valuable information (the CTIF will have previously requested approval to use the information received) and provides them with a summary of the financial information it has transmitted to the judicial authorities.

b) The CTIF, after analysis, decides to transmit to the judicial authorities a case file showing links with a third country, without having previously questioned the FIU of this third country. It also informs the FIU of this third country and provides it with a summary of the financial information transmitted and authorises it to use this information.

187. When it concludes agreements with other FIUs, the CTIF bases its activities on the Egmont Group's Memorandum of Understanding (MoU). On 8 June 2016, the CTIF had 91 MoUs with its foreign counterparts, including those with the States Parties to the Convention. The latter cover all the States Parties except four (Albania, Armenia, Bosnia and Herzegovina and Montenegro). Even without such MoUs, the CTIF co-operated with these four countries in 2014 and 2015 on a case by case basis according to the principle of reciprocity. Thus, when the CTIF has not yet concluded an MoU, it is still possible to exchange information if reciprocity and confidentiality are guaranteed. In 2014 and 2015, for example, on the basis of these principles and in the absence of a bilateral co-operation agreement, the CTIF exchanged information under the auspices of international co-operation with the FIUs of nearly 30 countries and courts, including the four countries referred to above.

188. The following statistics illustrate the exchanges of information with foreign FIUs over the period 2008-2015.

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Total |
|---|---|---|---|---|---|---|---|---|---|
| **Number of requests sent*** | 2 720 | 2 808 | 2 457 | 1 376 | 1 639 | 1 319 | 1 223 | 898 | 14 440 |
| **Number of requests received** | 358 | 402 | 381 | 420 | 464 | 536 | 424 | 1 007 | 3 992 |

*Until 2010, requests for information sent via FIU-NET were counted in terms of the number of people involved. Since 2011, the requests submitted have been counted in terms of the number of cases (there can be several people involved in a single case).

**Article 46 paragraph 4**

189. There is no domestic legislation setting out the specific content of requests for co-operation.

190. In the case of requests for assistance to non-EU countries via the Egmont Secure web, the CTIF abides by the relevant Egmont rules and principles. Such requests are accompanied by the date and place of birth, nationality or address of the persons involved, information on their link with the requested country, a summary of the suspicious transactions with existing links with the requested country (origin or destination of the funds) and any evidence, based on information from the reporting entity, the Belgian police or another FIU, that the persons concerned are already known to the relevant authorities of the requested country.

191. The CTIF uses the FIU-NET communication system for requests to other EU countries. The requests are accompanied by the same sort of information as noted above, but only when and if the requested country states that the person concerned is known to its relevant departments, such as the FIU, police or customs.

192. The CTIF specifies in each case how the information requested will be used, that is solely for the purposes of combating money laundering or terrorist financing (see Annex II).

193. The CTIF has stated that no FIU has refused to co-operate with it because of insufficient information.

194. It should also be noted that the MoUs concluded with foreign counterparts lay down what information is required to justify requests for assistance.

**Article 46, paragraph 5**

195. Article 22 paragraph 2 of the legislation authorises the CTIF to receive and analyse information supplied by various persons and bodies, including foreign counterparts in connection with mutual assistance.

196. Article 33 of the Law entitles the CTIF to receive all the information it considers necessary for its analytical duties from:

- the reporting entities, namely the persons and bodies specified in Articles 2(1), 3 and 4, and from the Chairman of the Bar under certain conditions as specified in Section 26.3;
- the police;
- the State administrative departments;
- bankruptcy receivers and interim administrators;
- the judicial authorities (on condition that transmission is authorised by the public or federal prosecutor).

197. Article 33 also allows the CTIF to determine, of its own motion, the deadline for the aforementioned persons, bodies and authorities to respond to its requests for information. It states that this power is mainly used for urgent requests for information or when a reporting entity or public authority shows clear reluctance to supply the requested information. In the great majority of cases, reporting entities and the competent authorities respond to requests within a reasonable time that is compatible with the effective processing of reported suspicions.

198. The CTIF has direct access to several databases. Information collection is also facilitated by the secondment of liaison officers from the federal police, the customs service, the tax authorities and the intelligence services. MoUs have also been signed with the military intelligence and security service to regulate the exchange of information.

199. Article 35(2) authorises the CTIF to pass on information received under Article 33 to requesting FIUs.

200. Information obtained from a judicial authority cannot be communicated by the CTIF to a foreign counterpart without the express authorisation of the public prosecutor or federal prosecutor (Article 35(6)). According to the Belgian authorities the public prosecutor does not usually refuse to supply information to foreign counterparts and it takes no more than a week to secure his agreement.

201. The time taken to respond to a request for information from an FIU in an EU member State is five days, in the case of a negative reply, and 30 days if the reply is positive. For exchanges of information with non-EU countries, the period is 30 days. When the request for information states that the matter is urgent, it is dealt with as a priority.

