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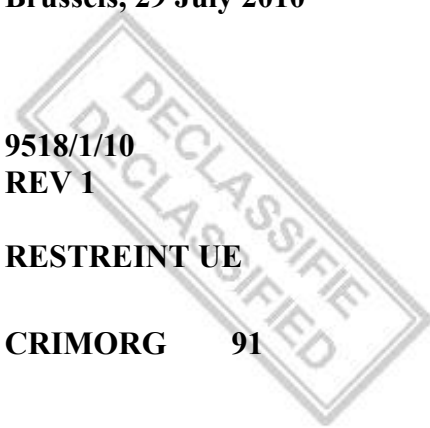
**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 29 July 2010**

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REV 1**

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**EVALUATION REPORT ON THE**  
**FIFTH ROUND OF MUTUAL EVALUATIONS**  
**"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**

**REPORT ON BELGIUM**

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## 1. INTRODUCTION

At the meeting of the Multidisciplinary Group on Organised Crime (MDG) on 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluations<sup>1</sup>, two of which received substantial support. At the MDG meeting on 6 May 2008, the majority of delegations were in favour of selecting financial crime and financial investigations. On 17 June 2008, the Group decided that the subject of the fifth round was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant to countering financial crime. However, it was also agreed that the evaluation should go beyond simply examining the transposition of relevant EU legislation and take a wider look at the subject matter<sup>2</sup>, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG<sup>3</sup>.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed<sup>4</sup>. The significance of the exercise was once again underlined by the Council when establishing the EU's priorities for the fight against organised crime based on OCTA 2009 and ROCTA<sup>5</sup>.

Topics relating to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen<sup>6</sup>.

Experts with substantial practical knowledge in the field of financial crime and financial investigation were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits<sup>7</sup>. Belgium was the fifth Member State to be evaluated during this round of evaluations.

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<sup>1</sup> 6546/08 CRIMORG 34.  
<sup>2</sup> 10540/08 CRIMORG 89.  
<sup>3</sup> 16710/08 CRIMORG 210.  
<sup>4</sup> 9767/09 JAI 293 ECOFIN 360.  
<sup>5</sup> 8301/2/09 REV 3 CRIMORG 54.  
<sup>6</sup> 11060/09 JAI 404.  
<sup>7</sup> 5046/1/09 REV 1 CRIMORG 1.

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The experts charged with undertaking this evaluation were Ms Bernadett Hajos (Customs investigator, Hungary), Ms Alina Mihaela Bica (State Secretary, Romania) and Mr Stéphane Maas (Judge, Luxembourg). Four observers were also present: Ms Joanna Beczala (DG JLS, Commission), Ms Valery Charbonnier (*OLAF*, Commission), Ms Angeles Gutierrez Zarza (Eurojust) and Mr Carlo van Heuckelom (Europol), together with Mr Guy Stessens and Mr Peter Nath of the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, based on findings arising from the evaluation visit that took place between 24 and 27 November 2009, and on Belgium's detailed replies to the evaluation questionnaire<sup>1</sup>.

## 2. NATIONAL SYSTEM AND POLICY

### 2.1. Specialist units

#### 2.1.1. Investigative authorities

##### 2.1.1.1. *Police Services – Home Affairs Federal Public Service (SPF)*

In Belgium it is primarily the police service under the Home Affairs Federal Public Service<sup>2</sup> (FPS) (*Service Public Fédéral - (SPF) Intérieur*) that deals with investigating financial and economic crime. The competent Belgian authorities have underlined that the Belgian police works, under limited legal conditions and under the authority of a magistrate, in close cooperation with the other competent services in the fight against economic and financial crime.

Law enforcement is conducted by an integrated police service structured at federal and local levels, made up of the Federal Police<sup>3</sup> (*Police Fédérale*) and the Local Police (*Police locale*). Both forces are autonomous and subordinate to different authorities, but linked in regard to reciprocal support, recruitment, manpower mobility and common training.

The Federal Police operates under the supervision of the ministry of the interior and the ministry of justice. The Federal Police conducts specialised law enforcement and investigation missions over the whole territory of Belgium, but for practical reasons the federal police has a central level and is

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<sup>1</sup> Doc. reference SN 4553/09 for the English language version.

<sup>2</sup> It is a Belgian peculiarity that the Belgian federal ministries are referred to as Federal Public Services (FPS).

<sup>3</sup> [http://www.polfed-fedpol.be/org/org\\_dgj\\_fr.php](http://www.polfed-fedpol.be/org/org_dgj_fr.php)

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furthermore divided into districts. Every member of the federal police has however competences nationwide.

Within the Federal police, the general directorate of the judicial police (*Direction Générale de la Police Judiciaire - DGJ*), with a staff of approximately 4200, is responsible for investigating crime.

The investigations of the *administrative police* are carried out under the responsibility of the administrative authorities: the mayors, the provincial governors and the Minister for the Interior.

The investigations of the criminal investigation police services are, depending on the type of investigation, under the responsibility of the Public Prosecutor, the investigating magistrate or the Federal Office of the Public Prosecutor. The prosecutor's office is strategically governed by the College of General Prosecutors under the authority of the Minister for Justice.

Overall, police services tackling financial crime in Belgium are grouped as follows:

- within the federal police structure:
  - *DGJ's* organised economic and financial crime directorate (*DJF - Direction pour la lutte contre la criminalité économique et financière organisée*)<sup>1</sup>
  - 27 decentralised criminal investigation directorates (called *PJFs*) with "EcoFin" units or cells
- within 196 police zones of the local/zonal police structure:
  - "EcoFin" sections in local investigations (especially in major zones, i.e. cities).

In 2006, judicial directors (at district level) assigned 28,2 % of the 2 064 operational staff in the *PJFs* (district judicial directorates of the federal criminal investigation department) to deal with "EcoFin" crime, with approximately 9 % assigned to money laundering.

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<sup>1</sup> [http://www.polfed-fedpol.be/org/org\\_dgj\\_djf\\_fr.php](http://www.polfed-fedpol.be/org/org_dgj_djf_fr.php)

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## Economic and Financial Crime Directorate (DJF)

Within the federal criminal investigation department (*Direction générale de la Police judiciaire - DGJ*), the economic and financial crime directorate (*Direction pour la lutte contre la criminalité économique et financière organisée - DJF*)<sup>1</sup> is responsible for the nation wide strategic and operational goal setting to combat economic and financial crime and has also its own operational competences for the investigation of serious economic crime, serious IT crime, corruption, and fraud and money laundering. It is located in Brussels and is manned by some 270 police officers and civilians.

The directorate is made up of five special divisions, each one specialising in investigating a particular form of crime and with tasks described in detail further on in this report.

The *DJF*'s divisions are:

- the Central Anti-Corruption Office (*OCRC*)
- the Central Office for Combating Forgeries (*OCRF*)
- the Central Organised Economic and Financial Crime Office (*OCDEFO*)
- the Federal Computer Crime Unit (*FCCU*)
- the Federal Unit against Swindling and for Economic and Financial Documentation (*FUSE*).

In addition there are 27 decentralised criminal investigation directorates (*PJF*) with “Ecofin” units that comprise approximately 450 staff.

In their answers to the questionnaire, the Belgian authorities have stated that overall there are approximately 750 investigators specialising in serious financial and economic crime at the directorate-general of the criminal investigation department (*Direction générale de la Police judiciaire - DGJ*).

Within the *DJF* there are a number of specialist units, dealing with the different forms of economic and financial crime:

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<sup>1</sup> [http://www.polfed-fedpol.be/org/org\\_dgj\\_djf\\_fr.php](http://www.polfed-fedpol.be/org/org_dgj_djf_fr.php)



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## a) Central Anti-Corruption Office (OCRC)

Within the DJF services the Central Anti-Corruption Office (*Office central pour la répression contre la corruption - OCRC*) represents a central service endowed with operational powers. Its members can conduct judicial investigations which includes the exercising of coercive powers (e.g. searches, seizures, wire tapping, arrests), either autonomously, or with the support or collaboration of the judicial directorates that are decentralised in districts, according to the seriousness of the investigation, its sensitivity, the position of the offenders and the complexity of the action required. More precisely, the *OCRC* is in charge of investigating and supporting the investigation of crimes detrimental to the State's interests, as well as crimes of complex and serious corruption. Besides, it fulfils a pilot function within the context of the fight against criminal abuses and attitudes regarding public market sectors, and regarding legislation on grants, assents and permits.

Thus, *OCRC* investigations particularly concern the following crimes:

- bribery
- misappropriation of public funds
- conflicts of interest (*prises d'intérêts*)
- embezzlement in connection with public procurement contracts, grants, permits and approvals.

The corruption in question must therefore be understood in its broad sense, especially criminal violations referred to in the Law of 10 February 1999 on the fight against corruption.

The existence of this operational capacity at central level is indispensable for the following reasons:

- The district (and local) authorities do not have the same capacities to fight corruption (given the other types of crime they have to tackle).
- In some districts there appears to be a lack of expertise and, above all, of capacity.
- It is necessary to have a specialist investigation service that is sufficiently autonomous and capable of leading complex and difficult investigations or international investigations.

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The various cooperation partners of the *OCRC* are:

- the other departments of the *DJF*
- *OLAF*
- the Criminal Policy Department.

## b) Central Office for Combating Forgeries (OCRF)

The Central Office for Combating Forgeries (*L'Office central pour la répression des faux - OCRF*) is responsible for investigating crimes of falsification both at national and international level. They comprise the following:

- False documents;
- Forgery of money;
- Infringement of property rights;
- Counterfeiting (e.g. pirate product, counterfeit medication).

## c) Central Organised Economic and Financial Crime Office (OCDEFO)

In order to carry out its mission the Central Organised Economic and Financial Crime Office (*l'Office central pour la lutte contre la criminalité économique et financière grave - OCDEFO*) contains four sections: 1.) VAT, 2.) Serious Organised Tax Fraud, 3.) Assets Bureau and 4.) Money Laundering. Those sections are supported by a Strategy and Analysis Bureau.

The office is empowered to carry out judicial investigations (including any necessary coercive measures). In order to detect cases of serious VAT Fraud, the police, the public prosecutor and the ministry of Finance set up the OCS (Support Unit). This unit, located in the offices of *OCDEFO*, applies data mining which has made it possible to detect VAT carousels more rapidly and more efficiently. This early detecting of fraud makes the actions of the Law Enforcement (ministry of Finance or police) more effective.

The main responsibilities of *OCDEFO* are the following:

- to detect and investigate money laundering
- to detect and investigate serious organised economic and financial and tax fraud
- to detect and investigate VAT fraud
- to recover illegal assets.

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Within anti-money-laundering policy the "cash watch" project plays an important role. The transport of large sums of money by couriers from one country to another can nearly always be considered as suspicious. Such couriers are mostly discovered through border control or customs services, for instance at the external borders of the European Union, or during large-scale routine controls (so-called FIPA actions). On the basis of those observations, the Federal Judicial Police can carry on the investigation on the potentially illegal origin of the money transported. In order to improve the processing of judicial records, the services in the field have been made aware of this form of crime by the Federal Judicial Police and informed of their part in the discovery of the transport of suspicious money and valuables by all kinds of couriers.

*OCDEFO* pays special attention to detection, seizure and confiscation of assets derived from crimes committed. For the purpose of managing goods seized, *OCDEFO* cooperates with the Central Body for Seizure and Confiscation (*OCSC*) via two liaison officers. In addition, at international level they cooperate with other countries via *CARIN*.

## d) Federal Computer Crime Unit (FCCU)

The *FCCU* reflects the ever-increasing use of information technology and classic crimes committed through electronic networks.

The main task of the *FCCU* is to detect computer crimes, especially paedophile contents or fraud, committed via the Internet. The *FCCU* is equipped with advanced computer technology to detect and investigate crime.

The unit cooperates with other police units and provides them with technical and analytical support. A special team has been set up for the purpose of analysing ICT technologies in serious and urgent cases. The unit also provides operational support in the event of an attack on IT systems.

The *FCCU* is divided into three sections:

- Intelligence and e-fraud section
- Operational section
- "Internet search" section

Its role in fighting financial crime can be understood as providing support.

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e) Federal Unit against Swindling and for Economic and Financial Documentation (FUSE)

The Federal Unit against Swindling and for Economic and Financial Documentation (*FUSE*) has a dual mission; on the one hand it manages the information flow, both at national and international level, transmitting requests to the banks; on the other hand it tackles cases of swindling that have not been committed via the Internet.

## Local Police

The local police in Belgium are made up of 196 police forces whose officials have been drawn from the former communal and gendarmerie brigades during the reorganisation of the police in 2001. Each local police chief is responsible for implementing local law enforcement policy and ensures the management, organisation and distribution of missions in the local police force.

Apart from the information received in the answers to the questionnaire, the expert team had no opportunity during the evaluation to assess the functioning of this particular law enforcement element in the fight against financial crime and in conducting financial investigations. Based on a ministerial directive the Belgian local police deals with the so-called “minor” economic and financial crime investigations (directive 2/2002 of the College General Public Prosecutors).

### *2.1.1.2. Fiscal Authorities*

The Tax Administration has no law enforcement powers and therefore does not deal with investigation of financial crimes. It has, however, good relations with the *DJF's* Central Organised Economic and Financial Crime Office and the public prosecutor's office.

Under their general powers of investigation, prosecutors or investigating judges may ask the tax authorities for any information they require. Such information may come from the income tax authorities (buildings belonging to a person liable for tax, moveable assets, tax assessments carried out, precise description of company activities, accounts, remuneration of directors and staff, business relationships and addresses or premises occupied), the VAT authorities (annual records of sales to Belgian and foreign clients liable for tax, notifications of certain offences, irregularities identified in checks), the land and property registry (purchase and sale of buildings, loans, estates) and the customs (import and export details and records of major VAT offences).

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Although there is no specialist unit dealing mainly with financial crime at the Belgian FPS for Finance, for a comprehensive understanding of the role of the tax administration in countering financial crime and when conducting financial investigations it is necessary to shed light on the functioning of some of the players.

## **Standing Committee for the Fight against Tax Fraud (Comité permanent de lutte contre la fraude fiscale - CAF)**

In 1996 the Standing Committee for the Fight against Tax Fraud (*Comité permanent de lutte contre la fraude fiscale - CAF*) was set up as a coordinating body to combat tax fraud, which may constitute an offence subsequent to financial crime. It coordinates anti-fraud policy (in tax matters) between the various tax authorities.

Article 2 of the Law of 28 April 1999 expressly provides that prosecution service officers appointed to courts and tribunals must inform the Minister for Finance immediately whenever a suspicion of fraud involving direct or indirect taxation emerges during examination of a case referred to them for preliminary investigation. These reports are forwarded to the *CAF*.

In a certain number of cases, in order for action to be taken at tax level, the Finance Federal Public Service has to be notified by the prosecution service and the Belgian Financial Intelligence Processing Unit (*CTIF*) of economic or financial offences where there is serious evidence of tax fraud which could prompt the relevant tax authorities to open a case.

Under current legislation, all prosecution service officers appointed to "courts and tribunals" and those responsible at the Belgian Financial Intelligence Unit (*CTIF*) must inform the Minister for Finance immediately whenever serious evidence of laundering of funds that have been derived from serious or organised tax fraud (entailing complex mechanisms or international procedures) is brought to light during the investigation of a criminal case which has been referred to them.

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Pursuant to a circular from the Minister for Finance, such cases must be forwarded to the *CAF* Secretariat, which forwards them for processing by the Special Tax Inspectorate (the administrative authority dealing specifically with serious tax fraud – *ISI*). In the light of the outcome, the *ISI* will decide either to take charge of the case itself (for example, if "carrousel" fraud is involved) or to pass it on to another tax authority (for example, Customs and Excise in cases involving products subject to excise duty, or the Corporate and Income Tax Administration (*l'Administration de la Fiscalité des Entreprises et des Revenus - AFER*) in cases involving failure to declare earned income).

## **Special Tax Inspectorate (ISI)**

The Special Tax Inspectorate (*Inspection Spéciale des Impôts - ISI*) is a decentralised organisation under the Belgian Federal Public Service for Finance with (at the time of the report) about 480 officials throughout the country and is primarily responsible for coordination between the regional directorates and the four regional centres in respect of its own task. In addition it cooperates with other administrations in the social and financial sector. The duties of this administration relate mainly to combating serious tax fraud.

Serious tax fraud investigations are generally carried out by the *ISI*. Pursuant to Article 29 of the Criminal Procedure Code, (tax) officials are obliged to inform the public prosecutor's office directly of any criminal offence, e.g. cases of corruption, trading in influence or money laundering committed by individuals or legal persons. Criminal offences under the tax legislation and its implementing instruments are, pursuant to Article 29.2 of the Criminal Procedure Code, subject to the mandatory submission to the regional director of the tax administration who has the discretionary power to forward it to the prosecutor's office.

To enable the *ISI* to carry out its mission, Article 87 of the special law on institutional reform of 8 August 1980 granted it and its officials "the powers which laws and regulations on taxation, duties and charges confer on tax authorities and officials thereof".

There are no specialist staff dealing exclusively with financial crime and/or financial investigations at the *ISI*.

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However, the *ISI* makes officials available to the police and judicial authorities, namely 6 officials (staff of 16) to the Central Organised Economic and Financial Crime Office (*OCDEFO*)<sup>1</sup> and 7 officials (staff of 18) to public prosecutor's offices<sup>2</sup>.

## **Corporate and Income Tax Administration (AFER)**

The Corporate and Income Tax Administration (*Administration de la Fiscalité des Entreprises et des Revenus - AFER*) is required to assess and collect tax and helps to implement the government's financial, economic and social policies.

This Administration is subdivided into:

- central departments which have wide-ranging tasks which may be summarised as follows:
  - enforcement of all laws and decrees concerning duties and taxes;
  - examination and drafting, usually in conjunction with the Fiscal Affairs Administration, of any amendments that might be made to existing legislation, as circumstances develop;
  - management and organisation of external departments, and maintaining order and discipline in those departments.
- external departments comprising:
  - on the one hand, 48 polyvalent control centres, including
    - 3 specialist national control centres<sup>3</sup>, with nationwide powers for the detailed scrutiny of dossiers concerning:
      - companies forming part of international groups;

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<sup>1</sup> Pursuant to Article 31 of the Law of 30.3.1994 (Belgian official gazette of 31.03.2004) and the Royal Decree of 23.1.2007 (Belgian official gazette of 7.2.2007).

<sup>2</sup> Pursuant to Article 71 of the Law of 28.12.1992 and the Royal Decree of 21.1.2007 (Belgian official gazette of 2.2.2007).

<sup>3</sup> “The expert team has been informed after the visit that since 1 January 2010 the three national control centres have been re-grouped within the AFER, now forming the Control Centre for Large Enterprises (*CCGE - Centre de contrôle des Grandes entreprises*). The latter is not only competent for the verification of those companies that had fallen under the specific sectors of activity of the national control centres but also for the control of companies and legal personalities that are qualifying as ‘large enterprises’ under the criteria defined in Circular AFER no. 4/2010 of 11 January 2010.”

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- large and very large companies belonging to the credit sector and insurance sectors as well as stock-exchange companies and holdings in which banks and insurance companies participate;
- large and very large companies belonging to the property and construction sectors;
- 45 control centres whose task is to check the tax situation of all legal and natural persons thoroughly. These checks are conducted jointly and simultaneously for income tax and VAT;
- on the other hand, the classic departments for direct taxation (158 for companies and 335 for natural persons) and for VAT (224), whose main task is to manage the fiscal dossier (collection and classification of declarations and documentation, enrolments, etc.) and to carry out spot checks;
- national and international search departments which supply information to the control centres and systematically search for information which is useful to the tax departments.

The staff complement of the external departments and the national and international search departments is around 11 300 officials, 21 % (+/- 2 370) of whom are employed in a control centre, 21 % (+/- 2 400) in a classic VAT department and 58 % (+/- 6 500) in a classic direct taxation department.

Both the direct taxation and VAT departments continue to play an important role at fiscal level. The direct taxation departments are responsible in particular for regularising the tax situation of wage-earners and pensioners and for spot checks on the self-employed and the liberal professions, etc. The VAT departments continue to carry out various spot checks relating to the commencement or cessation of activity, tax credits, normal construction value, etc.

Apart from carrying out a large number of administrative controls and tasks, the *AFER* is also responsible for combating fraud by all taxpayers taken individually. It is also called on as interlocutor for the judicial authorities on direct and indirect taxation for matters outside the terms of reference of *ISI*.



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Excursion: VIES-database and EUROCANET

The evaluation team has been informed after the visit about the manner in which the competent authorities of the Belgian Federal Public Service of Finance make use of the VIES-database. Moreover, information was received that Belgium has recently transposed 3 directives which are useful in the field of the fight against VAT fraud. These directives have been applicable in Belgium since the 1st of January 2010:

- Directive 2008/8/EC amending Directive 2006/112/EC as regards the place of the intra-Community supply of services;
- Directive 2008/9/EC laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State; and
- Directive 2008/117/EC amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions.

The latter is crucial in the field of the fight against fraud, because it creates the obligation for economic operators to submit information on intra-Community supplies of services on a quarterly basis. This information will be incorporated in VIES which will give the tax authorities the possibility to know all the information on service received by their residents in another Member State. An overview of the statistics concerning the use of VIES is published in the nation rapport "Tax and Recovery" (see Annex 2 - chart n° 88). In 2008, 7.126.370 times data was transferred through VIES from Belgium to another Member State and 1.014.508 times the Belgian authorities received information from abroad. In 2007 the numbers of transfers were 4.945.800 and 1.929.020 and in 2006 4.027.204 and 2.180.847 respectively.

EUROCANET, which has been founded by Belgium, is obviously also used by the Belgian authorities in the fight against fraud and especially within the framework of investigations of carousel fraud. The OCS (*Ondersteuningscel BTW-carrousel fraude - Cellule de soutien en matière de fraude carrousel TVA*) plays a key role in the latter. The OCS is a multidisciplinary cell which is composed of members of the Belgian tax authorities as well as the Belgian federal police. Its task is to gather all relevant information in order to single out, as soon as possible, certain suspicious companies. Their core business is thus to trace down criminal offences early and their know-how and expertise has contributed to the foundation of EUROCANET.

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Out of the 18.129 records which were exchanged between the participating states of EUROCANET in 2009, 310 records were used by the Belgian authorities in the fight against fraud.

Although neither *ISI* nor *AFER* have law enforcement powers, they have a legal obligation to inform the public prosecutor's office of punishable acts noted in the performance of their duties.

## Customs and Excise Administration

The Belgian Customs and Excise Administration operates under the authority of the Minister for Finance.

According to the answers provided by Belgium, there are no specialist entities at the Customs and Excise Administration that deal mainly or exclusively with financial crime and/or financial investigations.

However, a liaison officer from the Customs and Excise National Investigation Directorate has been posted to the Financial Intelligence Unit (*CTIF*).

The Customs and Excise Administration also posts officials to the Central Organised Economic and Financial Crime Office (*OCDEFO*).

In spite of this lack of direct involvement in investigating financial and economic crimes on behalf of the customs administration, they do take part in combating financial infringements. The customs authorities are primarily responsible for the control of international trade in the European Community.

In addition, the authority deals inter alia with:

- protecting the financial interests of the Community and the Member States,
- protecting the Community from unfair and illegal trade while supporting legitimate business activity.

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The protection of the financial interests of the Community includes collecting and checking excise duties during customs procedures and, inside the country, collecting and checking VAT relating to imports and checking on exemptions from excise duties and VAT on exports.

As part of the protection of the Community market, it takes action to combat IPR (Intellectual Property Rights) crime and counterfeiting.

Furthermore, the Customs and Excise Administration is entrusted with checking cross-border cash transport, for which purpose Instruction C.D. 592.20 – D.M.G.C. 245.603 "cross-border cash transport" of 11 June 2007 was circulated to all Customs and Excise Administration staff, to familiarise them with their powers and mission in that area.

### *2.1.1.3. The Interdepartmental Coordinating Committee on Combating Fraud in the Business Sector and applying Commission Regulation (EC) No 1848/2006 of 14 December 2006 (CICF)*

The Interdepartmental Coordinating Committee on Combating Fraud in the Business Sector and applying Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Council Regulation (EEC) No 595/91 No 595/91 (*CICF*) was set up by the Belgian Council of Ministers on 26 September 1997 as a result of the *Timperman-Carmeliet report*.

The *CICF* forms part of the Interministerial Economic Commission (*IEC*). Each department concerned with the problems discussed in a meeting may in principle be invited to it.

Although the *CICF* has no independent powers, it is responsible in particular for coordinating the various services comprising it which do have legal powers. The officials in some of those services have law enforcement officer status. The services represented have units and cells, etc. that specialise in combating economic fraud.

The list of *CICF* members may be changed depending on the agenda for the meeting.

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Responsibility for the *CICF* lies with the Minister for the Economy. It is chaired by the Head of the Directorate-General for Supervision and Mediation (*Direction Générale du Contrôle et de la Médiation - DGCM*) of the Federal Public Service (Economy, SMEs, the Self-Employed and Energy). The *CICF* is responsible for reporting annually to the Council of Ministers on the prevention and elimination of economic fraud.

Hence this report is also based on the annual evaluation that must be carried out by the Interdepartmental Prevention Unit (*Cellule interdépartementale de Prévention - CIP*) and the Multidisciplinary Unit on Fraud Prevention for the Safety of the Food Chain (*Cellule Multidisciplinaire de Lutte contre la Fraude pour la Sécurité de la Chaîne Alimentaire - CMSA*).

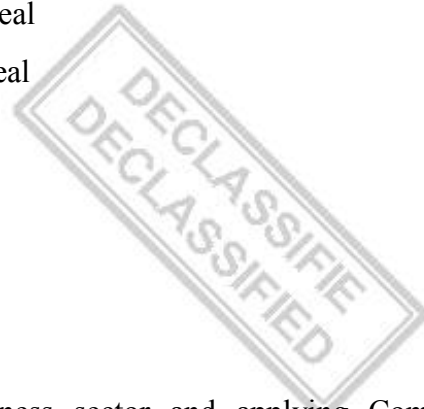
In their answers to the questionnaire, the Belgian authorities announced that a surveillance unit was to be set up in the near future as part of the Economy FPS Market Surveillance programme and the evaluation team has been informed after the visit that it had been established. The strategic objective is to combat all economic fraud practices effectively in order to strengthen the instruments used in that context (operational strategy). The project is called "Establishment of a surveillance system for the early identification of problems". It is expected that this surveillance system will enable the authorities represented on the *CICF* to analyse indicators in advance so as to detect and prevent possible fraud, rather than compile *ex post* reports. The ultimate aim of the project is to put in place a system for detecting and analysing fraud prevention indicators on a permanent basis. The project will result in the provision via an online information network (share-point) of permanent and continuous updates to partners on possible forms of economic fraud.

The following Belgian authorities and bodies are represented in the *CICF*:

- Economy, SMEs, Self-Employed and Energy FPS
- Justice FPS
- Flemish Government
- Finance FPS
- Health, Food Chain Safety and Environment FPS
- Permanent Representation of Belgium to the European Union
- Walloon Public Service
- Ministry of the Brussels-Capital Region

# RESTREINT UE

- Belgian Paying Agencies
- College of General Public Prosecutors
- Public Prosecutor's Office at the Brussels Court of Appeal
- Public Prosecutor's Office at the Ghent Court of Appeal
- Public Prosecutor's Office at the Liège Court of Appeal
- Federal Police
- Federal Agency for Food Safety
- Federal Agency for Medicines and Health Products.



The tasks of the *CICF* are varied. They comprise:

- coordinating the fight against fraud in the business sector and applying Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Council Regulation (EEC) No 595/91
- drafting an Annual Report to the Belgian Council of Ministers on the prevention and combating of economic fraud
- efficient management of information exchange
- improving coordination of all inspection services
- implementing Regulations (EC) No 1469/95 and No 745/96 on measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF
- performing tasks under Regulation (EC) No 1848/2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy
- proposing joint fraud prevention strategies
- establishing consultations on fraud mechanisms and measures to combat them
- issuing reports on instruments to be introduced
- issuing policy reports based on experience gained
- coordinating the preparation of meetings of the European Anti-Fraud Office (*OLAF*) at the European Commission.

# RESTREINT UE

## **Interdepartmental Prevention Unit (*Cellule interdépartementale de Prévention - CIP*)**

The Interdepartmental Prevention Unit, which comes under the Minister for Agriculture, was set up in 1996 for the purpose of preventing fraud in expenditure charged to the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF)<sup>1</sup>. Following the further regionalisation of agriculture and the establishment of the Federal Agency for Food Safety (AFSCA), the following bodies take part in the CIP's activities:

- the three paying agencies authorised for EAGF – EAFRD expenditure and for Belgium: the BIRB (Belgian Paying Agencies), the paying agency for Flanders and the paying agency for Wallonia;
- Delegated functions: Customs, AFSCA and the DGCM;
- the Coordinating Body for agencies paying out EU agricultural funds (Federal Unit for Agriculture, Economy FPS).

In performing its tasks, the CIP must, together with other partners involved, play a significant part in preventing fraud via the elaboration of specific scenarios, the drafting of appropriate reports and the organisation of missions in situ.

## **Multidisciplinary Unit on Fraud Prevention for the Safety of the Food Chain (*CMSA*)**

The Multidisciplinary Unit on Fraud Prevention for the Safety of the Food Chain (*Cellule Multidisciplinaire de Lutte contre la Fraude pour la Sécurité de la Chaîne Alimentaire - CMSA*) comes under the Ministry of Public Health and is chaired by the AFSCA National Investigation Unit (*Unité Nationale d'Enquête – UNE*), which is a multidisciplinary operational unit. Its basic task is to help to determine the areas of action, coordinate the work of the services concerned and evaluate the measures undertaken. Its activities focus on combating fraud along the entire food chain.

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<sup>1</sup> [http://mineco.fgov.be/menu/new\\_fr.asp](http://mineco.fgov.be/menu/new_fr.asp)

# RESTREINT UE

## 2.1.1.4. *Banking, Finance and Insurance Commission (CBFA)*

The Belgian Banking, Finance and Insurance Commission (*Commission bancaire, financière et assurances - CBFA*) is an independent administrative authority; financed through contributions from the undertakings whose activity it supervises, according to conditions determined by royal decree. It supervises compliance by financial institutions and financial intermediaries with their obligations as regards the fight against money laundering. This supervision extends to exchange bureaux that have an obligation to register with the *CBFA*. Furthermore, the *CBFA* is obliged to inform the Financial Intelligence Unit (*CTIF*) of any behaviour which is suspected of serving the purposes mentioned above.

The *CBFA* is entrusted with certain specific tasks with a view to protecting consumers of financial services and participates in the fight against money laundering and terrorist financing. It has the task of investigating and seeking evidence for and against where, pursuant to Article 70 of the Law of 2 August 2002, the *CBFA*'s Management Committee provides it with serious indications of practices liable to give rise to an administrative fine or penalty.

Within the *CBFA* two services and a Committee are responsible for financial offences and/or financial investigations, namely the investigation and analysis service and the auditor service. Besides those two services there is also the independent Sanctions Committee.

## 2.1.1.5. *Belgian Financial Intelligence Unit (CTIF)*

The Belgian Financial Intelligence Unit (*Cellule du Traitement des Informations Financières - CTIF*) is an independent agency with legal personality under the supervision of the Ministers for Finance and Justice, providing the link between those involved in the fight against money laundering and the financing of terrorism.

The *CTIF* was established by the Law of 11 January 1993 on preventing the use of the financial system for money laundering and the financing of terrorism. This Law transposes the EU Money Laundering Directive. It has been operational since 1 December 1993.

The bodies and individuals covered by the Law of 11 January 1993 contribute to its operating costs. The ceiling for the annual budget of the *CTIF* is set annually by the Ministers for Finance and Justice to which the *CTIF* has to submit an annual report.

## RESTREINT UE

The *CTIF* board consists of three magistrates, four financial experts and one high-ranking officer from the federal police reflecting its special function by providing the link between those involved in the fight against money laundering and the financing of terrorism. The agency is assisted by a secretariat of administrative staff and personnel responsible for assisting experts on financial matters. Staff providing assistance have a university qualification in legal, economic and financial matters. The Belgian FIU (*CTIF*) is permanently supported by two liaison officers from the Federal Police and one administrative co-operator. They belong also to the directorate *DJF* of the Federal Judicial Police.

The preventive arrangements in Belgium put in place by the Law of 11 January 1993 are based on a system of suspicious transaction reports (STRs). The *CTIF* receives STRs from different partners (financial institutions and members of a number of non-financial professions such as notaries, estate agents, diamond dealers, cash-in-transit companies, etc.).

The bodies and individuals subject to these arrangements must declare to the *CTIF* all operations and events which they know or suspect to be connected with money laundering or the financing of terrorism within the definition of the Law of 11 January 1993.

To that end, the law introduced an obligation of constant vigilance on the part of the bodies and individuals covered by the law who must satisfy themselves that the transactions carried out are consistent with their knowledge of the client and of his commercial activities, risk profile and, where necessary, the origin of the funds. They also examine with particular care all transactions which they consider particularly susceptible, by their intrinsic nature or their unusual aspects when set against the client's activities, by the circumstances surrounding them or by the kind of persons involved, of being connected with money laundering or the financing of terrorism.

Suspicious transaction reports are subject to operational and financial analysis focusing on the information they contain and other data that the *CTIF* collects by virtue of the powers granted to it to obtain all the intelligence it considers useful for accomplishing its tasks from bodies or individuals covered by the arrangements and from their monitoring, supervisory or disciplinary authorities, the police, government administrative bodies (tax and customs authorities, in particular the Federal Intelligence and Security Agency), bankruptcy receivers, temporary administrators and judicial authorities. The *CTIF* can also exchange information with units in other countries that perform the same functions.



## RESTREINT UE

Operational analysis is intended to show a link between the sums involved in suspicious financial transactions reported and certain criminal activities specified by the Law of 11 January 1993, being mainly at organised crime, terrorism and serious economic and financial crime<sup>17</sup>.

The *CTIF*'s financial analysis is aimed at retracing the source of the funds or determining their destination and identifying the financial flows connected with possible operations involving laundering money or financing terrorism.

In the case of a suspicious transaction the *CTIF* is entitled to temporarily freeze the transaction (two working days). In these cases the FIU informs the Central Body for Seizure and Confiscation (*OCSC*) and also submits the file to the public prosecutor's office. The money may be seized.

The *OCSC* can then contact the judicial authorities and lend its assistance and play a part in any judicial seizure that the authorities may decide upon.

The figures below indicate the number of STRs received by the *CTIF* between 2006 and 2008 and the number of financial analyses and investigations carried out by the agency following those suspicious transaction reports.

	2006	2007	2008
Suspicious transaction reports received	9 938	12 830	15 554
Number of new dossiers opened <sup>18</sup>	3 367	4 927	4 875

Since its inception in 1993, the *CTIF* has received 142 847 suspicious transaction reports collated in a total of 35 098 dossiers.