**Article 46, paragraph 6**

202. Under Article 22 paragraph 1 of the Law, the CTIF is responsible for processing and analysing information for the purposes of combating money laundering and terrorist financing. Any request for information must therefore be intended for that purpose.

203. As a member of the Egmont Group, it subscribes to the principles governing international co-operation. According to the 2013 principles, one of the grounds for refusal is failure to provide adequate protection for the information supplied.

204. The MoUs concluded by the CTIF with foreign counterparts also include criteria for refusal relating to the protection of information. If a foreign FIU cannot provide adequate protection for information supplied to it the CTIF may decide to cease providing it with sensitive data, and also limit to a strict minimum the information accompanying its requests for information from deficient counterparts. It may also decide unilaterally to denounce an agreement with a deficient FIU.

205. MoUs with foreign FIUs also stipulate that the authorities are not required to offer assistance if this could pose a direct threat to judicial proceedings under way concerning the same facts as those that are the subject of the request (see Annex III). The CTIF said that no requests had been refused for this reason. In case of an ongoing judicial investigation, the CTIF informs the FIU concerned of the case references so that the latter can pass these on to its judicial authorities, who can then contact the Belgian judicial authorities directly.

206. According to the Belgian authorities, the CTIF never refuses requests from foreign FIUs, unless they are unconnected with suspicions of money laundering. It may, however, adjust the reply it gives to the requesting country to take account of any deficiencies in the request, such as one that falls outside the scope of the FIU's responsibilities, or when there is no reference to how it relates to Belgium or when the requesting agency offers no overview or description of the suspicious operations concerned. The CTIF will nevertheless check whether the individuals or legal persons on whom the information is sought appear in its database as a result of reports of suspicion. Thus, the CTIF will, at a minimum, inform the requesting country whether or not the person concerned does indeed appear. The authorities state that refusals because of absence of suspicion of laundering are very rare.

207. The Belgian legislation does not contain an explicit requirement to send an explanation to the FIU concerned in case of refusal of a request. However, in this case the Egmont Principles apply and the Belgian authorities have indicated that every refusal of cooperation will be explained in writing.

**Article 46, paragraph 7**

208. Belgian legislation imposes no restrictions on the dissemination of information received by counterpart FIUs or the use of such information other than for analytical purposes. Such restrictions are, however, the subject of Egmont Group principles and relevant MoU clauses.

209. MoUs explicitly provide that:
- the prior authorisation of the requested FIU is obligatory for the purposes of the use of the information it has supplied;
- the information obtained will not be communicated to any third party and will not be used for administrative, police inquiry or prosecution purposes without the prior consent of the supplying authority;
- the authorities will not permit the use or dissemination of any information or documents obtained from their counterparts for purposes other than those specified in the agreement, without the prior consent of the supplying authority.

210. The CTIF uses the standard MoU, which essentially repeats these three principles. The conditions governing the use of the information are also shown in bold type at the foot of each communication of information to foreign FIUs.

211. The Egmont Group's 2013 principles for information exchange between FIUs place limits on the use of information for other purposes than those set out in the request. In such cases, the receiving FIU needs the approval of the requesting FIU.

212. The Belgian authorities have confirmed that information received from other FIUs is only used with their written consent.

**Article 46, paragraph 8**

213. Belgian law imposes no restrictions on the use of information or documents supplied by the CTIF for the purposes of analysis. However, if the receiving FIU wishes to divulge them, it must obtain the CTIF's prior authorisation. The requirements laid down in Article 46 paragraph 7 are applicable.

**Article 46, paragraph 9**

214. There are no specific provisions in Belgian law governing the procedure the CTIF must follow when authorising a foreign counterpart to use information supplied in judicial inquiries or prosecutions. The Belgian authorities have stated that the CTIF does not refuse to give authorisation to a requesting FIU that wishes to transmit the information received to the police or judicial authorities for investigative or prosecution purposes, unless the request for information falls outside the scope of money laundering or terrorist financing, as defined by the legislation, or there is no evidence of such laundering or financing. In the latter case, the CTIF asks the requesting FIU for fuller information to enable it to identify any laundering or terrorist financing aspects.

215. Information exchanged between FIUs cannot be used directly in judicial proceedings.

**Article 46, paragraph 10**

216. The legislation provides for the confidentiality of information held by the CTIF. Article 35 imposes a high level of professional confidentiality on members of the CTIF and its staff, police and other officials seconded to it and outside experts whose services it uses, and prohibits them from disclosing information received in the course of their duties to unauthorised third parties. Divulging such information makes them liable to prosecution under Article 458 of the Criminal Code, punishable by eight days' to six months' imprisonment and a fine of EUR 100 to 500.