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<sup>17</sup> For a full list of predicate offences to money laundering referred to in the law of 11 January 1993, cf. [www.CTIF-cfi.be](http://www.CTIF-cfi.be).

<sup>18</sup> A large number of reports concern separate operations relating to the same case. Several reports from a single source may relate to the same case. Moreover, a single case may involve reports from several different bodies. The Unit groups together the reports received in a particular case in a single dossier.

## RESTREINT UE

The increase in the number of disclosures received in 2008, compared to 2007, is largely due to the rise in the number of disclosures from the Postal Service (+ 81 %), the Exchange Offices (+ 42,8 %) and Customs (+ 215,8 %).

In the past three years the *CTIF* has sent over 3 000 case files and financial analyses to the judicial authorities; developments for the years from 2006 to 2008 are shown in the following table:

	2006	2007	2008
Number of case files sent to public prosecutors' offices	912	1 166	937
Amounts involved in the case files sent to public prosecutors' offices [million EUR]	799,5	623,7	711,3

In 2008 the *CTIF* used its power to halt transactions in 21 cases, temporarily freezing EUR 8,9m. This amount should not be confused with the seizures and confiscations undertaken by the judicial authorities on the basis of information transmitted by the *CTIF*, involving significantly higher amounts.

Since its establishment, the *CTIF* has closed 22 108 files out of a total of 34 878 files opened since 1993. Feedback was provided to the financial institutions concerned, emphasising that closures are by nature provisional and do not dispense them from disclosing additional suspicious transactions if any occur. These closed files represent 61 119 disclosures, i.e. 42,8 % of all disclosures.

The *CTIF* has been informed of 1 209 convictions by the courts in 10 146 of the files reported to the Public Prosecutor since the start of its operations. It should be noted that some of these convictions are still under appeal. The amount of the confiscations known totals EUR 747.5m, whereas fines amount to EUR 80.3m. In these files 2 102 individuals were convicted.

# RESTREINT UE

## 2.1.2. Judicial authorities

### 2.1.2.1. Prosecution Service

#### Tasks

In criminal matters the prosecutors ensure the proper conduct and conclusion of criminal proceedings. They do so as regards both the treatment of the substance of the case and during the earlier investigative proceedings (for the investigating courts: pre-trial chamber and indictment division).

#### Organisation

The organisation of the Prosecution Service corresponds to that of the courts.

There is a public prosecutor's office at the court of first instance in each of the 27 court districts in Belgium, a general public prosecutor's office at each of the five courts of appeal (Brussels, Antwerp, Ghent, Mons and Liège), a federal public prosecutor's office with national jurisdiction and a general public prosecutor's office at the Court of Cassation. The latter, however, has no operational powers.

Appointments to all posts in the General Public Prosecutor's Office are by royal decree, on a proposal from the High Council of Justice.

Currently, the legal framework provides for in total 902 public prosecutors. In reality there are respectively 817 people in office.

The public prosecutor's office at the court of first instance delivers a prosecution primarily on the basis of the criminal policy directives adopted by the Minister for Justice and the College of General Public Prosecutors.

#### The College of General Public Prosecutors

The powers of the College of General Public Prosecutors include the consistent implementation and coordination of crime policy and the proper overall functioning and coordination of the Prosecution Service. The College of General Public Prosecutors is also responsible for informing the Minister of Justice about its annual activities, with an analysis and evaluation of the policy of investigations and prosecution during the past year and the priorities for the following year. The Minister of Justice adopts the criminal policy directive, including investigation and prosecution policy, after obtaining the opinion of the College of General Public Prosecutors.

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To carry out its task, the College of General Public Prosecutors meets at least once a month, on its own initiative or at the request of the ministry. There are also regular coordination meetings with the police, the Council of Public Prosecutors and the Council of Labour Prosecutors.

To enable it to follow developments in the various areas and to put together the resources to manage them, expert networks bringing together specialist judges have been set up by the College of General Public Prosecutors, inter alia for financial matters. Having useful information and the necessary expertise, these networks participate in the drafting of the guidelines to be put into force. They are therefore at the crossroads of exchanges between the different jurisdictions of the Courts of Appeal and constitute an important pole in terms of support for the judges at first instance responsible for the administration of dossiers.

While in general (except for specific tax questions) financial matters are not dealt with by the specialist judicial authorities set up as such by the law, practice nevertheless shows that, both at general prosecutor level and in the public prosecutor's offices at district (*arrondissement*) level, specialist financial sections are operating on the ground, composed of prosecutors specifically responsible for dealing with financial and/or economic matters.

In the Brussels district, for instance, the financial section is made up of 10 specialist prosecutors and tax officials seconded from the administration.

A particular situation prevails with respect to tax questions. The legislator has established a procedure for appointing assistant public prosecutors specialising in tax questions<sup>19</sup>. These prosecutors have the same powers as an ordinary assistant but have a qualification making them more specifically suited to conducting prosecutions or giving an opinion before a court on tax matters. They will carry out their duties in the court of first instance to which they are appointed and may carry out their duties in the various courts in the same judicial area. These prosecutors

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<sup>19</sup> The Law of 4 August 1986 created the post of assistant public prosecutor specialising in tax matters. A complement of fifteen assistant public prosecutors specialising in tax matters at federal level was set at the time. Special conditions of appointment were demanded for nominations to such posts. Those conditions were subsequently amended and it is now up to the High Council of Justice to assess the qualities and merits of candidates.

## RESTREINT UE

fulfil specific conditions of training and experience. They are made available by the general public prosecutor to the district public prosecutor having territorial jurisdiction.

In the case of files covering more than one *arrondissement* or having an international dimension, the competent judges or the general public prosecutor's office may call upon the federal public prosecutor's office, whose task it is to ensure national and international coordination of dossiers. The federal public prosecutor's office is in permanent contact with the Belgian member of Eurojust and several federal magistrates act as contact points in the European judicial network. The federal public prosecutor's office has the infrastructure, documentation and know-how necessary to facilitate international cooperation.

In the opposite direction, the federal public prosecutor's office facilitates the execution of tasks in Belgium requested by foreign authorities. For the latter it can represent a single entry point.

Within the College of General Public Prosecutors, one of Belgium's five General Public Prosecutors is more specifically responsible for implementing the criminal law policy laid down by the Minister for Justice and the College with regard to economic and financial crime and corruption.

He is assisted in this task by a "magistrate's assistant" (supporting prosecutor - a member of the prosecution service attached to one of the Courts of Appeal assisting him) who is empowered to make proposals with a view to securing consistency and effectiveness in the implementation of criminal law policy in this field by the prosecution service and the police services. In addition, the "magistrate's assistant" chairs an expertise network bringing together prosecutors, officials and police services specialising in the fight against economic and financial crime as well as other institutions such as the *CTIF*, the Banking Finance and Insurance Commission (*CBFA*) and the Minister for Finance, with a view to harmonising their policies regarding this type of crime.

### **Central Body for Seizure and Confiscation (OCSC)**

#### **a) Legal status and organisation of the OCSC**

The Central Body for Seizure and Confiscation (*l'Organe Central pour la Saisie et la Confiscation* - *OCSC*) was established by the Law of 26 March 2003 establishing a Central Body for Seizure and Confiscation and providing for value-preserving management of goods seized and for the implementation of property sanctions. The *OCSC* has been operational since 1 September 2003 and has its seat in Brussels.

## RESTREINT UE

Article 2 of the *OCSC* law<sup>20</sup> stipulates that the agency is to be set up within the prosecution service. It is therefore a public prosecution institution run by prosecuting magistrates. Furthermore, Article 25 of the law stipulates that the *OCSC* will carry out its tasks under the authority of the Minister for Justice, without prejudice to the powers of the College of General Public Prosecutors.

That provision places the *OCSC* under the direct authority of the Minister for Justice. Since it is also part of the public prosecutor's office, it is subject to the directives drawn up by the ministry of justice and the College of General Public Prosecutors on the basis of Articles 143bis and 143ter of the Judicial Code.

The *OCSC* has no distinct legal personality. At the time of its establishment, it was considered not only superfluous but also undesirable to give it legal personality, in order to avoid the risk of its becoming mired in liability proceedings. Any mistakes made by the *OCSC* are therefore subject to the same general liability rules as mistakes made by magistrates in the course of their duties.

*b) Relation of the OCSC to other relevant authorities (including prosecutors, police and customs).*

The *OCSC* was set up in particular to optimise collaboration between the FPS Justice and Finance and to support prosecutors and examining magistrates in matters of seizure and confiscation.

The Property Services of the FPS Finance are in general appointed as representatives of the *OCSC* (the collector represents the *OCSC* in cases of alienation). Apart from the former, other representatives may also be appointed (e.g. notaries).

Under Article 15, paragraph 4, of the *OCSC* law, the Central Body may ask the public prosecutor to investigate the solvency of convicted persons.

Account must also be taken of Article 17bis of the *OCSC* Law, which was introduced by the Programme Law (II) of 27 December 2006. That Article assigns two members of the prosecution service to the *OCSC*, to act as liaison magistrates. The law states that the task of the liaison magistrates is in particular to conduct solvency investigations as referred to in Article 15.

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<sup>20</sup> “Law of 26 March 2003 establishing a Central Body for Seizure and Confiscation and providing for value-preserving management of goods seized and for the implementation of property sanctions”.

# RESTREINT UE

At international level, the *OCSC* is, however, not the authority which acts as a central information point for Belgium. Its role is solely to facilitate enforcement of judgments abroad. In fact the rule is that neither the prosecution service nor the FPS Finance are competent to carry out confiscations abroad; it is the relevant department of the FPS Justice which does so.

For the enforcement of confiscations abroad, the prosecution services compile a dossier containing the decision and the pertinent documents from the criminal file. The dossier is sent to the *OCSC*, which then forwards it to the FPS Justice. Within the FPS Justice there is a central authority for international cooperation in criminal matters, working under the authority of the Directorate-General for Legislation and Fundamental Freedoms and Rights. The latter service carries out confiscations.

Forwarding of the dossier to the *OCSC* is justified by the fact that some magistrates and registrars are still unfamiliar with the procedure for enforcing judgments abroad. It was stated by the Belgian authorities that scrutiny of the dossier by the *OCSC* often brings added value in its treatment.

## c) *Mandate and powers of the OCSC*

The Central Office's powers and the scope of its interventions are set out in the *OCSC* law<sup>21</sup>.

Therefore the *OCSC* is obliged to assist the judicial authorities in criminal matters concerning the following:

- seizure of assets,
- exercise of the action of a public prosecutor for the purpose of confiscation of assets,
- enforcement of judgments and decisions which have acquired the force of *res judicata* and ordering confiscation of assets.

The *OCSC* has an obligation to submit either voluntarily or upon request opinions to the Minister for Justice and the College of General Public Prosecutors on the matters it is dealing with. It is also obliged to send a copy of its opinions to the relevant minister, where they relate to the regulations within his remit or to the activities of the officials, servants and representatives of his administration.

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<sup>21</sup> Cf. Article 3 of the *OSCS* law.

# RESTREINT UE

Furthermore, the OCSC is responsible for the following duties:

- carrying out centralised, computerised management of data relating to its activities;
- when so authorised by the public prosecutor or examining magistrate, carrying out the alienation of the assets seized;
- managing the assets seized in collaboration with the public prosecutor or examining magistrate;
- coordinating the enforcement of judgments and decisions ordering confiscation of assets;
- assisting the public prosecutor and the examining magistrate;
- supplying information on specific topics to the prosecutors and examining magistrates, police services and public services concerned;
- supplying assistance in the framework of international mutual legal assistance, drafting and updating service reports and cooperating with its foreign counterparts in the framework of laws and conventions.

With due regard for respective competencies, the tasks referred to in § 3, 1° and 2° of the OCSC Law must be carried out in collaboration with the College of General Public Prosecutors, the Council of Public Prosecutors and the Criminal Policy Department.

*d) Restraints on reporting to the OCSC and the Law of 27 December 2006 (II) to remedy the deficiencies*

The obligation to notify property assets is limited<sup>22</sup> to money and deeds, motor vehicles and boats, immovable property and any other property assets having an apparent estimated value of EUR 2 500 per unit of seized goods in the case of seizure, or per judgment or order in the case of confiscation.

Thus when the unit of property assets has a value of less than EUR 2 500, the assets do not have to be notified to the OCSC. The OCSC therefore does not receive all decisions concerning assets which meet the definition of "property assets". Moreover, as the experts were informed, the Court of Auditors clearly considers this a flaw.

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<sup>22</sup> By Circular Col. 7/2004.



# RESTREINT UE

Notification to the *OCSC* of confiscation decisions was not regulated by law at the time, and notification of such decisions to the Property and Collection Department was also left unclear, leading to a risk of non-enforcement. The Law of 27 December 2006 (II) enacting various provisions was introduced to tighten up this loophole.

Article 5(2) of the *OCSC* Law now provides that the public prosecutor or the general public prosecutor must either notify the *OCSC* or have the *OCSC* notified of final judgments and orders confiscating property assets. The Belgian authorities reported in their answers to the questionnaire that practices nevertheless still differed from one prosecutor's office to another.

As for the clerks, Article 92(1) of the Royal Decree laying down general rules on legal costs for enforcement measures stipulates that the clerk must submit a paper or electronic extract from all final judgments or orders imposing fines, confiscation or costs to the collector of the Departments for Registration and Property and Collection within three days.

He must also send the *OCSC* a copy of all judgments imposing confiscation, as well as a copy of the extract from such judgments. Notification is also sent to the Central Administration of the Departments for Registration and Property and Collection.

This latter obligation will eventually allow the fiscal authorities to centralise all information on confiscations in one database.

In the meantime, the circulation of information to the *OCSC* and fiscal authorities could obviously be organised more efficiently. The *OCSC* has informed the Court of Auditors that it is in favour of a system in which all confiscation judgments and orders – as well as extracts – are sent to the *OCSC* only, which would ease the administrative burden on the clerks.

For confiscations to be enforced efficiently, it is vital in all cases for the *OCSC* to have an extract in addition to the full text of all confiscation judgments and orders. The judgment or order allows the *OCSC* to solve any problems of interpretation and to compile a case file, while the extract allows it to communicate in full knowledge of the facts with the collector of the Property and Collection Department, who uses the extract as the sole basis for enforcement.

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e) Staff organisation of the *OCSC*<sup>23</sup>

## Director

The *OCSC* is headed by two members of the prosecution service, acting respectively as director and deputy director of the office, and are appointed for a period of five years which may be renewed twice on the advice of the College of General Public Prosecutors.

The director has an obligation to report to the Minister for Justice and the College of General Public Prosecutors, with particular regard to the application of the *OCSC* law by the bodies responsible.

Under the *OCSC* law, the director has full autonomy vis-à-vis the relevant minister to propose the staff he wants to employ or have made available.

## Liaison magistrates

The function of liaison magistrate<sup>24</sup> was introduced by Article 10 of the Programme Law (II) of 27 December 2006. The person fulfilling such a function must be a member of the prosecution service. In order to allow for the language specificities of Belgium, there are two liaison magistrates in the *OCSC*, one for Dutch and one for French.

According to the law, liaison magistrates must assist the directorate of the *OCSC* in the performance of their duties and liaise between the *OCSC* on the one hand and the public prosecutors' offices and examining magistrates on the other. They are responsible, in particular, for investigating the solvency of convicted persons as provided for in Article 15 of the *OCSC* law.

Their legal tasks comprise the following<sup>25</sup>:

They must:

- participate in the drafting of circulars and draft legislative amendments;
- assist prosecuting and examining magistrates with value-preserving management of goods seized in order to avoid depreciation of property by alienation or restitution under guarantee (that is to say, restitution on payment of a sum of money), reduce storage costs and carry out possible subsequent confiscation;

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<sup>23</sup> Cf. Articles 17 to 24 of the *OCSC* law.

<sup>24</sup> Cf. Art. 17bis of the *OCSC* law.

<sup>25</sup> Cf. Explanatory Memorandum to the Programme Law (II) of 27 December 2006.

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- help coordinate enforcement of confiscations, by helping to ensure better communication between the executive services of the public prosecutor's offices and the *OCSC*;
- lend support to magistrates for particular dossiers; by virtue of their experience, liaison magistrates have a very practical view of criminal procedure and can therefore give their colleagues more effective support.

### Liaison officers from other bodies

With the authorisation of the relevant minister, one to four liaison officers<sup>26</sup> from the FPS Finance, one to four officials from each of the FPS or the bodies which collect social security contributions, and one to four officers from the Federal or Local Police may be seconded to the *OCSC*.

Currently there are six liaison officers working with the *OCSC*: two Federal Police liaison officers, seconded from the Economic and Financial Crime Directorate's (*DJF*) Central Organised Economic and Financial Crime Office (*OCDEFO*) and four finance liaison officers. Two are from the tax and recovery administration, and they deal specifically with the application of Article 16a of the *OCSC* law. Two more are from the Property Services, and they liaise with their home administration for the execution of management measures during seizure (in particular for alienations) and for enforcement of confiscations.

The Belgian authorities explained in their answers to the questionnaire that at the time of the visit it was not yet possible for the *OCSC* to take advantage of the possibility of recruiting officials from the social security bodies as the necessary Royal Decree had not yet been adopted.

### Administrative staff

Legally, the number of staff members and their status must be determined by the King.

The necessary Royal Decree has yet to be drafted, which is explained by the fact that the *OCSC* was at the time a totally new service whose requirements in terms of administrative staff had yet to emerge in practice.

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<sup>26</sup> Cf. Art. 19 of the *OCSC* law.

# RESTREINT UE

Meanwhile, the *OCSC* has around twenty administrative staff. They are partly contract staff and partly statutory administrative staff from the FPS justice, seconded to the *OCSC*. The *OCSC* management informed the expert team in their answers to the questionnaire that they expected the staff of the *OCSC* to increase over the coming months and years.

## Consultants

Although the possibility of hiring consultants<sup>27</sup> for specific tasks exists, this instrument has not yet been exploited.

### **2.1.3. Training**

#### *2.1.3.1. Police*

There are various possibilities for joining the Belgian police, depending on applicants' prior training. Officers' qualifications therefore vary. In addition, there is a special course (accounting, IT) for police officers dealing with investigation of financial crimes.

Apart from the resources deployed by the federal police to control and if possible reduce serious financial crime, there is an ongoing programme to raise in-house awareness, in practice; this takes the form of various training measures.

The Federal Police has moreover a special training programme for financial investigators. This programme consists of four specific training modules, depending on the level of competence. Level 4 is in close cooperation with and organised by the University of Antwerp and concerns a master class in forensic auditing. Courses are given on serious economic and financial crime (e.g. money laundering, VAT fraud, etc.); there are various training modules: basic training, fast-track legal training, continuing training and the training required to secure progress up the pay scale. The Economic and Financial Crime Directorate (*DJF*) is also actively involved in the Cefpol, Taiex and Cospol training programmes, etc. It also contributes to in-house training programmes for trainee prosecutors every year. It provides one-off training courses for professionals (e.g. for those having a duty to report offences, for outside inspection services or inspectors from the Federal Public Service for Economic Affairs who monitor the ban on cash payment for goods worth EUR 15 000 or more).

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<sup>27</sup> Cf. Art. 24 of the *OCSC* law.

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## 2.1.3.2. *Customs and Excise*

With regard to its role in tackling financial crime, the Customs and Excise Administration organises training on specific issues such as cash transport, corruption and counterfeiting.

A one-day training course on cross-border cash transport is offered for airport officials and their line managers, in cooperation with the Federal Police and the *CTIF*

Customs and Excise Administration action on corruption is three-pronged:

Firstly, the criminology faculties of the universities of Ghent and Liège are running an awareness-raising campaign for all Customs and Excise Administration staff, focusing specifically on corruption. The campaign began in December 2008 and will run into 2010. An evaluation tool is currently being prepared, based on a number of specially developed questionnaires. The tool is designed to measure the impact of the campaign on the ethical perceptions of staff.

Secondly, a Vademecum which should constitute a practical tool for staff confronted with a corruption scenario is scheduled to be published by mid-2010. It is designed to enable staff to take a practical approach (signs of corruption) and react appropriately (relations with managers, procedure, protective measures, etc.) and will refer to Circular No 16/2008 of 7 October 2008 of the Anti-Fraud Committee (FPS Finance) on fighting corruption.

Thirdly, dedicated training courses solely for level A staff are to be organised, comprising three sections: (a) circular No 573 on a code of ethics for staff of the federal civil service, (b) disciplinary arrangements, (c) internal control. These courses were due to take place at the time when the evaluation visit took place<sup>28</sup>.

## 2.1.3.3. *Judicial authorities*

The judges have the opportunity of training in the subjects they are dealing with. Such training was, until very recently, organised directly by the High Council of Justice. The evaluation team was informed that now, however, a new institute for judicial training has been set up. This institute will

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<sup>28</sup> The evaluation team was informed after the visit that the courses were conducted and due to finish end of March 2010.

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be responsible for the organisation of training for the judiciary in conjunction with the High Council of Justice and the universities.

Furthermore, due to the different official languages in Belgium and the necessity for multilingualism, language courses will be given by specialist institutes.

However, with regard to financial crime and financial investigations the experts had the general impression that the issue of special training on those matters was not something that was particularly stressed but was pursued on a more or less voluntary basis.

#### 2.1.3.4. *Fiscal authorities*

“The expert team has been informed after the visit that although the FPS Finance does not systematically pursue a particular specialisation, future officials are receiving special training with regard to their field of employment immediately after they have taken up their function. Furthermore, they are given continuous training throughout their career in order to be up-to-date on changes in legislation and its application. At an international level, Belgium participates actively in the FISCALIS programme that has been set up to improve customs officials’ knowledge of community law and administrative cooperation between the EU Member States.”

#### 2.1.3.5. *Belgian FIU - CTIF*

The *CTIF*, headed by a magistrate, has considerable expertise in legal and financial matters and has high entry requirements for its staff. Members must have at least ten years' experience in legal, administrative or scientific fields relating to the Unit's activities.

The *CTIF* is assisted by a secretariat composed of administrative staff and staff responsible for assisting experts on financial matters. The staff providing assistance have university degrees in either legal, economic or financial subjects.

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New analysts receive a one-week general training when they start working for the FIU. After this initial training new analysts are supervised by two assistant-analysts to the head of the analytical department. These two assistant-analysts and the head of the department have an experience of several years in the fight against money laundering (ML) and terrorist financing (TF). Junior analysts can also benefit from the experience of other analysts that have also been working in the unit for several years.

Occasionally internal training sessions are organized, sometimes in cooperation with financial institutions.

An Intranet system with information regarding ML and TF is available. This Intranet includes a lot of useful information for analysts, like trends, external websites on ML and TF, information on new legislative developments, copies of presentations made during the occasional training sessions.

Information is disseminated on a regular basis: Once a week the analytical department issues an internal newsletter with some practical information in relation to the handling of the ML/TF case files. Once a month analysts meet together to discuss practical points related to their job and to be informed of new trends.

## **2.2. Criminal Policy**

### **2.2.1. National Security Plan**

The Belgian federal security and prison policy plan dates back to the 1990s. During that period one of the main objectives was the amendment of the Penal Code concerning seizure and confiscation. In addition, wide-ranging confiscation was introduced by legislation in 1990, making it possible in all cases to confiscate gains, regardless of the perpetrator's subsequent action.

Part of the protection against the misuse of the financial system in Belgium and the action taken to combat money laundering and later terrorist financing has been the establishment of the Financial Intelligence Unit (*CTIF*) in 1993.

In addition, the adoption of the Act of 20 May 1997 made it possible to cooperate at international level concerning seizure and confiscation.

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Since 2000, combating “white-collar” crime has played a more important role than before.

The current National Security Plan (NSP) 2008-2011 sets priorities in two areas: strategy and police security policy. Tackling serious financial and economic crime as well as corruption, fraud and money laundering is a matter of security policy. Besides the offences mentioned, tackling serious information and communications technology (ICT) crime is also part of the National Security Plan 2008-2011. Terrorist acts, money laundering, swindling, and illegal gambling, trade in unlawful goods etc. via the Internet have become a widespread phenomenon and the Internet provides a prime communication tool for criminals. By attacking IT systems in the public or business sector, they can very effectively undermine their operational capabilities or even put them out of action. Combating cybercrime requires the use of special resources and expertise.

Since the overall objective of the NSP is a safe society, each authority in Belgium has been assigned its own particular responsibilities deriving from the plan.

Taking into account the priorities established in the NSP, the judicial police is striving for ever better control of the scale and impact of organised crime and criminal activities which have a destabilising effect on society, as well as of supra-local crime and criminal activities – whether linked or not to the former type of crime – which, given their complex nature, require specialised inquiries.

## **2.2.2. Approach to criminal organisations and organised crime**

The experts were informed that the fight against organised crime in Belgium - hence also against financial crime - essentially aims at criminals and the structures created to develop their illicit activities, as well as at the methods they use to maintain their criminal organisations. Therefore, Belgian authorities rarely focus on individual instances, which may sometimes be very varied after all.

Such an approach requires a good overview of the active criminal organisations. This knowledge is derived, among others, from the data concerning investigations on criminal organisations. This data is supplemented by qualitative analyses of the information provided by other Belgian or foreign services. In order to anticipate the possible evolution of a particular criminal phenomenon, different



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multidisciplinary analysis instruments, such as risk analysis, are employed. The phenomenon is then considered in a broader context and is not limited solely to the police data.

The means used to fight criminal organisations are determined at tactical level, as well as the preventive and administrative police approach (for instance collaborating with administrative authorities during control operations in sensitive areas or encouraging the trade sector to limit or even eliminate the opportunities exploited by the criminal organisations) and the judicial or law enforcement approach, through the development of efficient inquiry tools to combat targeted organisations.

The operational approach is directed at specific criminal groups targeted by the decentralised directorates.

Within the Belgian Federal Police, the intelligence-led policing concept is one of the foundations of the approach propagated.

The Belgian Federal Police explained that their understanding of the concept was as follows: police action should be driven by intelligence, and should not be merely reactive. Such an approach is based on data gathering and processing (facts, criminals, criminal groups, etc.) on the one hand and on the added value of police experience and skills on the other hand. The action of the Federal (Judicial) Police is driven by the intelligence gathered at strategic (criminal policy) level, tactical (action plan) level and operational (investigation) level.

The police officers in the field, close to information sources, are thus a key element. Their field knowledge is used to better understand crime phenomena. Besides police officers, many other actors (analysts, specialist investigators, district information crossroads, laboratories, etc.) also play an essential part.

For a number of years now, a proceeds-oriented approach to crime has formed part of the strategic and operational objectives of the (federal) police and has in particular been included in the national security plan and in current specific action plans. It has received constant attention over the last few years by way of training, seminars etc.

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The Federal Police broadly distinguish five levels of criminal investigation here:

- fairly simple financial investigations (often referred to as asset investigations), mostly carried out at the same time by investigators dealing with the underlying offence;
- quite complex financial investigations, carried out at the same time or later by investigators from the asset investigations department specially set up for the purpose;
- the asset investigations department at the Central Organised Economic and Financial Crime Office (OCDEFO), within the DJF, which provides support mainly by cross-checking assets and calculating asset benefits;
- "inductive" inquiries, stemming from any suspicious asset-holding situations detected in society or in the course of other investigations (these are often proactive investigations led by magistrates);
- lastly, specialist support from two federal police liaison officers seconded to the Central Body for Seizure and Confiscation (OCSC), who also keep in touch with the Camden Assets Recovery Inter-Agency Network (CARIN) and provide assistance with cross-border aspects.

## 2.3. Conclusions

### 2.3.1. Investigative authorities

- Belgium's institutional arrangements to counter financial crime are extremely complex and derive from a division of powers between the various entities that are laid down in the Belgian Constitution.
- While certain areas are exclusively a federal domain, responsibilities in other areas are shared with the regions and communes with an occasional overlap of functions. During the visit the experts were not able to reach a final opinion on the degree to which this might lead to losses in synergy. This also applies to any possible loss in synergy due to the fact that Belgium is a multilingual country.

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- However, according to the presentations given to the expert team, within the integrated police, structured on two levels, the Belgian police has apparently rationalised its structure to enhance its capacity to investigate financial crimes and to eliminate unproductive competition between different police services. Less complex financial crimes with an impact only at local level are investigated by the financial investigation departments of local police services who have done extensive capacity building to that end and have been supported in that by the Central Directorate for Economic and Financial Crime (*DJF*) and the decentralised Criminal Investigation Directorate at district level.

The investigation of complex and “supra-local crimes” is assigned to the specialist units of the Federal Police (districts and central level). At national level a highly specialised limited criminal investigation capacity is reserved for investigating organised financial and economic crime (mainly money-laundering and complex fiscal fraud), corruption, fraud committed in the course of public procurement procedures and ICT-crimes.

- Apart from its investigative vocation, a central directorate (*DJF*) analyses the crime phenomena that fall within its competences, draws up and itemizes the strategy with regard to these crime phenomena and provides support for the decentralised units of the Federal Police operating at district level. This organisational set-up appears to function rather well. The main problems that arise are the apparent difficulty in maintaining the required level of specialisation at central level and the lack of incentives for financial investigators. The experts have learnt that financial investigations are not effectively seen as a specialist function, whereas other functions such as serving within a canine unit entitle the officers assigned to additional allowances. Although it was not possible to assess this point, it might have repercussions for the quality of the personnel manning the investigation units. It was clearly pointed out in the annual report of the DJF that the average age within the department is quite high (50 years of age). This requires initiatives to remedy the situation as it could have an impact on the quality of financial investigations as constant handing-on of work experience is necessary in such a specialist area. It also seems to indicate that the function of financial investigator, at all levels, needs to be enhanced to attract young blood and to consolidate the efforts that have been made over the last decade.

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- The competency and capacity to investigate financial crimes appear to be quite fragmented. Despite the reorganisation of the police services, a number of separate units embedded in different ministerial departments still remain competent to investigate financial crimes.
- The Special Tax Inspectorate (*ISI*) which is embedded within the Federal Public Service for Finance has no criminal investigation powers. Taken in conjunction with Article 29 *CIC* that channels the denunciation of fiscal crimes exclusively through the hierarchy of the Inland Revenue administration, this leads to a lack of consistency in the prosecution of fiscal fraud.

The ‘tax payer's charter’ (law 4 august 1986), which makes that tax inspectors can only be heard as a witness in a tax investigation, directed by the police, has completely outlived its usefulness and should be revised and reconsidered.”. Other Member States have opted to confer criminal investigation powers on duly appointed bodies within the tax department and that has proven to be far more successful.

- Another important issue to be addressed is Article 44 of the law on the Police Function, which regulates access to police and judicial databases. The current version prevents the sharing of intelligence between different law enforcement bodies and is a crucial impediment to enhanced cooperation between Customs and Police.
- It should be noted that the Belgian police service members have a variety of qualifications. While on one hand this might constitute an advantage allowing for a multidisciplinary approach to financial and economic crime, it should on the other hand, however, not be forgotten that police officers' practical experience in tackling crime of that kind is indispensable. In the opinion of the experts, such expertise could be ensured by favouring a university degree in economics or law that could be supplemented by continuous and obligatory training, particularly as the complexity of the most recent crime phenomena makes it impossible in practice to conduct efficient investigations without a solid grounding in economics or finance.

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## 2.3.2. Prosecution services

- Like the police services, the Public Prosecution Office has been the subject of reorganisations over the last decade. However, although it cannot be denied that several important reforms have been undertaken, e.g. the setting up of a college of general prosecutors (1997), of expert networks of the college (2004) and the federal prosecutor's office (2001), the Public Prosecution Service with regard to dealing with financial crime has not been rationalised to the same degree which adversely affects its ability to deal efficiently with this phenomenon. At district level prosecutors are coping with the situation to the best of their ability with the limited resources they have at their disposal. Nevertheless, there is strong criticism at all levels of society that too many financial prosecutions are subject to prescription or achieve only a small part of the desired outcome.
- The evaluation team being of the opinion that the division of tasks between the five members of the College of General Public Prosecutors was not facilitating its designated role in implementing policy on crime was informed by the Belgian authorities about the following:  
Taking into account the number of important matters that have to be dealt with by the College, a redistribution of tasks had been instructed by Royal Decree<sup>29</sup> to assign to every member of the College a stimulating role with a view to take all measures necessary and chair the expert networks. All decisions at the level of the five members of the College are taken unanimously. The expert networks have the role to prepare the works of the College but have no decision-making function.
- During the evaluation visits, various Belgian actors have strongly criticised the fact that the Federal Prosecutor's Office has no specialist Department for Financial Crimes<sup>30</sup>. Apparently the level of cooperation and understanding between the Federal Prosecutor's Office and the other levels within the Prosecution Department is not as good as it might be. Improvements should definitely be made in this area.

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<sup>29</sup> Arrêté royal du 6 mai 1997 relatif aux tâches spécifiques des membres du collège des procureurs généraux.

<sup>30</sup> The evaluation team has received the following information from the Belgian authorities after the visit: Acting in conformity with Circular (no. 9/2003) issued by the general prosecutors, the federal prosecutor's office receives all cases from the European Anti-Fraud Office (OLAF). According to an established procedure they are analysed and dealt with either directly or at the level of the judicial districts. Some magistrates of the federal prosecutor's office are specialised in financial disputes although they are not grouped together in a particular division.

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- The investigating magistrate, who plays a crucial role in the Belgian system as he is actually leading the investigation “à charge et à décharge”, is looked upon as a generalist. However, especially with regard to financial crimes, it was felt by the experts that it would be an advantage to have specialist investigating magistrates.
- Despite some minor flaws, the *OCSC* in its role as the Belgian ARO appeared to be very efficient and could serve as an example for other EU MS.
- The experts noted that from a practical point of view the *OCSC* was made up of some 30 staff, of whom two form the directorate, two are liaison magistrates and six are liaison officers. The other members of staff exercise administrative support functions and are of a very high standard.
- It was noted that the *OCSC* does not receive all decisions concerning goods which meet the definition of "property assets" as there is no obligation to report when the value of the property assets is less than EUR 2 500. The experts shared the view of the Court of Auditors that this was a flaw.
- There is no system in place for online reporting to the *OCSC*. Furthermore, it was noted that the *OCSC* reported a low level of reporting from the FPS Finance.

### 2.3.3. Training

- The Belgian Police have developed a comprehensive financial investigation training programme, consisting of 4 modules, each of which is designed for the appropriate level of investigators. The highest level is organised in cooperation with Belgian universities at academic level and aims at integrating public and private sector forensic audit training. Other levels are organised within the criminal investigation department of the police academy and provide trainees with comprehensive manuals on how to investigate various financial crimes using a very hands-on approach. The problem, as stated earlier, is that specialisation as a financial investigator is not a very rewarding career, for which reason there is not much enthusiasm amongst CID staff about signing up for this specific career development route.

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Recruitment of police officers is very centralised and there are now few possibilities of recruiting people externally for a specific specialist area. This is already causing a dearth of staff in certain areas of specialisation, particularly financial investigation.