*Article 35 AML/CFT Law*

*§ 1. Without prejudice to the application of the preceding sections and to the communications specified in § 2, and except where they are called to give evidence in legal proceedings, the members of the CTIF and its staff members, police and other officials seconded to it and outside experts whose services it uses shall not, even in the case specified in Article 29 of the Code of Criminal Investigation and notwithstanding any contrary provision, disclose information received in the course of their duties.*

*Any member of the Unit, staff member, police or other official seconded to it or outside expert whose services it uses who discloses information as defined in sub-paragraph 1 shall be liable to the penalties laid down in Article 458 of the Criminal Code.*

*Article 458 Criminal Code*

*Medical practitioners, surgeons, health officers, pharmacists, midwives and all other persons who, by reason of their status or profession, are guardians of secrets entrusted to them and who disclose them, except where they are called to give evidence in legal proceedings (or to a parliamentary commission of inquiry) or where the law requires them to do so, shall be liable to imprisonment for between eight days and six months and a fine ranging from EUR 100 to 500.*

217. The legislation also establishes exceptions to the confidentiality requirement. It does not apply to communications falling within the scope of mutual assistance, under international treaties to which Belgium is a party, or made, on the basis of reciprocity, to foreign bodies fulfilling similar functions and subject, when carrying out their duties, to the same confidentiality requirements as those of the Unit. Nor does it apply to communications coming within the scope of mutual assistance between, on the one hand, the Unit and, on the other, the State intelligence service, the military intelligence and security service and the co-ordination body responsible for assessing the threat posed by terrorism, its financing and possible associated money laundering activities.

*Article 35 AML/CFT Law*

*§ 2. Paragraph 1 shall not apply to communications falling within the scope of mutual assistance, under international treaties to which Belgium is a party, or made, on the basis of reciprocity, to foreign bodies fulfilling similar functions and subject, when carrying out their duties, to the same confidentiality requirements as those of the Unit.*
*(…)*
*Nor shall paragraph 1 apply to communications coming within the scope of mutual assistance between, on the one hand, the Unit and, on the other, the State intelligence service, the military intelligence and security service and the co-ordination body responsible for assessing the threat posed by terrorism, its financing and possible associated money laundering activities.*

218. Information is also protected by the employment regulation of 26 June 2013, which all the employees of the CTIF have signed.

219. Staff members are also all subject to rules on incompatibility. Under Article 7 of the Royal Decree of 11 June 1993, they are prohibited from carrying out any duties or occupying any post in the financial or non-financial organisations and professions specified in the Law of 11 January 1993. Under Article 9 of the Royal Decree of 11 June 1993, seconded liaison officers sign a written undertaking to maintain confidentiality.

220. In addition, several aspects of the protection of sensitive information, such as the security of premises and documents, improper exercise and misuse of authority, conflicts of interests and procedures relating to gifts, invitations and various other benefits, as well as certain fundamental principles, are covered

by the code of ethics and departmental memoranda. The offices of the CTIF, where reports that might give rise to requests from and exchanges with other authorities are processed, are located separately from other departments. There are also established principles governing the protection of the IT environment and the data for which it is responsible. Exchanges of information with foreign FIUs pass via the FIU.Net and Egmont Secure Web secure channels.

**Article 46, paragraph 11**

221. The Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data was ratified by Belgium on 28 May 1993 and came into force on 1 September 1993.

222. The Law of 7 December 1992 on the protection of privacy with regard to automatic processing of personal data sets down the obligations arising from the Convention. The Law was amended by the Law of 11 December 1998 transposing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The principles of protection of the rights and freedoms of individuals, particularly the right to privacy, as laid down in the Directive, clarify and extend those contained in the aforementioned Council of Europe Convention.

**Article 46, paragraph 12**

223. Belgian legislation contains no provision on follow-up action regarding the use of the information forwarded by the CTIF, nor on providing feedback at the request of a foreign FIU.

224. The Belgian authorities have stated that in practice, the CTIF occasionally asks its foreign counterparts to inform it of the action taken on case files – transmitted or discontinued – for which the CTIF has supplied information.

225. Moreover, since 2007, and at more or less regular intervals (once or twice a year), the CTIF has met its main foreign counterparts to discuss international co-operation. On such occasions, certain important cases on which the two FIUs have collaborated are examined to assess the extent to which information supplied by the CTIF has been used to process the case, and vice versa.

226. In the case of information received from its foreign counterparts, the CTIF completes a “feedback” form, which may be requested by the other FIU. It also systematically, and spontaneously, provides it with general and detailed information on the file (overview of suspicious financial transactions, the sums involved, identity of the persons concerned and so on (see paragraph 190)).

***Effective implementation***

227. The CTIF states that it collaborates on a regular basis with 147 foreign counterparts. The FATF’s evaluation of the effectiveness of aspects relating to international co-operation (Immediate Outcome 2) found that there was a “substantial level of effectiveness”. The report gave a positive assessment of the dynamism of information exchange and the high quality of the information

provided by the CTIF, whether on request or in a spontaneous manner. The CTIF stated that it had never refused to assist a counterpart and its responses were given in a timely manner. As shown by the statistics in the following table, the CTIF sends many more requests than it receives.

**Requests for assistance sent and received by the CTIF**

| | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Total |
|---|---|---|---|---|---|---|---|---|---|
| **Number of requests sent*** | 2 720 | 2 808 | 2 457 | 1 376 | 1 639 | 1 319 | 1 223 | 898 | 14 440 |
| **Number of requests received** | 358 | 402 | 381 | 420 | 464 | 536 | 424 | 1007 | 3 992 |

*Source*: CTIF

* Until 2010, requests for information sent via FIU-NET were counted in terms of the number of people involved. Since 2011, the requests submitted have been counted in terms of the number of cases (there can be several people involved in a single case).

### *Recommendations and comments*

228. Overall, given its legal framework and the measures it has taken, Belgium is carrying out the requirements of Article 46 of the Convention satisfactorily.

229. The authorities are nevertheless encouraged to consider enacting provisions to ensure that the requirements of Article 46, paragraphs 4, 6, 7, 8, 9 and 12, are duly incorporated into the domestic AML/CFT legislation.

230. It should be noted that work has already started on transposing the 4th EU Directive[21] into Belgian law. The resulting new AML/CFT Law will include a chapter dealing explicitly with co-operation between FIUs in the manner specified by the 4th Directive.

## 9. Postponement of domestic suspicious transactions – Article 14

The Convention is considered to offer added value in that it requires State Parties to take measures to permit urgent action in appropriate cases to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion.

### *Description and analyses*

231. The AML/CFT Law includes provisions, in particular Article 23, to permit fulfilment of the obligations arising from Article 14 of the Convention.

[21] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

232. Under Article 23 paragraph 1, when persons or institutions covered by Article 2 paragraph 1 of the Law know or suspect that a transaction to be carried out is related to money laundering or terrorist financing, they are obliged to inform the CTIF of this fact, either in writing or in electronic form, before executing the transaction, specifying, if appropriate, the deadline for execution. Article 23 paragraph 2 authorises the CTIF to prevent execution of a reported transaction, if such a measure is justified by the seriousness or urgency of the case.

233. This refusal to execute applies not only to the suspicious transaction report but also to any other transactions related to this case. The CTIF will decide which transactions and accounts are concerned by these measures. It is also authorised to prevent the execution of transactions by other reporting entities specified in Article 2 paragraph 1 that have not filed such reports, if the transactions concerned relate to a case currently being assessed by the Unit.

234. Article 23 requires reporting entities to specify a final date for execution of the suspicious transaction. According to the Belgian authorities, the CTIF generally has approximately two working days to assess urgent reports. The CTIF considers that this is quite sufficient to obtain information from the various departments and bodies it might wish to consult, such as the police, State administrative departments, intelligence services and judicial authorities, and to request urgent information from its foreign counterparts.

235. The CTIF is legally bound to notify immediately, by fax or, failing that, in any other written form, the persons and bodies specified in Section 2 paragraph 1 that are concerned by the refusal of execution measures.

236. It is possible to suspend the execution of transactions for a maximum of five working days from notification.[22] This period may be extended but the CTIF must then send the case files to the state or federal prosecutor, who will then decide whether the extension must be approved. The CTIF informs the state or federal prosecutor that it is opposed to the execution of a transaction and provides the latter with the relevant information to decide whether the suspension measure can be extended by means of a judicial seizure. If there is no extension decision, once the deadline has passed the transaction can be executed.

237. There is no legislation on suspension of the measure to block a transaction before five days have expired. The authorities have stated that when there is no longer any justification for such postponement measures the financial institution concerned is advised of this in writing.

238. Belgian law clearly and explicitly limits the application of this measure to cases in which an STR has previously been filed. Yet, the Belgian authorities state that in order to block or postpone a transaction, or freeze assets or an account, the matter must first be brought properly to the CTIF, either by an STR or through another form of communication transmitted by a competent authority, such as the federal prosecution service or officials of the State administrative departments. These are the communications that the legislation treats as equal to STRs, thus enabling the CTIF to open a case file under Article 22 of the Law. However, there appears to be a definite lack of

[22] The Programme Act of 29 March 2012 extended this period from two to five working days.

consistency between Article 22 paragraph 2 and Article 23 of the legislation. The former grants the CTIF very wide-ranging powers and authorises it to take all necessary measures, in accordance with Articles 23 to 28 and 33 to 35. Yet Article 23, which deals with suspension measures, restricts the CTIF's powers to apply such measures to cases where there is a prior STR report filed by one of the individuals or bodies specified in Article 2 paragraph 1.

239. No suspension measure has been applied since the legislation was passed and no case file has been opened on the basis of other forms of communication than ones treated by the Act as STRs (except in the case of requests for information from foreign counterparts – see Article 47 of the Convention). According to the Belgian authorities, reports on which a suspension measure is based are normally filed by the banks.