- There appears to be hardly any specific training for the judiciary on financial investigation and financial crimes. Prosecutors have to rely on their own initiative to get external training. There does not seem to be any structured or tailored continuing professional training programme for prosecutors and examining magistrates.
- While it was noted by the experts that examining magistrates in Belgium were free to choose in what professional domain to train, their professionalisation, particularly in the field of economic and financial crime, could be improved by introducing an obligation to attend training on such subjects.
- The experts would therefore see a benefit in addressing such specialised training at the new institute for judicial training that has been set up and that could help promote a multidisciplinary approach to tackling economic and financial crime from the judicial end.

## 2.3.4. Criminal policy

- The experts were informed that, on the basis of the National Security Plan, Belgium has a comprehensive and solid foundation for the development and implementation of a coherent and consistent criminal policy. This criminal policy also contains clear guidelines on several types of financial crime. In terms of content, the police have a very strong input into the National Security Policy. The police can therefore provide a clear and detailed action plan based upon the priorities identified. This happens not only at central level, but also at district level where action plans suited to the specific situation in the district are developed. Obviously there are differences between the overall crime rates in rural and urban areas.

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- Based upon the presentation by the Brussels Prosecution Office, it appears that the prosecution office and the available investigative capacity are adequate to deal with the specific situation in the capital, especially with regard to organised and serious financial crime.
- There seems to be a problem at institutional level where too many entities and governmental bodies have an input and there is no clear decision-making structure to ensure the implementation and enforcement of the criminal policy. The current organisational structure of the Public Prosecutor's Office does not seem to be able to cope with the leading role assigned to it.
- During the evaluation visit the team was not provided with statistics relating to the activity of Customs. It was therefore possible to make only a limited assessment of how effectively Customs works within the subject matter of this evaluation.<sup>31</sup> It has to borne in mind however, that customs has only a very limited competence in the matter under review.

## 2.3.5. CTIF

- According to the statistics provided in its 2008 Annual Report, the Belgian Financial Intelligence Unit (*CTIF*) has apparently increased its efficiency in fighting money-laundering by processing a higher number of suspicious transaction reports.
- The *CTIF*'s cooperation with other national actors, e.g. the Prosecution Service and the Federal Police as well as the *OCSC*, seems to have had a positive effect on the overall effort in Belgium to fight financial crime.

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<sup>31</sup> The evaluation team was informed after the visit that the customs and excise administration does not publish a separate report of activities. General statistics can, however be accessed via <http://www.minfin.fgov.be/portail2/fr/administrations/taxes-tax-levy.htm>



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## 3. INVESTIGATION AND PROSECUTION

### 3.1. Information and databases available

#### 3.1.1. Databases and Registers

##### a) Bank accounts

Belgium has no central register of bank accounts. In practice, the criminal investigations have to rely on so called ‘general bank information questionnaires’, which can only be asked under the strict authority of a magistrate. According to the information provided by the Belgian authorities, this works well, but sometimes a bit slow.

##### b) Real estate

Because they are so varied, the tasks of the department responsible for land register, registration and property (*Administration du cadastre, de l'enregistrement et des domaines – ACED*) are carried out by different local bodies. The local services comprise four groups.

The land register covers all the operations and the documents necessary for compiling and maintaining a detailed record of built properties and land in the country, making it possible to pinpoint and identify the properties in question and establish a basis for tax collection.

In 1998 the Land Register was merged with the registration and property administration to form the Land Register, Registration and Property Administration (*ACED*). Having combined the records of the land register, the registration department and the mortgage registry, this new Department has a huge real estate register for the entire country.

The land register has four tasks allocated to it:

1. A property records task involving compiling and administering property records.
2. A fiscal task: assessing real estate for revenue purposes and keeping records of ownership. Both these data and the Department's property tax assessments are forwarded to the services responsible for tax collection.
3. A technical task that is irrelevant to the subject under evaluation, and
4. A task of maintaining records: This task involves updating land registry documents and means keeping track of property transfers.

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The Law of 11 January 1993 also authorises the *CTIF* to request information from the administrative services of the State, inter alia the Mortgage Registry and the Tax Department. Those two agencies keep records of immovable property situated in Belgium, including the identity of the owners.

The above law also allows the *CTIF* to request information it considers useful for its tasks from all reporting entities covered by the arrangements for combating money laundering and the financing of terrorism and to receive it within a period of time it determines. Hence the *CTIF* may also request information (copies of pre-contracts, sales contracts, and financial information on the source of funds) from all notaries established in Belgium regarding a real estate transaction they may have handled.

In Belgium notaries cannot approve cash payment for immovable property that exceeds 10 % of its sale price or EUR 15 000. Furthermore, a notary is obliged to indicate in the pre-contract and in the sale contract the bank account from which the advance payment or sale price will be paid.

## c) *Crossroads Bank for Businesses (BCE)*

The Law of 16 January 2003 set up the Crossroads Bank for Businesses (*Banque-Carrefour des Entreprises - BCE*), modernising the commercial register, creating authorised business helpdesks and containing various provisions constituting an important stage in the process of administrative simplification in Belgium.

The *BCE* now assigns a single identification number to each business (in the broad sense). This has lessened the burden on businesses to go through the same formalities several times with different administrative bodies, since the latter exchange information via the *BCE*.

The *BCE* is therefore a register with all the identification data on businesses and their business units. It contains data from the national register of legal persons and the commercial register, VAT data and National Office of Social Security data and is kept up to date by the competent bodies which enter the data.

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All these data are entered in the *BCE* database by the Economy Federal Public Service. The *BCE* works in close cooperation with the Economy FPS, FEDICT, ASA, the Finance FPS, the Justice FPS and the Social Security FPS.

The Public Services (Finance, Social Security and Justice) and the business helpdesks are all linked to the *BCE*.

*BCE* offers search services for the public as well as the authorities (e.g. *CTIF*, judicial authorities).

## *d) Reference to annual accounts*

This database enables the references of filed annual accounts to be consulted. The annual accounts themselves are available via the website of the BNB<sup>32</sup>. The annual accounts are collected and processed by the Central Balance Sheet Office of the National Bank of Belgium. In 2008, 352 593 annual accounts were filed by 334 929 undertakings.

## *e) Reference database of associations*

The database is publicly accessible and it is the only source on the history of associations between 1981 and 30 June 2003. The “legal persons” database contains only data relating to associations which were published after 1 July 2003.

The reference database of associations is also accessible to everyone. It contains the history of non-profit organisations for the period between 1981 and 30 June 2003, and includes references to publications between 1981 and 1998 together with the full text and image scan of the acts published by such organisations between December 1998 and 30 June 2003.

This database is merely a search tool and has no official or legal status.

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<sup>32</sup> <http://bcc.nbb.be/BCCIA0101/WEB/actions/Frames?LangIndex=F>

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## f) Fiscal databases

In order to fulfil its task, the tax administration has access to a number of databases, namely:

- BELCONET-ON-WEB, which contains taxpayers' data, tax reimbursements, legal persons' data (tax payment), and data on early payments made by taxpayers, motor vehicle tax and property tax;
- BELCOTAX-ON-WEB, containing the tax form drawn up by various tax debtors, as well as recapitulative statements;
- WORKFLOW DISPUTED CLAIMS, which allows electronic follow-up of tax disputes at both the administrative and judicial stages;
- VIES;
- Client Lists
- Service Provider list
- VAT returns
- Intra-Community lists for all taxable persons.

There is an automatic cross-checking facility for the databases. On the basis of data mining for risk analyses, the system discovers discrepancies and isolates the suspicious data. After the automatic selection, the Direct Taxation Department checks the information.

Some years ago the DATAMARK project was introduced and a large “database” was created. Here different systems have been combined, thereby making it possible to analyse and detect *ex post* certain types of behaviour, such as fraud.

The Tax Administrations have access for various purposes to databases that include the following:

- WEBSIGNA: particulars of persons liable for VAT
- BELFIRST: Financial Report and Statistics on Belgian and Luxembourg Companies.

## g) Commercially available databases

Several commercial databases, listing inter alia commercial undertakings under Belgian law are available. Both the Federal Police and the *CTIF* have access to such databases.

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## *h) Motor Vehicles (DIV)*

The *DIV* is a database of all vehicles registered in Belgium and the database is accessible for many authorities. Access to the database is direct, but must be requested from the Belgian Privacy Protection Commission, which then submits the request to the Sectoral Committee for the Federal Authority before it is granted.

## *i) Ships*

The Law of 21 December 1990 relating to the registration of seagoing ships, the Royal Decree of 4 April 1996 relating to the registration of seagoing ships and the Royal Decree of 4 June 1999 relating to the registration of pleasure craft make up the legal basis for the Belgian ship registers.

Seagoing ships must be registered in the “Belgian Register of seagoing ships” that is kept by the Mortgage Registrar of Antwerp. Rights and applications in rem (with the exception of liens) as well as mortgages and arrests and other charges with regard to merchant ships registered in the Belgian Register of seagoing ships are registered in the same register.

Foreign bareboat chartered seagoing ships can be registered in the “Belgian bareboat charter Register” that is equally kept by the Mortgage Registrar of Antwerp.

Inland navigation vessels that are used for purposes of commercial navigation (e.g. carriage of persons, carriage of goods, fishery, dredging, etc.) are eligible for registration on the “Belgian register of inland navigation vessels”. The registration of inland navigation vessels is optional.

Pleasure craft<sup>33</sup> for private or commercial use can be registered in the “Register of pleasure craft” by the authorised official of the DGMT and can additionally be registered in the Belgian Register of seagoing ships.

The information in the Belgian Register of seagoing ships, the Belgian bareboat charter Register and the Belgian register of inland navigation vessels are public and accessible for everyone, albeit indirect, on request, after the payment of a mortgage fee and in the form of an identical copy. The Register of pleasure craft is not open to the public.

Regarding the ship and its owner, public services have access to the register on an informal basis and in the form of ‘administrative information’.

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<sup>33</sup> With an overall length from 2,5 to 24 meters.

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Information on property registry (for example mortgages, embargoes etc.), for which the registrar is personally liable, are in principle only given out in the form of a certificate (signed by the registrar) and after the payment of a fee. However, certain public authorities (such as tax authorities) are exempted from this provision.

## *j) Aircraft register*

The Belgian Civil aircraft Register is maintained by the Belgian Civil Aviation Administration. There is a direct and public access to the 'Belgian Aircraft Register' via [www.mobiliteit.fgov.be](http://www.mobiliteit.fgov.be) under item 'air'.

However, in the case of private persons being owner of an aircraft, by application of the Belgian privacy protection legislation, personal data of aircraft owners are not published on the website. Services conducting financial investigations may have access to those data upon request.

## *k) Race horses*

In Belgium there is not a specific register for race horses, but there is however a register for all *equidae* staying within the Belgium territory. This register was created by 'the Royal Decree of 16 July 2005 concerning the identification and coding of horses in a central data bank'<sup>34</sup> and is in line with the Commission's Regulation 504/2008.

The maintaining of the register is the responsibility of the non-profit-making organisation 'Belgian Confederation of the Horse' (vzw Belgische Confederatie van het Paard – asbl Confédération Belge du Cheval). The federal and local police authorities as well as the competent regional authorities have access to the database in the field of their competences on a 24/7 basis.

## *l) Other databases*

On the basis of a specific apostille, the Federal Police can obtain data on foreign companies from a private firm. The police can also interrogate those databases which are grouped together in the "Portal" of IT applications available to the police.

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<sup>34</sup> Cf. Moniteur Belge 03.08.2005

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## m) Customs databases

The Customs and Excise Administration does not have databases of its own specially dedicated to identifying bank accounts, immovable property and vessels for the purpose of tracing the proceeds of financial crimes.

## n) Databases accessible to members of the Asset Recovery Office (ARO)

Via the liaison officers of the appropriate authorities seconded to the OCSC, the Belgian ARO has access to the following databases:

Financial authorities' databases:

- § *DIV* (vehicle registration directorate),
- § *BCE (Banque-Carrefour des Entreprises)* (Crossroads Bank for Businesses)<sup>35</sup>,
- § the register of legal and natural persons,
- § *Cadnet* and *loco*: real-estate owners in Belgium<sup>36</sup>,
- § *Belconet*: tax database for recovery purposes; advance payment of direct taxes; road duty payments; property tax payments,
- § *Belcotax*: tax database for taxation purposes.

The following databases can only be accessed by the police liaison officers seconded to the OCSC:

- § *RRN*: national register,
- § *LDL*: drivers' licences,
- § *DIV*: vehicle registration directorate,
- § *Sidis*: detention,
- § *NLC*: general National Bank consultation,
- § *FIN-EuroDB*: information on companies,
- § central criminal records.

The expert team has been informed after the evaluation that legislation has been adopted by the Belgian Federal Parliament that authorizes the Belgian ARO to access bank accounts and data in the execution of confiscation orders.

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<sup>35</sup> The *Banque Carrefour des Entreprises* is to a limited extent publicly accessible.

<sup>36</sup> The land register offices (identification of real estate owners) are publicly accessible.

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## 3.1.2. Cooperation at European level

### 3.1.2.1. Legal Framework

The ratification of the Protocol to the Convention on Mutual Legal Assistance in Criminal Matters has not required the adoption of specific provisions and its implementation is subject to general mutual legal assistance arrangements. In particular, Article 6(1) of the Law of 9 December 2004 on international mutual legal assistance in criminal matters stipulates that mutual legal assistance requests received from the competent foreign authorities are executed in accordance with Belgian law. Article 46quater of the Code of Criminal Procedure is therefore also applicable to the execution of requests made under the Protocol to the Convention on Mutual Legal Assistance between Member States of the EU.

### 3.1.2.2. Identification of bank accounts and holders

The Belgian authorities indicated that information relating to the identification of a bank account, the identification of the owner of a bank account and identification of operations from and to a specified bank account in a specified period in the past cannot be provided to a law enforcement authority in another Member State through "police cooperation"; instead, under Belgian law these measures are a matter for mutual legal assistance.

### 3.1.2.3. Information requests via the ARO

The Belgian entity acting as the Asset Recovery Office - the *OCSC* - has a role in the execution of a request for information issued by a law enforcement authority in another Member State through its liaison officers from the Federal Police. When stemming from the judicial authorities requests are not sent to the *OCSC* but to the central authority for international cooperation in criminal matters of the FPS Justice. The *OCSC* may, on occasion, deliver opinions at the request of the FPS Justice.

### 3.1.2.4. Competent authorities in the issuing State and in the receiving State

With regard to competence when asking for a request to be issued or when issuing a request (in the issuing State) as well as receiving a request or executing the request (in the receiving State), the only competent authorities are the public prosecutor having territorial competence or the Federal Prosecutor.



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## 3.1.2.5. *Problems encountered*

In their answers to the questionnaire, the Belgian authorities noted a number of problems that they encountered in international collaboration.

The main problems encountered by the police concern the following:

- the slowness in collaboration between police at international level and in exchanges of data, notwithstanding certain improvements made in the last decade
- the (legal) obstacles unquestionably and systematically encountered in the application of international letters rogatory (see the problem of tax havens)
- the slowness of certain financial criminal investigations and the priority given to dossiers involving common law offences as compared to economic and financial dossiers
- the use of complicated (international) legal constructs that are far from transparent via legal and other persons
- a lack of expertise within the police services (also increasingly frequent in the IT sphere)
- the lack of human and material resources for handling difficult and large-scale fraud dossiers.

In international collaboration on taxation matters, the time taken to respond has proved too long and there have been omissions in responses when exchanging information on the basis of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, as amended by the Directive of 6 December 1979, which in particular extended its scope with regard to VAT – until 31 December 2003<sup>37</sup>, and of Council Regulation (EC) No 1798/2003 of 7 October 2003 in the field of VAT<sup>38</sup>.

It should further be pointed out that the option of conducting spontaneous exchanges of tax information is greatly underused.

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<sup>37</sup> OJ L 336, 27.12.1977, p. 15.

<sup>38</sup> OJ L 264, 15.10.2003, p. 1.

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## 3.2. Financial investigation and use of financial intelligence

### 3.2.1. Legal Framework

Financial investigations may be carried out in the context of criminal investigations but, as already indicated above, also for preventive purposes in response to suspicious transaction reports by the bodies and individuals covered by the Law of 11 January 1993 on prevention of use of the financial system for the purposes of money laundering and the financing of terrorism.

Owing to its particular tasks, the *CTIF* enjoys specific arrangements in this respect. Articles 12 to 14 of the Law of 11 January 1993 require the bodies and individuals concerned to report any suspect transactions they have detected in the course of their supervision of transactions by their clients before they are carried out or immediately afterwards where postponement of the transaction is not possible owing to its nature or would be likely to prevent prosecution of the alleged beneficiaries of the money laundering or alleged terrorism financing.

The bodies or individuals concerned may report their suspicions by telephone, but must always confirm their reports in writing (Article 12(1) of the Law of 11 January 1993). The written report may be made by fax, post or internet or using the secure online report module developed by the *CTIF* and available to those making reports.

The *CTIF* may, pursuant to Article 12(2), notify a body or individual concerned that it has decided, for a maximum period of 2 working days, to halt the carrying out of a given financial transaction or indeed any movement on a given bank account. Such a freeze makes it possible to prevent the disappearance of laundered funds, alleged to be the proceeds of a serious criminal activity covered by the Law or capable of being used to finance alleged terrorism activities. The freeze is notified orally to the money-laundering reporting officer and immediately confirmed by fax. If the *CTIF* thinks that this measure should be extended in time, it will refer the matter to the Public Prosecutor or the Federal Prosecutor, who will take any decisions and steps necessary.

When the CBFA requires monitoring of an account, it generally lays down in a letter to the financial body the regular intervals at which the data must be provided. On the basis of Article 34 of the Law of 2 August 2002, the CBFA also has the right to consult and copy *in situ* any document, file or record and to have access to any data-processing system.