240. Under Article 14 of the Convention, States may restrict postponement measures to cases where an STR has been submitted before execution of the transaction. However, States do not appear to have authority to limit the scope of this power to transactions notified by only certain reporting bodies. Yet, the provision relating to the CTIF's blocking powers (Article 23 of the Law) only refers to bodies and persons specified in Article 2 paragraph 1. It thereby excludes those specified in Articles 3 and 4, such as notaries, lawyers and accountants. Moreover, there is no provision requiring these latter bodies and persons to refrain, if possible, from executing a transaction, so that they can file a report of suspicion that would make it possible to apply a postponement measure. Consequently, it would appear that Belgian legislation limits the CTIF's power to suspend transactions as it covers only some of the reporting entities.

241. However, the bodies and persons specified in Articles 3 and 4 of the legislation are obliged to report any suspicious transaction as soon as they become aware of it (Article 26). The Belgian authorities have also indicated that it would be difficult to apply suspension measures to transactions executed by this type of profession, given their immediate character.

### *Effective implementation*

242. According to available statistics, between 2009 and 2015, the CTIF imposed 211 suspension measures on amounts totalling EUR 366.51 million. The authorities have stated that these measures exclusively concerned credit establishments.

243. Over the same period, 177 case files were forwarded to the judicial authorities and the same number of investigations were launched. More than EUR 213.65 million was seized.

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | Total |
|---|---|---|---|---|---|---|---|---|
| **Number of suspension measures** | 38 | 60 | 33 | 36 | 25 | 19 | 13 | 224 |
| **Amount (EUR millions** | 10.47 | 135.84 | 183.59 | 11.81 | 12.34 | 8.71 | 3.75 | 366.51 |
| **Number of case files (among the suspension measures) forwarded to the judicial authorities** | NA | 56 | 31 | 34 | 24 | 19 | 13 | 177 |
| **Number of investigations** | NA | 56 | 31 | 34 | 24 | 19 | 13 | 177 |
| **Number of prosecutions** | NA | NA | NA | NA | NA | NA | NA | NA |
| **Number of penalties** | NA | NA | NA | NA | NA | NA | NA | NA |
| **Amounts seized (EUR millions)** | NA | 116.46 | 23.22 | 12.45 | 8.44 | 53.08 | NA | 213.65 |
| **Amounts confiscated (EUR millions)** | NA | NA | NA | NA | NA | NA | NA | NA |

244. The amounts seized are sometimes greater than the amounts blocked by the CTIF. This is because the CTIF informs the central authority responsible for seizures and confiscations that it has forwarded a case file concerning property that might be seized. In conjunction with the central authority, the prosecution authorities may seize assets that the CTIF has not necessarily blocked, because it has no reason to do so (for example, because the client has not expressed any wish to recover his or her assets).

245. The number of postponement measures imposed differs from the number of files forwarded to the judicial authorities because of cases where no serious evidence of money laundering or terrorist financing could reasonably be identified.

246. The amounts suspended in 2010 and 2011 were much higher than in the other years. This was the result of several important cases involving sums of EUR 60, 88 and 100 million.

247. In 2011, the amounts seized were significantly below the amounts suspended by the CTIF. This was because the latter blocked a transfer of EUR 60 million. The prosecution service subsequently judged it inappropriate to extend the suspension measure. In addition, in another case, the sum of EUR 88 million was returned to a client in the form of securities, which were subsequently found to be forged.

248. There is no information on confiscations, following suspension measures.

249. Despite the decline in the number of suspension measures, these statements show that this measure is applied effectively.

***Recommendations and comments***

250. As a valuable supplement to the postponement system, the CTIF is recommended to base its power of postponement on reports from all the reporting entities and to give these entities all the necessary means for applying blocking measures.

251. Belgium is recommended to amend its legislation to make the provisions of Articles 22 and 23 clearer and more consistent.

## 10. Postponement of transactions on behalf of foreign FIUs – Article 47

Article 47 establishes a new international standard, namely:

*"1 Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.*

*2 The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that;*

*a) the transaction is related to money laundering; and;*

*b) the transaction would have been suspended, or consent to the transaction." going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report."*

***Description and analysis***

252. Belgium has stated that when the CTIF receives a request for information from a foreign FIU that meets the legal conditions, it can then use all of its legal powers, including that of postponing the execution of a transaction under Article 23 of the legislation, for a maximum period of five days. The procedure to be followed by the CTIF's in exercising this power is described in section 9 of this report (Postponement of suspicious transactions – Article 14).

253. An analysis of Article 23 of the Law shows quite clearly that blocking measures can only be applied on the basis of suspicious transaction reports emanating from bodies and individuals specified in Article 2 (1) (financial undertakings and professions, estate agents and diamond traders). The aforementioned group of reporting entities does not include foreign counterparts.

254. Admittedly, Article 22 paragraph 2 authorises the CTIF to receive and analyse information supplied by the bodies and persons specified in Article 2 of the Law as well as by foreign entities fulfilling similar functions to its own, in the context of mutual assistance. Nevertheless, having regard to the

requirements of Article 23[23], the power to apply blocking measures does not appear to extend to information supplied by a foreign FIU.

*Article 22*

*§ 2. Without prejudice to the powers of the judicial authorities, this authority is responsible for receiving and analysing information supplied by the bodies and persons specified in articles 2(1), 3 and 4, pursuant to articles 20, 23 to 28, by the authorities specified in Article 39, pursuant to Article 31, by foreign entities fulfilling similar functions to its own, in the context of mutual assistance, by the customs and excise department, pursuant to the Royal Decree of 5 October 2006 on certain measures relating to controls of the transfrontier transport of cash and Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, and by the traders specified in Article 21 sub-paragraph 4. It shall take all necessary measures, pursuant to articles 23 to 28 and 33 to 35.*

### *Effective implementation*

255. It should be emphasised that, notwithstanding the requirements of the given article, in practice the CTIF co-operates with other FIUs in applying blocking measures.

256. The CTIF has itself initiated requests to other FIUs for the postponement of transactions. In 20 active cases over the last three years, the CTIF has requested a foreign FIU to block assets or funds in a foreign account.

257. According to the Belgian authorities, since 2005, the CTIF has acted on seven occasions to postpone transactions at the request of a foreign FIU.

### *Recommendations and comments*

258. Belgium has stated that the legal provisions on international co-operation can be used to exercise a right to block transactions, at the request of a foreign FIU. However, the lack of any clearly worded provision on this subject casts certain doubts about the effective implementation of the obligations arising from Article 47 of the Convention.

259. Belgium is therefore recommended to take legislative or other measures to permit the CTIF to initiate urgent action, at the request of a foreign FIU, to suspend or withhold consent to a transaction, under the same conditions as those provided for in domestic law.

[23] For a detailed analysis of this section, see paragraphs 234 ff of this report.

## 11. Refusal and postponement of co-operation – Article 28 paragraphs 1d, 1e, 8c

The Convention is considered to offer added value in that, under articles 28.1(e) and 28.1(d), international judicial assistance cannot be refused on the grounds that the offence concerned is a political (or a fiscal) one if it concerns the financing of terrorism.

Article 28.8(c) prohibits refusal of international cooperation by States that do not recognise self-laundering domestically, when the refusal is based on the fact that, in the internal law of the requesting Party, the subject is the author of both the predicate and the money laundering offence.

### *Description and analysis*

260. Since the Law of 9 December 2004 on international mutual legal assistance in criminal matters came into force, the fact that an offence is of a fiscal nature can no longer be invoked as justification for refusing assistance outside the scope of the Convention. The fiscal nature of the offence is no longer a ground for refusal in Belgium. In any case, the authorities have stressed that terrorist financing is an offence under normal criminal law and can no longer be considered to be a fiscal offence.

261. Regarding the grounds for refusal relating to political offences, the following points may be made.

262. Article 4(2) of the Law of 9 December 2004 lists the obligatory grounds for refusal, which include cases in which the request concerns facts that, in Belgium, give rise to political offences or ones that are closely related. However, this paragraph only applies to requests for international assistance in criminal matters that do not fall within the scope of an international legal instrument on mutual assistance between Belgium and the requesting country and that are therefore responded to on the basis of a reciprocal commitment to close co-operation under Article 4(1) of the legislation. This provision is therefore not relevant for an assessment of co-operation under the Convention.

263. Article 3 of the Law of 20 May 1997 on international co-operation on seizure and confiscation includes obligatory grounds for refusal of requests for seizure and confiscation:

*Article 3*
*§ 1. The request will not in any circumstances be executed if:*
*1. it could pose a threat to Belgium's sovereignty, security, public order or other essential interests;*
*2. there are serious reasons to believe that the request is based on considerations that are incompatible with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;*
*3. the offence to which the request relates is a political offence, subject to exceptions stipulated in the relevant treaties.*
*§ 2. A decision on the execution of the measures specified in the request will be deferred if these measures might have an adverse effect on inquiries and prosecutions conducted by the Belgian authorities.*

264. The Belgian legislation therefore provides for a ground for refusal where the offence to which the request relates is a political offence, subject to exceptions stipulated in the relevant treaties. The Belgian authorities pointed out that political offences were very narrowly defined, and in accordance with the international instruments currently in force. Terrorist offences, including terrorist financing, are excluded from this category as a matter of principle.

265. The Belgian courts appear to have gradually reduced the scope of the political offence criterion[24]. However, there is no legal definition of this notion.