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Shortly after the evaluation visit, a Law amending the Law of 11 January 1993, aimed at implementing the Third Money Laundering Directive, was approved by Parliament (Law of 18 January 2010). Since 5 February 2010, article 12 of the Law of 11 January 1993 has been replaced by article 23 of the Law of 18 January 2010. In the framework of market abuse investigations and in accordance with Article 34 of the Law of 2 August 2002, the CBFA has the right to consult and copy in situ any document, file or record and to have access to any data-processing system.

The Special Tax Inspectorate (*ISI*) and the Company Tax and Revenues Administration (*AFER*) have special prerogatives in this context.

In tax matters, bank investigations are governed in particular by Articles 318(2) of the 1992 Income Tax Code (*CIR 92 - Code des Impôts sur les Revenus*) and 62bis of the VAT Code (*Code de la TVA - CTVA*).

In this connection, it has to be pointed out that Articles 2 and 11 of the Programme Law of 20 July 2006<sup>39</sup> state that a bank investigation may be decreed by "the official designated for that purpose by the Minister for Finance" (amendment of Articles 318(2) *CIR 92* and 62bis *CTVA*).

By Ministerial Order of 29 August 2006<sup>40</sup>, the competent director in charge of the service which conducted the investigation is designated as the official referred to in Articles 318(2) *CIR 92* and 62bis *CTVA*. This amendment is aimed at simplifying and speeding up the way bank investigations proceed.

In the case of both the *ISI* and *AFER*, the regional directors have since 5 September 2009 been competent to grant authorisation for a bank investigation.

### **3.2.2. Special legal powers and tools for investigating the financial aspects of criminal activities**

The Law of 11 January 1993 enables the *CTIF* to investigate suspect financial movements which may possibly be linked to money laundering or the financing of terrorism.

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<sup>39</sup> Moniteur belge of 28 July 2006.

<sup>40</sup> Moniteur belge of 5 September 2006.

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In addition to the obligation to declare transactions presumed to be linked to money laundering or the financing of terrorism in application of Articles 12 to 14 of the Law, Article 15 of the Law of 11 January 1993 enables the *CTIF* to obtain all the information it deems useful for accomplishing its task from:

- § all reporting entities (bodies and individuals subject to the arrangements)
- § police services
- § administrative services of the State (tax authorities, Federal Intelligence and Security Agency departments, customs, social security services, mortgage registration, etc.)
- § receivers in bankruptcy
- § temporary administrators
- § judicial authorities.

Pursuant to Article 17 of the Law of 11 January 1993, the *CTIF* may also collaborate with other financial intelligence units throughout the world, with *OLAF* and with the control or disciplinary authorities of the bodies and individuals concerned.

### **3.2.3. Use and effectiveness of financial investigations in specific crimes**

It is obvious that the complementary conventional investigation affords considerable added value throughout the criminal proceedings. Indeed, given that effective and definitive prison sentences are frequently subject to all sorts of early-release and other mechanisms, depriving the criminal of his ill-gotten benefits is often the best way of affecting his interests.

For some years now in Belgium, police and public prosecutors have been making increasing use of the inductive search model. The suspect holding of assets forms the starting point for understanding and uncovering which crimes have triggered a particular mechanism. The discovery of money laundering in a crime thus makes it possible to avoid detailed time-consuming searches.

To that end, Belgium has money-laundering legislation that is very sophisticated and effective at both the prevention level (see the role of the Belgian Financial Intelligence Unit, the *CTIF*) and the enforcement level.

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The financial investigations conducted by the *CTIF* in the context of the system for combating money laundering and the financing of terrorism are said to make it possible to detect and combat not only money laundering but also the serious forms of underlying crime targeted by the system, such as trafficking in human beings or cyber crime.

The *CTIF* assumes that, with the financial information it obtains from the bodies and individuals concerned and then analyses, it is able to contribute to criminal investigations in progress, and that it can also contribute to the detection of the criminal activities which underlie money laundering activities.

The *CTIF* transmits a dossier to the judicial authorities if, in the course of the operational analysis, it has been able to bring to light convincing signs of money laundering linked to one of the serious forms of underlying crime covered by the Law or convincing signs of the financing of terrorism.

The presumption of an underlying crime in money laundering operations may be prompted by information concerning:

- § a criminal investigation in progress,
- § a criminal record,
- § the persons involved, the types of transaction carried out, the currencies found or the origin or destination of the funds.

The experts were informed that every year the *CTIF* carries out a cluster analysis to identify the principal characteristics to be found in the dossiers which it has transmitted to the judicial authorities: the profile of those involved, the techniques used, the currencies exchanged, the underlying crimes most in evidence, etc.

This enables the *CTIF* to transmit certain dossiers solely on the basis of cluster indications relating to the profiles of those involved, the types of transaction carried out, the currencies exchanged, etc.

In the last two cases, it is very unlikely that any judicial or police investigation is in progress, but the *CTIF*'s financial information may make it possible to bring criminal activities to light.

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The CTIF therefore also considers that the preventive approach to money laundering also contributes to a crackdown on the serious forms of crime that are undermining society.

## **3.2.4. Continuation of an investigation into the financial aspects of crime after closure of a case**

When the *CTIF* has transmitted a file to the judicial authorities, it continues to inform those authorities of any new suspect transactions of which it is aware, for instance when a body or person concerned notifies it of further suspect transactions after the initial transmission.

Any follow-up by the judicial authorities relating to transactions notified at the end of the criminal investigation or after a conviction is a matter for those authorities. A new file may be opened or work on the transactions may be closed with no follow-up.

## **3.2.5. Involvement of private experts in the investigations**

The *CTIF* is empowered by Article 9 of the Royal Decree of 11 June 1993 on the composition, organisation, functioning and independence of the Belgian Financial Intelligence Unit (*CTIF*) to have recourse to external experts of its choice. Unless they are bound by their status, before commencing their task such experts must give a written undertaking to observe secrecy.

## **3.2.6. Financial Intelligence**

For several years now, the Belgian police have been working within a framework of “information-led policing”. At strategic level, efforts are directed at establishing a reliable profile of the phenomenon, with the emphasis on future threats.

At operational level, work is based as much as possible on an efficient information cycle as regards prevention, both on a proactive and reactive basis and in national and international terms. The information cycle is driven as far as possible by a single platform, the General National Database, with the aim of ensuring practical content.

In addition to “information-led policing”, proactive search and inductive search, the Belgian Police also increasingly apply special search methods in financial investigations.

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Use is made here of open and closed sources, informers, observation, infiltration, and telephone tapping.

Within the legal framework, financial intelligence from the national FIU is also used.

### **3.3. Cooperation with Europol and Eurojust**

#### **3.3.1. Cooperation with Europol**

In the answers to the questionnaire, the experts were informed that the Belgian Federal Police cooperate with Europol on a permanent basis:

- via Belgium's liaison officers at Europol, who have daily involvement in specific or structural collaborative efforts;
- via the Analysis Work Files (AWF), through Federal Police input into the electronic data systems. For EcoFin matters this means the following AWFs in particular: SUSTRANS, CIRCAMP, OCICT, MTIC, SMOKE, COPY, TERMINAL and SOYA. The hits obtained through the AWF system represent added value for the Belgian police and justice authorities;
- via the Europol Information System (EIS), with the input of investigative data relating to offences within Europol's remit.

Furthermore, the expert team noted that Joint Investigation teams (JITs) were also deployed (although as yet only sporadically) as part of the approach adopted to financial crime, although it was not specified to what extent;

- Europol provides support tools, such as its Financial Crime Information Centre (FCIC) website, which supplies relevant information on specific phenomena;
- Information channels, such as Cefpol, Taiex, etc., to which Europol is a regular contributor, are further sources of support.

The *CTIF* also cooperates with Europol, regularly providing it with information from files sent to the judicial authorities which is of potential interest for investigations being conducted by Europol.

That information concerns, inter alia:

- the people involved in the cases submitted to the judicial authorities;
- the amounts concerned;
- the nature of the transactions.

Communication with Europol takes place via the AWF SUSTRANS system.

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The Customs and Excise authorities reported that they had no particular experience of cooperating with Europol within the framework of financial investigations, including joint investigation teams.

This was attributed to the fact that the scope of Customs and Excise's investigative powers places limits on the volume of purely financial investigations conducted and the human resources invested in them.

According to the information received, procedures for sharing information in this field with the Federal Police have been developed in consultation with the judicial authorities.

Financial intelligence updated as a result of a customs investigation is passed promptly to the Federal Police; conversely, information on Customs and Excise fraud collected during a criminal investigation into financial crime is sent to Customs and Excise investigation departments.

The Customs and Excise authorities participate in AWF COPY (counterfeiting).

While Customs and Excise has no specific expectations vis-à-vis Europol with regard to financial investigations as, strictly speaking, this type of investigation lies outside its customary remit, the Belgian authorities stated that the Customs and Excise operational departments considered international information exchange via Europol to be slow compared with the habitual instruments of international customs cooperation.

### **3.3.2. Cooperation with Eurojust**

According to the answers given to the questionnaire, the Belgian Federal Prosecutor's office is in close and regular contact with the Belgian national member of Eurojust. On several occasions the action taken by Eurojust – either enabling foreign prosecution services to exchange information, or coordinating their activities - has made it possible to conduct criminal investigations. Eurojust has also proven its worth in situations of urgency, enabling very prompt identification of the magistrate with jurisdiction for a case involving a request for mutual assistance.



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As regards the expectations regarding Eurojust, the Belgian authorities stated that collaboration with Eurojust depended on the nature of national members' relations with their own national authorities.

Experience has shown that collaboration is uneven in quality: the good will demonstrated by Eurojust's national members in The Hague was not always matched when the file was transferred to the requested State. Emphasis was therefore placed on the importance of Eurojust national members having efficient back-up in their home countries.

## 3.4. Conclusions

- Financial matters are at present not handled by judicial entities specifically set up for this purpose. Instead, developments are facilitated by practical expertise gathered by specialised financial chambers manned by examining magistrates specifically entrusted to deal with financial or economic matters.
- This has enabled examining magistrates at the courts of first instance in the larger judicial *arrondissements* such as Brussels and Ghent to develop specialist knowledge in view of the number of important cases, while in other areas the absence of such cases and a lack of human resources has not permitted the development of such expertise in this field.
- One way to remedy this imbalance throughout Belgium might be to introduce specialist chambers dealing with financial and economic matters only, although it is obvious that a specialist department for financial matters with ten specialist examining magistrates like the one that currently exists in Brussels is inconceivable for the rest of the country in the light of the realities of the situation. It would however be worth considering establishing five or six centres of excellence on financial and economic matters in order to guarantee overall high-quality treatment.
- The Belgian authorities have at their disposal a wide range of databases, the contents of which are indispensable for conducting investigations into financial crime and financial investigations, and they are accessible either to the public or only to the appropriate authorities. In addition to their information value, they provide assistance for the competent authorities in recovering criminal assets (e.g. land registry and vehicle databases).

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- Via a liaison network, requesting authorities can access the databases run by another authority, thus enabling information to be accessed and exchanged between them.
- Belgium has no central register of bank accounts and, as experience in some other Member States has shown, investigations into financial crime and the conduct of financial investigations might well benefit from such a register as it is highly likely that it would save precious time during the initial stages of an investigation.
- According to the Europol statistics for Belgium, overall cooperation through Europol and the use made of products and services offered by Europol to the Member States appear to be exemplary. Though the emphasis lies on the non-financial crime area, Belgian contributions to the Financial AWFs are more than adequate and the quality is above average.
- The only shortcoming with regard to Belgium's cooperation with Europol that needs to be mentioned at this stage is the very lengthy decision-making procedure in Belgium on whether to take part in a specific work file. This particular issue was mentioned and acknowledged by the relevant authorities during the evaluation visit.
- The customs authorities did not share this positive view of cooperation via Europol and preferred to use the usual instruments of the international customs cooperation as they are considered to be faster than the Europol channel.
- The Belgian prosecution services stated that they were in close and regular contact with Eurojust and that cooperation depended on the nature of the crime. The prosecution services did, not, however provide concrete statistics so that the evaluation team was unable to assess the level of cooperation.

## 4. FREEZING AND CONFISCATION

### 4.1. Freezing

#### 4.1.1. At national level

##### 4.1.1.1. *Freezing Order*

##### Legal basis for freezing

In Belgium the freezing of assets is governed by Articles 35, 35bis and 35ter of the Criminal Procedure Code (CPC) Pursuant to Art. 35(1) of the Criminal Procedure Code, the public prosecutor (or investigating magistrate) will seize anything which seems to constitute one of things referred to in Articles 42 and 43quater of the Penal Code.

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Under Belgian legislation, criminal seizure refers to any measure to prevent the owner or possessor from freely disposing of an item pending judicial proceedings. Criminal seizure is governed by Articles 35 and 89 CPC. It may be ordered by the public prosecutor at the police investigation stage or the investigating judge at the judicial investigation stage. Seizure may be applied to any potential items covered by Article 42 PC or anything that might serve to uncover the facts. These provisions authorise the seizure of objects, instruments and proceeds of crime and any financial benefits derived from financial crime offences, assets and securities that have been substituted for them and income from investment of these benefits. Article 35bis CPC authorises preventive seizure of immovable property and, since the adoption on 19 December 2002 of a law extending the options for criminal seizure and confiscation, Article 35ter has extended this power to preventive seizure of an equivalent amount. Seizures are only possible under Articles 35 and 35bis CPC if a link can be shown between the offence and the items seized whereas Article 35ter also authorises seizure of items owned by a perpetrator that are not the direct proceeds of the offence or for which no link has been established.

Article 42 of the Penal Code (PC) introduces a system of special confiscation. This is considered to be ancillary to the principal penalty. It may be applied to items that were the object of the offence or were used to commit it if they belong to the perpetrator (Art. 42.1 PC), the proceeds of the offence (Article 42.2 PC), or pecuniary benefits directly derived from the offence (primary benefits), assets and securities substituted for them (so-called substitute benefits) and any investment income from these assets and securities (Art. 42.3 PC). The special confiscation of items covered by Articles 42.1 and 42.2 is mandatory, whereas in the case of Art. 42.3 it is optional and can be imposed by the court only in response to a written request from the public prosecutor (Art. 43bis.1 PC).

Special confiscation of the object and/or instrumentality of the offence is only obligatory when it belongs to the perpetrator of the infringement, whereas the proceeds of offences and/or pecuniary benefits directly derived from it, assets and securities substituted for them and any investment

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income from these assets and securities may be confiscated even if they do not belong to the offender. Article 505.3 PC authorises confiscation of the object of the offence of laundering, even if it does not belong to the offender. Sections 4 and 16 of the Criminal Liability of Legal Persons Act of 4/5/99 also authorises the confiscation (and seizure) of assets belonging to legal persons.

## Types of crime for which a freezing order can be obtained

Confiscation of the proceeds of financial crimes is dependent on a prior conviction for a crime.

If it is not or is no longer possible to find the items covered by Article 42.3 PC in the perpetrator's property, Article 43bis.2 PC authorises the courts to undertake a financial assessment and order the confiscation of an equivalent sum. Estimates of the value of the financial benefits from offences must take account of all the available information on direct and indirect benefits and any other factual material that may be relevant. In the absence of more precise information, the courts may also carry out such assessments *ex aequo et bono*<sup>41</sup>. Confiscation of an equivalent sum is subsidiary and may only be applied if assets or securities directly linked to the offence cannot or can no longer be found in the offender's property.

For a limited number of specifically listed offences Article 43quater PC provides for direct confiscation by equivalent with shared burden of proof, which is separate from the systems under Articles 42.3 and 43bis 1 and 2 PC. This Article provides for a sharing of the burden of proof between the crown prosecutor and the accused regarding the unlawful origin of financial assets that are liable for confiscation. The public prosecutor must first establish that there is a substantial difference between the perpetrator's assets over the relevant period and the assets he has probably acquired legally, having regard to his normal expenditure, and that there are serious and concrete grounds for thinking that this increase in wealth resulted from the offence of which the individual has been found guilty or an identical offence. It is then the perpetrator's responsibility to show plausibly that this difference is not the result of the offence of which he has been convicted or of identical offences.

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<sup>41</sup> Cf. Court of Cassation 14/12/1994.

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Subject to the rights of third parties in good faith, the assets of a criminal organisation must be confiscated.

Subject to the stipulations of Art. 42.1 PC concerning the object and instrumentality of the offence, special confiscation under Articles 42.2, 42.3; 43bis and 43quater CPC may be ordered even when the perpetrator does not own the unlawful assets. In a judgment of 29 May 2001, the Court of Cassation ruled that the personal nature of the penalty was not a barrier to confiscation from third parties.

The only restriction on such confiscation derived from the rights that third parties could claim to such property by virtue of their legitimate possession. There is no presumption of third parties' bad faith but the latter have to take the initiative in claiming their property. In the case of laundering, confiscation of the object of the laundering may be ordered, pursuant to Article 505.3 PC, even if the property does not belong to the offender, although without infringing third parties' rights of ownership of assets liable to be confiscated.

### *4.1.1.2. Management of the assets during the period of freezing*

The management of seized assets is governed by sections 12 to 14 of the Law of 26 March 2003 establishing a Central Body for Seizure and Confiscation (*OCSC*), with provision for the management of seized assets at constant values and the application of certain property-related penalties.

Constant-value management consists of either maintaining or storing the seized assets, subject to available resources, with a view to their restitution or confiscation, in a state comparable to that at the time of seizure, or the transfer or restitution subject to compensatory payment of the seized assets, in which case the seizure applies to the proceeds obtained. Transfer or restitution subject to compensatory payment relieves the judicial authorities of the burden of maintaining or preventing a fall in the value of seized assets.