266. Regarding Article 28 paragraph 8(c) of the Convention, the fact that a person suspected or convicted of laundering is at the same time suspected of being the (co-)author of the predicate offence or has been convicted of such an offence cannot be a ground for refusing mutual assistance for the purposes of seizing or confiscating property. Self-laundering is an offence in Belgium under Article 505 sub-paragraph 2 of the Criminal Code.

267. The rapporteurs noted that the FATF report considers that Belgium has achieved a substantial level of effectiveness in international co-operation. The Belgian authorities stated in the report that the rule in principle was to honour requests for assistance. None of the countries who gave opinions on international co-operation with Belgium noted any refusal to grant mutual legal assistance.

### *Recommendations and comments*

268. Belgium's legal system satisfies the requirements of Article 28, paragraphs 1d, 1e and 8c.

269. The Belgian authorities are recommended to ensure that they can provide meaningful statistics on the practice of international co-operation in these two areas.

[24] *''An offence cannot constitute a political offence unless it is a necessary consequence of the nature of the offence that it consists in a direct interference with the existence, organisation or functioning of the political institutions, or that it has been committed for the purpose of securing such interference with the political institutions, and, given the particular circumstances, the fact of its commission has or may have such an interference as its direct consequence"* Court of Cassation, 18 November 2003, RG P.03.0487.N.

## II. OVERALL CONCLUSIONS ON IMPLEMENTATION OF THE CONVENTION

270. Belgium has a certain number of effective tools to enable it to combat serious forms of crime and target the proceeds of those crimes, for use in both the prevention of money laundering and criminal investigations.

271. As a result, the country's legal provisions are generally compatible with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

272. First, the legal framework has been improved in recent years, as a result of both domestic legal provisions and the influence of Community law. Second, there is evidence of the Belgian authorities' commitment to ensuring that the AML/CFT system works effectively. For example, the establishment of a register at the central bank, which expedites the identification of accounts, has improved the already reliable machinery for ensuring co-operation in the execution of requests for MLA, and in particular requests for information on the tracing and identification of the bank accounts of any legal person or individual.

273. The assessment of the effective implementation of a major part of the Convention provisions has been made possible by the co-operation supplied by the Belgian authorities and the information they have furnished. In a few rare cases, however, it has been complicated by a lack of statistics and of practical illustrations.

274. Convention CETS No. 198 could be exploited more effectively by the Belgian authorities, particularly in its role as a legal basis for international judicial co-operation.

275. This report has identified a series of desirable improvements to secure a higher level of compliance with the Convention in areas that offer added value to the recommendations drawn up by the FATF:

- clarify the legislation regarding the offence of money laundering in cases where there has been no conviction for a predicate offence and the legislation on the liability of legal persons, to confirm the already established evolutions in case-law;

- take the necessary measures to enable courts and prosecution authorities to have regard to previous decisions taken in States Parties to the Convention, whether or not the country concerned is a member of the European Union;

- increase the effectiveness of the confiscation system, particularly by strengthening the central role of the OCSC, and to make confiscation of all criminal proceeds a real priority;

- to improve the availability of detailed statistics on MLA, to allow better evaluation of the effective implementation of the measures covered by Articles 17, 18 and 19 of the Convention.

- harmonise domestic legislation with Article 23 paragraph 5 of the Convention, thus ensuring, to the widest extent possible, the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions; ensure that the restitution of confiscated property to the requesting Party is considered as a matter of priority, in accordance with Article 25 of the Convention;

- ensure that there are effective and clear procedures for direct communication, whether or not the country concerned is an EU member, and even in a period of change to the domestic judicial landscape;

- supplement the suspension arrangements by authorising the CTIF to base its power of postponement on reports from all the reporting entities and make the provisions of Articles 22 and 23 of the AML/CFT Act more consistent;

- finally, take the necessary steps to permit the CTIF to initiate urgent action, at the request of a foreign FIU, to suspend or withhold consent to a transaction, under the same conditions as those provided for in domestic law.

276. The Conference of the Parties invites Belgium to implement the conclusions in this report and report back on action taken by 31 May 2018.

# III. ANNEXES

## ANNEX I

**Declaration contained in the instrument of ratification deposited on 17 September 2009 - Or. Fr.**

Belgium declares that the central authority designated under Article 33, paragraph 2, of the Convention, is the *Service Public Fédéral Justice, Direction générale Législation, Libertés et Droits fondamentaux, Service de coopération internationale pénale, Boulevard de Waterloo 115, B-1000 BRUXELLES*.
**Period covered: 1/1/2010 -**
Articles concerned: 33

**Declaration contained in the instrument of ratification deposited on 17 September 2009 – Or. Fr.**

Belgium declares that the unit which acts as FIU, designated pursuant to Article 46, paragraph 13, of the Convention, is the *Cellule de traitement de informations financières* (Belgian Financial Intelligence Unit), *Avenue de la Toison d'Or 55 (boîte 1), B-1060 BRUXELLLES*.
**Period covered: 1/1/2010 -**
Articles concerned: 46