Since 1 September 2003, any cash sum seized must be assigned to *OCSC* management unless it has been assigned instead to a particular financial institution or manager or has already been seized or blocked in such an institution. In other cases, the public prosecutor or investigating judge may assign management of assets to the *OCSC*. Sums seized before 1 September 2003 and those already entrusted to a financial institution or a specific manager before that date or that were seized or

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blocked in that institution or other agency may be assigned to the *OCSC*. Similarly, the public prosecutor or investigating magistrate may ask the *OCSC* to manage all the pecuniary assets not subject to compulsory *OCSC* management and any assets requiring special management.

Art. 6 (2) of the *OCSC* Law mentions the value-preserving management measure: disposing of seized goods and replacing it with the proceeds; returning the seized property in exchange for payment of a sum of money and replacing it with that sum of money, and retaining the property in kind depending on the resources available.

The main simplifications made to the disposal procedure by the Law of 27 December 2006 laying down miscellaneous provisions seek to ensure that the sale of seized property that meets the legal criteria becomes the usual way of managing seized property with the aim of converting current-value assets into an interest-bearing sum of money.

With this disposal, subrogation *in rem* takes place whereby the proceeds from the disposal replace the seized assets itself. The court having jurisdiction as to the substance of the matter will now no longer rule on the seized asset but on the proceeds, which will be returned or confiscated with interest.

Not all property is taken into account for disposal during the seizure stage. As a rule the possibility of disposal is confined to replaceable property whose retention in kind would lead to a reduction in value.

Cars and electronic equipment such as mobile phones belong to this category. Immovable property may also be disposed of.

If seized property is to be returned, return takes the form of an equivalent sum of money. As in the case of disposal, the sum paid takes the place of the asset sold.

### 4.1.1.3. *Specific arrangements relating to the CTIF*

Under the law of 11 January 1993, the *CTIF* may play a part at national level in the freezing of assets before sentence is passed in certain circumstances.

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Article 12 (2) of the abovementioned law allows the *CTIF* to lodge an objection to the implementation of a transaction or to any debiting of an account for two working days if such a measure is justified by the seriousness and urgency of the case. This provision applies where the *CTIF* has received a suspicious transaction report in accordance with Art. 12 to 14 of the law or a request for information from a foreign counterpart pursuant to Art. 11(2).

Art. 12(3) provides that, if the *CTIF* considers that the measure should be extended, it must immediately refer the matter to the public prosecutor or the federal prosecutor, who will take the necessary decision.

The *CTIF* informs the *OCSC* when it submits a file to the public prosecutor's office if, within the file it submits, substantial assets in the form of cash in account or securities (shares, bonds, investments in life assurance etc.) may perhaps be seized. The *OCSC* can then contact the judicial authorities and, if necessary, lend its assistance and play a part in any judicial seizure that the judicial authorities may decide upon.

#### *4.1.1.4. Involvement of the ARO during the freezing procedure*

The Central Body for Seizure and Confiscation (*OCSC*) has a duty to assist the judicial authorities, especially in the context of seizure of assets relating to offences (Article 3(2) of the abovementioned law of 26 March 2003).

In performing its duty the Central Body has to:

- centralise all data concerning seizures and confiscations in criminal matters;
- in consultation with the public prosecutors' offices or the investigating magistrates, ensure the specific management of seized assets and, where necessary, have them disposed of with the authorisation of the competent judge.

#### **4.1.2. Cooperation at European level - Implementation of Framework Decision 2003/577/JHA**

Framework Decision 2003/577/JHA was incorporated into Belgian Law by the Law of 5 August 2006 concerning the application of the principle of mutual recognition of judicial decisions in criminal matters between the Member States of the EU.

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Art. 8 of that Law provides that, in the context of relations with the EU Members States, the new system under the 2006 Law replaces the Law of 20 May 1997 on international cooperation as regards the enforcement of seizure and confiscation orders. However, as a transitional measure, the Law allows the Belgian authorities to comply with a request for a seizure order emanating from a Member State which has not yet transposed the Framework Decision. The system under the Law of 20 May 1997 continues to apply in that case.

Up to the date of the evaluation visit, Belgian experience has shown, however, that the freezing order under the Framework Decision has rarely been used, mainly because this procedure could not lead to confiscation.

The requesting State will very often prefer the mutual legal assistance procedure involving a request for the seizure of sums with a view to their eventual confiscation.

#### *4.1.2.1. Experience when acting as issuing State*

Depending on the case, either the public prosecutor or the investigating magistrate is competent to issue a freezing order.

There are no formalities and procedures which have to be observed in the executing State to ensure that evidence taken is valid in Belgium. Any item of evidence lawfully obtained abroad can be produced before the Belgian courts.

In Belgium the competent authority for receiving and handling a freezing order is the public prosecutor of the place where the asset to be seized is located. This principle is based on Art. 4 of the Framework Decision, namely that requests are transmitted directly from judicial institution to judicial institution. Some countries, however, prefer other methods such as Interpol or the diplomatic channel. When the Belgian federal ministry of justice receives this kind of request it is passed on to the competent public prosecutor.

According to the information provided in reply to the questionnaire, Belgium has had little practical experience with the issuing of freezing orders. If a freezing order is issued, Belgium seeks a contact point to ensure coordination and execution.



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Belgium reported no problems with the translation of requests. Belgian law states that the certificate must be translated into the language of the requested country.

## *4.1.2.2. Experience when acting as executing State*

When a freezing order is transmitted in Belgium, the case is sent by the public prosecutor to the competent investigating magistrate, who then takes a decision. Enforcement of the request is mandatory except where there is ground for refusal specified by Belgian law.

The authority which is competent to decide on the enforcement of a freezing order is the investigating magistrate. Belgium has not designated a central authority to carry out these tasks. The OCSC must be informed of any seizure, the procedure for retention of assets and any information identifying the persons in respect of whom the seizure was ordered.

There is no formal process for checking whether a request for further and better information is merited. The scope of the investigating magistrate's review is limited to examining the admissibility of the freezing order and the existence of grounds for refusal enumerated in the law.

With regard to the application of Framework Decision (FD) 2003/577/JHA, the Belgian authorities in their answers to the questionnaire noted some queries regarding the added value of Framework Decision 2003/577/JHA: it was stated that a) the same purpose was already served by other conventions, including those in the Council of Europe context, and b) that Belgium had already adopted a modern, efficient system for handling requests for assistance concerning seizure and confiscation orders while it was stressed that the Law of 20 May 1997 provided possibilities for international cooperation. And c) it was argued that the system introduced by the FD had a number of drawbacks: as regards the seizure of evidence, its limited scope entailed an administrative burden. The fact that the judicial authority was required to draw up two related requests was criticised.

Furthermore it was stressed that the FD required that the assets or evidence in question be clearly identified beforehand, something that at the evidence-collecting stage was not always possible or

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even desirable. It was argued that this was why rogatory letters often concerned both the enforcement of a search order and the simultaneous seizure of all the evidence relating to the investigation.

## 4.2. Confiscation (including 2005/212/JHA and 2006/783/JHA)

### 4.2.1. Confiscation at national level

Prior to the Law of 19 March 2003<sup>42</sup>, Article 197 of the Code of Criminal Procedure (CIC) stipulated that prosecutions for the recovery of fines and confiscated assets were to be brought by the Finance FPS on behalf of the public prosecutor.

The law was amended, however, because of the difficulties encountered in recovering the confiscated monies. A new Article 197bis was added to Article 197 CIC.

Article 197 CIC now merely states that prosecutions in connection with criminal fines are brought on behalf of the public prosecutor by the Director for Registration and Property (*Enregistrement et Domaines*).

The new Article 197bis CIC stipulates that prosecutions for the recovery of confiscated assets are brought on behalf of the public prosecutor by the Property Department, acting on recommendations from the Central Body for Seizure and Confiscation (OCSC), which is new.

This new provision vests the OCSC with own powers in the execution of confiscations, enabling it to replace the public prosecutor and make recommendations regarding confiscation to the Property Department. Henceforward the OCSC rather than the public prosecutor will oversee the execution of confiscations. It will not carry out confiscations itself; that task falls to the competent departments of the Finance FPS. The OCSC facilitates the execution of confiscations. This means that it is an additional player on the ground, as the powers hitherto vested in the Property department will continue to exist.

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<sup>42</sup> Law of 19 March 2003 amending the Code of Criminal Procedure, the Law of 21 November 1989 on compulsory insurance for motor vehicles and the Royal Decree of 28 December 1950 laying down general rules on court fees/legal costs in criminal cases, Moniteur Belge, 2.5.2003.

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Article 197bis CIC ends by providing that the Property Department will take all steps and submit all applications that are necessary for recovering or safeguarding entitlements arising from a ruling in the Treasury's favour. The OCSC has to be consulted before legal proceedings are brought.

Such proceedings arise in cases where, at the time when the confiscation is carried out, goods or money which are to be confiscated appear to have been misappropriated through "oversight" on the part of a private body (e.g. the bank) holding them. In such cases the public prosecutor opens a judicial inquiry against the non-compliant body into the misappropriation of confiscated assets or complicity in asset laundering. The desired practical outcome is not always easy to achieve.

For this reason, the necessary legal proceedings should be brought by the Finance FPS after consultation of the OCSC, on which occasion the latter acts as representative of the prosecution service (empowered to bring public prosecutions). The OCSC is, moreover, well placed to check whether or not the requested proceedings would interfere with any ongoing criminal investigations<sup>43</sup>.

## 4.2.2. Confiscation at European level

Belgian law is in conformity with the principles and procedures of the Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property<sup>44</sup>, including the possibility of extended confiscation (see in particular Articles 42, 43, 43bis, 43ter and 43quater of the Belgian Criminal Code). No additional implementation measures are required.

### 4.2.2.1. Implementation of Framework Decision 2006/783/JHA

The experts were informed that Belgium had not yet implemented Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition

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<sup>43</sup> Draft law setting up a Central Body for Seizure and Confiscation (OCSC) and providing for the value-preserving management of seized assets and for the implementation of property sanctions, Explanatory Memorandum, Doc.Parl., Ch.repr., sess.ord. 2002-2003, No 2117/001, p. 45.

<sup>44</sup> OJ L 68, 15.3.2005, p. 49ff.

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to confiscation orders<sup>45</sup> and that the current legal basis for cooperation in execution of a confiscation order was the Law of 20 May 1997 on international cooperation with regard to the execution of seizures and confiscation<sup>46</sup>. The legislative procedure on implementing the Framework Decision however, had been initiated in view of modifying the Law of 5 August 2006. The advice on the draft implementation law has already been received from the Conseil d'Etat and was at the time of the drafting of this report ready to be submitted before Parliament.

## 4.3. Conclusions

- Belgium has a well-developed national system of seizure and confiscation. Special seizure and confiscation by equivalent is applied with no condition of ownership, though subject to the rights of third parties. Under Article 35ter of the Criminal Procedure Code (*CPC*) on seizure by equivalent and Articles 42.3 and 43quater of the Penal Code (*CP*) on confiscation by equivalent, *offenders may be deprived of their assets or the corresponding value if they were acquired as a consequence of criminal offences*. It is unnecessary to establish a link between the offence and the asset seized. For a limited number of offences, Article 43quater introduces a sharing of the burden of proof between the public prosecutor and the offender regarding the source of unlawful financial benefits.
- Belgium has not yet implemented Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.
- The choice of provision on which the seizure is based (Article 42, 43bis, 43ter, 43quater *CP*) is of little relevance. It also emerged that the courts find it difficult to distinguish in practice between, on the one hand, optional and equivalent seizures/confiscations of financial benefits arising from an offence and, on the other hand, mandatory seizures/confiscations of the object and proceeds of the offence. The wider range of possibilities of seizure and confiscation and

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<sup>45</sup> OJ L 328, 24.11.2006, p. 59ff.

<sup>46</sup> Moniteur Belge, 3.7.1997.

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the new requirement for judges to manage seized assets at constant value have resulted in more applications. This has caused a “log-jam” in the courts as they are asked to rule on decisions taken at first instance. Proposed amendments to the legislation have been drawn up to fill the gaps in Article 505 CP and supplement and simplify the seizure and confiscation system.

- There are many benefits in the existing system; one is the close collaboration between the various authorities concerned with the identification, seizure, freezing and confiscation of assets. Examples include the use of *DJF* Ecofin liaison officers with the *CTIF* and *OCSC*, the use of informants and the establishment of contact points between the *OCRC* and various government departments with which it has concluded agreements. *DJF OCRC* is supervised by a federal magistrate. The *OCDEFO* laundering section cooperates with the *CTIF* and the prosecuting authorities on transactions to which the *CTIF* has objected. Liaison officers seconded to the *CTIF* ensure cooperation between it and the *OCDEFO*, particularly in the case of hit and run operations in which funds can be immediately blocked.
- In setting up the *OCSC*, Belgium has been one of the first EU MS to have established a seizure and confiscation office that is part of the public prosecutor's office, therefore taking away responsibility from the courts for a number of seized assets. The *OCSC* offers training to prosecutors as part of its assistance and support activities and has also established a database on seized and confiscated assets. Judges and prosecutors are required to notify the *OCSC* of seizures and confiscations of assets. This requirement is necessary because the *OCSC* is responsible for coordinating confiscation orders.
- While at international level Belgium would have the possibility of cooperating with other Member States on the basis of Framework Decision 2003/577/JHA, practice shows that they prefer to cooperate under the Belgian Law of 20 May 1997.

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- From the point of view of practical implementation and frequency of application, the usefulness of freezing orders pursuant to Framework Decision 2003/577/JHA was questioned by the Belgian authorities, and it was suggested as a matter to be raised in the discussions on the introduction of a general evidence warrant to replace the evidence warrant established by the Framework Decision of 18 December 2008.
- As the experts did not have concrete examples and statistics, they were not in a position to finally establish how extensive or effective international cooperation on the basis of the Belgian legal framework actually was.

## 5. PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

### 5.1. Mechanisms available, particularly cooperation with OLAF

#### 5.1.1. *OLAF* – Customs and Excise Administration

The Customs and Excise Administration provides the European Commission with quarterly reports on fraud and irregularities connected with the collection of traditional own resources (for own resources amounts above EUR 10 000) and on the position concerning cases which have already been reported but not yet closed.

These reports are sent electronically via the WEB-OWNRES application, and include a reference, if applicable, to the communication of cases under Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

The reports specify the stage reached in the administrative or judicial procedure and the financial consequences in each case. Local departments were provided with standardised procedures for recording in ONWRES-WEB the cases of fraud and irregularities linked to the collection of traditional own resources.

As regards the competence of the Customs and Excise Department, with regard to traditional own resources, in particular, the instruments of administrative assistance are preferred for cooperation with *OLAF*.

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## 5.1.2. *OLAF* – Judicial authorities

*OLAF*'s relations with the judicial authorities when dealing with irregularities reported by *OLAF* and/or the European Commission are dealt with in a circular (No 9/2003) of the College of General Public Prosecutors.

The Federal Prosecutor's Office has been appointed to act as the interface between *OLAF* and the Belgian judicial authorities. All reports are passed on to the Federal Prosecutor and copied to the chief coordinator of ECOFINFISC, the College of General Public Prosecutors' Expertise Network. It is therefore possible to monitor these files.

The Federal Prosecutor's Office has adopted a special procedure for handling cases coming from *OLAF*. This note provides for analysis of the case by a Belgian police department specialising in cases of corruption and fraud in connection with public procurement. The case is then the subject of a procedure at Belgium level to establish the competent prosecution body. It will often be the Brussels Public Prosecutor's Office or the Federal Prosecutor's Office if the nature of the case is distinctly international.

## 5.1.3. *OLAF* - Police authorities

In the case of the Federal Police, it is mainly the Directorate for Economic and Financial Crime that cooperates with *OLAF*.

*OLAF* plays a vital role in detecting offences that are likely to be the subject of legal proceedings. It has considerable resources and is able to facilitate ongoing investigations greatly. Regular contacts allow valuable cooperation.

In the answers to the questionnaire, it was stated that the Federal Police expected *OLAF* to provide them with the following support:

- Prior administrative investigation
- Handing over of internal data
- Preparation of operations
- Assessment of information on a given case of fraud, operational analyses

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- Processing and interpretation of documents
- Facilitating international cooperation
- All precautions in the prior administrative investigation for the purpose of safeguarding the effectiveness of subsequent criminal investigations (e.g. taking any measures necessary in order not to alert or inform the protagonists in the investigations which are being or are to be conducted)
- Acting as a relay to pass on to the relevant Commission departments, if appropriate, requests for information from the judicial authorities
- Forwarding of the internal investigation reports in one of Belgium's national languages.

Experience has shown that the assistance of *OLAF* is regularly sought in cases of fraud affecting the financial interests of the European Commission.

## 5.1.4. OLAF - CTIF

The *CTIF* is the only FIU to have concluded a cooperation agreement with *OLAF*. That agreement was made possible by the Law of 11 January 1993, in particular Article 17(2) thereof which specifies the exceptions to the principle of strict confidentiality applying to the Unit's members, its staff, police officers and civil servants seconded to it, and external experts whose services the Unit uses.

The requests for information sent by the *CTIF* to *OLAF* are not covered by the strict confidentiality rule.

It should also be noted that under Article 17(2) referred to above, the *CTIF* informs *OLAF* when a file that has been submitted concerns the laundering of the proceeds of an offence involving fraud against the EU's financial interests.

## 5.1.5. Participation of *OLAF* in investigations

The law does not provide for the participation of *OLAF* in investigations (except in the case of joint investigation teams - see above). However, there is nothing to stop the investigating magistrate from having recourse to its assistance in technical matters, for example to document and analyse the facts. *OLAF*'s assistance is also appreciated in facilitating the performance of formalities such as the waiver of officials' obligation of discretion, of their immunity or of the inviolability of premises.