**ANNEX II**

**Template for requesting information sent by the CTIF to a foreign counterpart**

Cellule de Traitement des Informations Financières
CTIF-CFI
Avenue de la Toison d'Or 55 boîte 1
B-1060 Brussels
BELGIUM
Tel : 32-2-533.72.11
Fax : 32-2-533.72.00
Email : info@ctif-cfi.be

Information request regarding a possible violation of the Belgian anti-money laundering legislation

Our reference: [Ref] [Insp]

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1. Applicant

Date : date
Nom : FirstName LastName
Titre : Function

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2. Recipient

FIU : Name
Nom : Salutation FirstName LastName
Adresse : Address, PostalCode City, Country
Téléphone : Tel
Fax : Fax
Email : eMail

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3. Persons concerned

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4. Description of suspicious operations

The CTIF is currently analysing a report of suspicions related to facts and financial transactions which can be linked to money laundering/terrorist financing concerning subjects. The report was submitted to the CTIF by an institution/a person covered by Belgian Law.

Summary

Memo

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5. Requested information

Could you let us know whether the subjects identified above are known to your authorities and send me, as far as possible, more detailed information on this individual? Could you also let us know whether this person has a criminal record?

The requested information will be used in the analysis of a report of suspicions related to suspicious facts or financial transactions.

Thank you in advance for your cooperation,

FirstName LastName
Function

**ANNEX III**

## Model type of Memoranda of Understanding concluded between the CTIF and foreign counterparts

### Memorandum of Understanding
### between
### the Financial Intelligence Processing Unit
### of the Kingdom of Belgium (CTIF / CFI)
### and the State Financial Intelligence Service
### under the Government of the …….
### Concerning Cooperation in the Exchange of Information
### Related to Laundering of Criminal Proceeds
### and Financing of Terrorism

The Financial Intelligence Processing Unit of the Kingdom of Belgium (CTIF / CFI) and the State Financial Intelligence Service under the Government of the ……..., herein referred to as "the Authorities", desire, in a spirit of co-operation and mutual interest, as well as on the basis of reciprocity and within the framework of the legislation of the States of the Authorities,

to facilitate the information exchange related to the laundering of criminal proceeds, predicate offences or financing of terrorism,

and have reached the following understanding:

**Article 1.**

The Authorities shall cooperate to gather, develop and analyse information related to the laundering of the criminal proceeds, financing of terrorism or associated criminal activities.

To that end, the Authorities, spontaneously or upon request, shall exchange any available information that may be relevant to the investigation by the Authorities of financial transactions related to laundering of criminal proceeds or financing of terrorism and also to the involved individuals or legal entities. Any request of information shall be justified by a brief statement of the underlying facts.

**Article 2.**

Except for information of a public nature, the information or documents obtained from the respective Authorities shall not be disseminated to any third party, nor be used for administrative, investigative or judicial purposes without prior consent of the Authority supplying the information.

**Article 3.**

The Authorities shall not permit the use or dissemination of any information obtained from the respective Authority for other purposes, than those stated in this Memorandum, without the prior consent of the Authority supplying the information.

**Article 4.**

The information obtained in accordance with this Memorandum is confidential. It is subject to official secrecy and is protected by at least the same confidentiality as provided by the national legislation of the Authority supplying the information.

**Article 5.**

The Authorities shall jointly arrange acceptable procedures of communication, consistent with the legislation of their respective countries, and shall consult each other with the purpose of implementation of this Memorandum.

**Article 6.**

The communication between the Authorities shall take place in English via the Egmont Secure Web.

**Article 7.**

The Authorities are not obliged to give assistance if this would directly prejudice ongoing judicial proceedings concerning the same facts as the request is related to. Any refusal shall be appropriately explained and justified.

**Article 8.**

By mutual consent of the Authorities this Memorandum may be amended and modified by separate protocols, which are inseparable part hereof.

**Article 9.**

Any Authority at any time may terminate this Memorandum by written notification of other Authority of its intention to terminate it upon expiration of ninety (90) days from the date of receipt of written notification of its termination.

**Article 10.**

The provisions of this Memorandum governing the confidentiality of information obtained prior to the termination of this Memorandum shall remain in effect after the termination of this Memorandum.

**Article 11.**

This Memorandum shall enter into force from the date of signing by the Authorities.

Signed in_____on……..2016, in duplicate in English, …….. All texts have equal legal power.

In the event of any disagreements arising from the interpretation or using this Memorandum, the text in English shall prevail.

| | |
|---|---|
| **For the Financial Intelligence Processing Unit CTIF/CFI of the Kingdom of Belgium** | **For the State Financial Intelligence Service under the Government …….** |
| _____ | _____ |
| **XXXXXXX** | **XXXXXX** |
| **Director** | **Chairman** |