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Experience has shown that *OLAF*'s assistance is regularly sought in cases of fraud affecting the financial interests of the European Union.

*OLAF* may be called upon as an expert, either with the magistrate's authorisation, or in the context of a joint investigation team. This applies in particular in the case of *OLAF*'s operational analysts. Its expertise, especially that of the Magistrates Unit, can also be useful, particularly in matters of criminal procedure in the countries involved in the investigations.

As regards the competences of the Customs and Excise Department, especially with regard to traditional own resources, the instruments of administrative assistance (application of abovementioned Regulation (EC) No 515/97) are preferred for cooperation with *OLAF*.

Pursuant to Article 9(3)<sup>47</sup> of the Law of 9 December 2004 on international legal assistance in criminal matters and amending Article 90ter of the Code of Criminal Procedure, *OLAF* officers may form part of an investigation team in their capacity as experts. *OLAF*'s investigation reports are admissible as evidence. (*OLAF*'s reports must be drawn up with due regard for the procedures laid down in Belgian law.) *OLAF* has technical expertise and is able to investigate in all the Member States and even in third countries without excessive administrative formalities. *OLAF* officers may not perform coercive actions (seizure, access to the economic operator's land or buildings without his authorisation).

## **5.1.6. *OLAF* - Coordination Committee on Combating Fraud in the Business Sector (*CICF*)**

The Coordination Committee on Combating Fraud in the Business Sector (*Commission Interdépartementale pour la Coordination de la Lutte contre la fraude dans les secteurs économiques et pour l'application du règlement CE n° 595/51 - CICF*) sends quarterly reports to *OLAF* pursuant to Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the

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<sup>47</sup> Art. 9(3). In the agreement referred to in Article 8(4), it may be agreed that representatives of third countries, Eurojust, Europol, or *OLAF* may take part in such investigation teams as experts. They may be present during information or inquiry activities, with the agreement of the magistrate referred to in (1). They cannot perform such activities themselves.

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common agricultural policy and the organisation of an information system in this field and repealing Council Regulation No 595/91. The *CICF* coordinates those reports at national level.

In their answers to the questionnaire, it was pointed out that the *CICF* would expect the following from *OLAF*:

- Specific information on fraud, making it possible to commence court proceedings
- Maintenance of the information flow after the beginning of the court proceedings
- Adoption of clear positions.

## 5.1.7. OLAF – Belgian Paying Agencies (*BIRB*)

If fraud or irregularities are found during the checks carried out by the Belgian Paying Agencies (*Bureau d'Intervention et Restitution Belge - BIRB*), the facts are recorded and sent to the Commercial Departments of the *BIRB*. Reporting to all external departments will then begin via the customary channel.

The Flemish Authority has sent an administrative instruction regarding *OLAF* to the department concerned.

For the Walloon Region there is no legislation regarding advance reporting to *OLAF*. Cases are not reported to *OLAF* unless they have been notified to the person concerned. The Walloon Region gives instructions for the recovery of funds connected with irregularities and aid unduly paid.

At the level of the *BIRB* there is an exchange of information between the various departments on all presumed or established cases of fraud.

Within the Flemish authority there is extensive cooperation with the lawyers of the agency through which an overview of the state of routine proceedings is transmitted each month.

The Walloon region initiates the judicial recovery of sums improperly received and informs *OLAF*, via the quarterly reports, on the follow-up to the procedures.

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## 5.2. Conclusions

- The Belgian authorities participate in protecting the financial interests of the European Union. In accordance with the requirements of the EU, special legislation was integrated into national law, and dedicated organisations (e.g. Intervention and Refunds Office) were set up.
- There are different kinds of cooperation between the Belgian authorities and OLAF. As OLAF is not a law enforcement authority, it cannot directly access databases maintained by law enforcement authorities; however, information contained therein can be obtained with the help of the judicial authorities. According to the information received, there do not appear to be any obstacles to the information flow between those agencies. OLAF is informed about fraud cases falling within its competence.
- The Belgian Criminal Procedure Code makes it possible for *OLAF* officers to participate in an investigation team as expert auditors; they are however, barred from performing coercive measures. According to the information received, *OLAF* appears to play a certain role in detecting offences in Belgium. However, during the evaluation visit the team did not receive statistics about either violations of the EU's financial interests or cooperation with *OLAF* (e.g. participation in joint investigation teams); the level of effectiveness could not therefore be assessed.

## 6. RECOMMENDATIONS

The evaluation team thought fit to make a number of suggestions for the attention of the Belgium authorities. This does not detract from the fact that Belgium has a justly deserved reputation for adopting a stringent policy with regard to financial crime and financial investigations. It appeared to the evaluation team that - given the present set-up - cooperation between the different players works well in general terms and that all practitioners are highly motivated and dedicated to their duties.

The experts would like to summarise their suggestions in the form of the following recommendations:

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## 6.1. Recommendations to Belgium

1. Should – despite the high degree of specialisation and expertise that has been noted, particularly within the *DJF* - review the mid- and long-term effects that the lack of incentives for young officials might have when seeking to attract new staff for combating financial crime and conducting financial investigations and in order to maintain the required degree of specialisation, (see 2.3.1)
2. Should - despite the improvement that the reorganisation of the police services has brought – review the fragmented competencies and capacities to investigate financial crimes that still exist, (see 2.3.1)
3. Should review whether the absence of criminal investigation powers of the Special Tax Inspectorate (*ISI*) in conjunction with Article 29 *CIC* channelling the denunciation of fiscal crimes exclusively through the hierarchy of the Inland Revenue administration has an impeding effect on the prosecution of fiscal fraud, (see 2.3.1)
4. Should review whether Article 44 of the law on the Police Function in its present form facilitates the sharing of intelligence between different law enforcement bodies, Customs and Police in particular, (see 2.3.1)
5. Should review the capacities of the Public Prosecution Service to deal efficiently with financial crime, (see 2.3.2)
6. Should review and consider to reinforce, concentrate and further develop the financial crime expertise in the Federal Prosecutor’s Office as well as at the level of the courts, (see 2.3.2 and 3.4)
7. Should - in order to reflect the specialisation of the criminal prosecution bodies in relation to the investigation of financial offences - consider the possibility of appointing specialist judges in medium and higher courts for such files and oblige prosecutors and examining magistrates involved to undergo special training that includes financial matters, (see 3.4)

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8. Should review why the *OCSC* does not receive all decisions concerning goods which meet the definition of "property assets" as there is no obligation to report when the value of the property assets is less than EUR 2 500, (see 2.3.2)
9. Should assess whether the effectiveness of the *OCSC* and the reporting volume by some actors could benefit from introducing online reporting to this unit, (see. 2.3.2)
10. Should review the lengthy decision-making procedure on whether to take part in a specific Europol work file, (see 3.4)
11. Should review the cooperation of the Customs and Excise Administration with Europol in criminal matters, (see 3.4)
12. Should reconsider the training of tax, customs and police officers on the subject matter as well as their continuous information about new criminal trends and modus operandi, (see 2.3.3)
13. Should implement all European Union legislation dealing with the subject matter, (see 3.1.2.2 and 4.2.2.1 and 4.3)
14. Should assess whether establishing a centralised database of bank accounts (similar to the French *FICOBA*) that could be considered as one option to facilitate financial investigations and investigations into financial crime, (see 3.1.1)
15. Should conduct a follow-up on the recommendations given in this report eighteen months after the evaluation and report on progress to the Multidisciplinary Group on Organised Crime (MDG).

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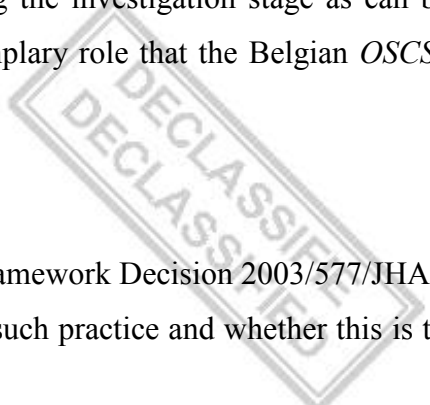
## 6.2. Recommendations to the European Union, its Member States, institutions and agencies

### 6.2.1. To the Member States

Should study the possibility of seizing assets during the investigation stage as can be done under the Belgian legal system, as well as the exemplary role that the Belgian *OSCS* has in this process, (see 2.3.2).

### 6.2.2. To the European Union

Should, given how rarely the freezing order under Framework Decision 2003/577/JHA is used by the Belgian authorities, look into the reasons for such practice and whether this is the case in other Member States as well, (see 4.1.2).



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ANNEX A

## PROGRAMME FOR VISIT

### Mardi 24 novembre 2009

- 09.30 Représentant du Ministre de la Justice, SPF Justice (DG Législation, Libertés et Droits fondamentaux et Service de la politique criminelle), Commission Interdépartementale pour la Coordination de la Lutte contre la fraude dans les secteurs économiques et pour l'application du règlement CE n° 595/51 (CICF) et Collège pour la lutte contre la fraude fiscale et sociale (Mr. Devlies)  
Lunch
- 14.30- Réseau d'expertise ECOFINFISC du Collège des procureurs généraux et Parquet fédéral

### Mercredi 25 novembre 2009

- Matin Organe central pour la Saisie et la Confiscation (OCSC)  
Lunch
- 14.30 Section financière du Parquet de 1ère instance de Bruxelles et magistrat(s) d'instruction

### Jeudi 26 novembre 2009

- 09.00 Secrétaire d'Etat à la fraude (Mr. Clerfayt), Comité permanent de lutte contre la fraude fiscale (CAF), Administration de la Fiscalité des Entreprises et des Revenus (AFER), Administration des Douanes et Accises et Administration de l'Inspection Spéciale des Impôts (ISI)  
Lunch
- 14.00-16.00 Cellule de Traitement des Informations Financières (CTIF)
- 16.00- Commission bancaire, financière et assurances (CBFA)

### Vendredi 27 novembre 2009

- 09.30-12.00 Police fédérale (Direction de la lutte contre la criminalité économique et financière)

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ANNEX B

## LIST OF PERSONS INTERVIEWED

### SPF Justice

Hubert PONCELET, Conseiller du Ministre de la Justice  
Daniel FLORE, Conseiller général, DG Législation, Direction du droit pénal  
Fabienne BULTOT, Attaché, Service de Politique criminelle  
Stéphanie BOSLY, Attaché, DG Législation, Direction du droit pénal, Service de droit pénal européen  
Jessica FAILLA, Attaché, DG Législation, Direction du droit pénal, Service de droit pénal spécial  
Laurence MAINFROID, Attaché, DG Législation, Direction du droit pénal, Service de droit pénal général

### SPF Economie

Dirk DE MAESENEER, Inspecteur-Directeur

### Collège des procureurs généraux

Patrick DE WOLF, Avocat général, Coordinateur principal du réseau d'expertise ECOFINFISC et du réseau d'expertise en matière de lutte contre la corruption

### Parquet fédéral

Erwin DERNICOURT, magistrat fédéral

### OCSC

Francis DESTERBECK, Directeur

### Parquet de 1ère instance de Bruxelles

Patrick CAROLUS, Substitut du Procureur du Roi, Chef de la section financière  
Paul D'HAEYER, Substitut du Procureur du Roi  
Jean-Claude VAN ESPEN, juge d'instruction  
Michel CLAISE, juge d'instruction

### SPF Finances

Jean-François SMETS, Conseiller du Secrétaire d'Etat adjoint au Ministre des Finances  
Joke DESCHACHT, Inspecteur Principal à la direction II/3 des Services Centraux de l'Afer, secteur TVA  
Marie-Christine JANS, Inspecteur à la Direction II/1, secteur CD  
Marc SIMON, Directeur Service 4/1 de l'AAF, collaborateur du CAF  
Christophe CHARLES, Inspecteur, service 1 de l'Administration centrale ISI  
Laurent WATERSCHOOT, Inspecteur, Service Recouvrement & Contentieux, Douanes & Accises  
Jean-Frédéric ANDRE, Inspecteur, Service Gestion des Groupes Cibles, Douanes & Accises  
Gien-Kuo WANG, Inspecteur, Service Gestion des Groupes Cibles, Douanes & Accises



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## CTIF

Jean-Claude DELEPIERE, Président  
Marc PENNA, Conseiller

## CBFA

Stéphane DE MAGHT

## Police fédérale

Johan DENOLF, directeur, Direction criminalité économique et financière (DJF)

Danièle GOFFINET, adjoint du directeur DJF

Johan DE VOLDER, adjoint du directeur DJF

Jan BUYS, conseiller stratégique, gestion et analyse auprès du directeur DJF

Stefan PRINS, officier responsable pour BTS/GLI de la direction DJF

Luc BEIRENS, chef de service de la Federal Computer Crime Unit (FCCU)

Pieter DE MEY, chef de service de l'Office Central de la lutte contre la criminalité économique et financière (OCDEFO)

Marc DE BACKER, officier de la section Blanchiment de l'OCDEFO

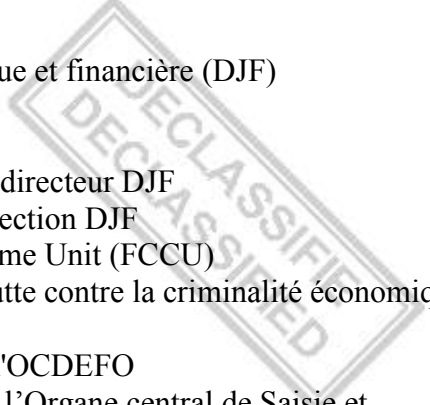
Nico GEYSEN, officier de liaison de l'OCDEFO auprès de l'Organe central de Saisie et Confiscation (OCSC)

Alain LUYCKX, chef de service de l'Office Central de la lutte contre la corruption (OCRC)

Alain BOUCAR, chef de service de l'Office Central de la lutte contre les faux (OCRF)

Georges CEUPPENS, chef de service de la Federal Unit against swindling and for Ecofin documentation (FUSE)

Marc VERVAENEN, adjoint directeur, direction pour la coopération policière internationale (CGI)



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ANNEX C

## LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE (FRENCH/DUTCH)	ENGLISH EXPLANATION
AFER	Administration de la Fiscalité des Entreprises et des Revenus	Corporate and Income Tax Administration
AFSCA	Agence fédérale pour la Sécurité de la Chaîne alimentaire	Federal Agency for Food Safety
ARO	-/-	Asset Recovery Office
ASA	Agence pour la Simplification administrative	Agency for Administrative Simplification
BCE	Banque-Carrefour des Entreprises	Crossroads Bank for Businesses
BIRB	Bureau d'Intervention et Restitution Belge	Belgian Intervention and Refunds Bureau
CAF	Comité permanent de lutte contre la fraude fiscale	Standing Committee for the Fight against Tax Fraud
CARIN	-/-	Camden Assets Recovery Inter-Agency Network
CBFA	Commission bancaire, financière et assurances	Belgian Banking, Finance and Insurance Commission
CIC	Code d'Instruction Criminelle	Code of Criminal Procedure
CICF	Commission Interdépartementale pour la Coordination de la Lutte contre la fraude dans les secteurs économiques	Interdepartmental Coordinating Committee on Combating Fraud in the Business Sector
CIP	Cellule interdépartementale de Prévention	Interdepartmental Prevention Unit
CMSA	Cellule Multidisciplinaire de Lutte contre la Fraude pour la Sécurité de la Chaîne Alimentaire	Multidisciplinary Unit on Fraud Prevention for the Safety of the Food Chain
CP	Code Pénal	Penal Code

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ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE (FRENCH/DUTCH)	ENGLISH EXPLANATION
CTIF	Cellule du Traitement des Informations Financières	Belgian Financial Intelligence Processing Unit
DGCM	Direction Générale du Contrôle et de la Médiation	Directorate-General for Supervision and Mediation
DGJ	Direction Générale de la Police Judiciaire	Criminal Investigation Department
DIV	Dienst voor Inschrijving van de Voertuigen	Belgian motor vehicle database
DJF	Direction pour la lutte contre la criminalité économique et financière organisée	Economic and Financial Crime Directorate
EAGGF	-/-	European Agricultural Guidance and Guarantee Fund
EIS	-/-	Europol Information System
FCCU	-/-	Federal Computer Crime Unit
FCIC	-/-	Financial Crime Information Centre
FEDICT	Service public fédéral Technologie de l'Information et de la Communication	FPS Information and Communication Technology
FPS	Service Public Fédéral	Federal Public Service
FUSE	-/-	Federal Unit against Swindling and for Economic and Financial Documentation
ISI	Inspection Spéciale des Impôts	Special Tax Inspectorate
JIT	-/-	Joint Investigation Team
NSP	-/-	National Security Plan
OCDEFO	l'Office central pour la lutte contre la criminalité économique et financière grave	Central Organised Economic and Financial Crime Office
OCRC	Office central pour la répression contre la corruption	Central Anti-Corruption Office

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ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE (FRENCH/DUTCH)	ENGLISH EXPLANATION
OCRF	L'Office central pour la répression des faux	Central Office for Combating Forgeries
OCSC	l'Organe Central pour la Saisie et la Confiscation	Central Body for Seizure and Confiscation
OCTA	-/-	Organised Crime Threat Assessment
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
PJF	Directions judiciaires déconcentrées (dites PJF).	Decentralised Criminal Investigation Directorate
ROCTA	-/-	Russian Organised Crime Threat Assessment
SPF	Service Public Fédéral	Federal Public Service (now used in Belgium instead of "Ministry")
STR	-/-	Suspicious Transaction Report
VIÉS	-/-	VAT Information Exchange System (V.I.E.S.)