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Belgium
Bribery & Corruption

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Belgium.

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Belgium: Bribery & Corruption

1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

The Act of 10 February 1999 on the punishment of corruption has introduced the regulations regarding antibribery and corruption into the Belgian Criminal Code. Embezzlement, extortion, and conflict of interests by persons exercising a public office are punished by articles 240-245 of the Criminal Code. Bribery of persons exercising a public office is criminalised by articles 246-253 of the Criminal Code (public bribery) and bribery of non-public persons is punished by articles 504bis-504ter of the Criminal Code (private bribery).

2. Which authorities have jurisdiction to investigate and prosecute bribery and corruption in your jurisdiction?

In Belgium, one has to make a distinction between two types of investigations. On the one hand, the investigations led by the Public Prosecutor, and, on the other hand, those led by the Investigating Judge. Both types of investigations can concern the same offences, such as bribery and corruption. The most important difference between the two above-mentioned types of investigations is that certain investigative acts are exclusively reserved for the Investigating Judge (e.g. dawn raid and telephone tapping). In general, the latter thus investigates the more severe cases. When conducting an investigation, both the Public Prosecutor and the Investigating Judge will be assisted by the police, and in particular by the specialised anti-corruption service of the federal judicial police, namely the Central Anti-Corruption Service (Centrale Dienst ter Bestrijding van Corruptie/Office Central pour la Répression de la Corruption). Although both the Investigating Judge and the Public Prosecutor can investigate bribery and corruption, only the Public Prosecutor can prosecute criminal offenses. In June 2021, the European Public Prosecutor's Office ("EPPO") started its investigative and prosecutorial operations. Therefore, should the bribery and/or corruption affect the EU budget, it then can be investigated and prosecuted by the EPPO.

3. How is 'bribery' or 'corruption' (or any equivalent) defined?

Under Belgian law, there is the distinction between public and private bribery, as well as between active and passive bribery. Passive bribery is the act where a person directly or through intermediaries, on its own behalf or that of a third party, requests, accepts or receives an offer, a promise, or a benefit of any kind to perform certain acts or to refrain from performing certain acts. Active bribery consists in proposing, directly or through intermediaries, to a person an offer, promise or benefit of any kind on its own behalf or on behalf of a third party to have certain acts performed or to refrain from certain acts. Depending on the capacity of the person one tries to bribe or who is actually bribed, there will be public or private bribery.

Corruption, being considered as the fraudulent conduct of a public official, includes different criminal offences. It covers embezzlement, extortion, and conflict of interests by persons exercising a public office. Embezzlement consists of the misappropriation by a public official of public or private funds, monetary instruments, documents, securities, or tangible assets, which he has in his possession by force or by virtue of his office (art. 240, of the Criminal Code). Extortion is about a public official giving an order to collect taxes, income, or interest, or claiming or receiving them, knowing that they are not due or exceed the amount due (art. 243, of the Criminal Code). Lastly, the conflict of interests concerns the situation in which a public official, either directly or through intermediaries or sham acts, takes or accepts any interest, whatever it may be, in the transactions, tenders, contracts or works under direction over which he had total or partial management or control at the time of the act (art. 245, 1st paragraph, of the Criminal Code). Nevertheless, it should be stressed that there is no criminal offence when, under the given circumstances, they were unable to promote their private interests through their position and acted transparently (art. 245, 2nd paragraph, of the Criminal Code).

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? Is a distinction made between a public official and a foreign public official? Are there different

definitions for bribery of a public official and bribery of a private person?

Under Belgian law, a distinction is indeed made between bribery of a public official ("public bribery") and bribery of private persons ("private bribery"). Articles 504bis-504ter of the Criminal Code cover both active and passive private bribery. Passive private bribery is the act of a person, in his capacity as director or manager of a legal entity, or trustee or appointee of a legal entity or a natural person requesting, accepting or receiving an offer, promise or benefit of any kind, directly or through intermediaries, on his own behalf or on behalf of a third party, in order to induce him to perform or refrain from performing an act falling within the scope of his responsibilities, or made easier by his position, without the authorisation of and without informing his board of directors, the general shareholders' meeting, the principal or the employer. Active private bribery is the act of making an offer or promise, or offering a benefit of any kind to a director or manager of a legal entity or a trustee or appointee of a legal entity or a natural person, directly or through intermediaries, on his own behalf or on behalf of a third party, in order to induce that person to perform or refrain from performing an act falling within the scope of his responsibilities, or made easier by his position, without the authorisation of and without informing his board of directors, the general shareholders' meeting, the principal or the employer. Public bribery is punishable pursuant to articles 246-249 of the Criminal Code. Passive public bribery is the act where a person exercising a public office, directly or through intermediaries, on his own behalf or that of a third party, requests, accepts or receives an offer, a promise, or a benefit of any kind in order to conduct one of the acts mentioned in article 247 of the Criminal Code. Active public bribery consists in proposing, directly or through intermediaries, to a person exercising a public office an offer, promise or benefit of any kind on his own behalf or on behalf of a third party in order to conduct one of the acts in article 247 of the Criminal Code. In accordance to article 247 of the Criminal Code different criminal sanctions apply depending on the purpose of the bribery: a) with the purpose of inducing the person exercising a public office, to perform a lawful act that is not subject to payment of his office (art. 247, § 1, of the Criminal Code); b) with the purpose of inducing the person exercising a public office, to perform an unlawful act in the exercise of his office or to induce such person to refrain from performing an act that is part of his duties (art. 247, § 2, of the Criminal Code); c) with the purpose of inducing the person exercising a public office, to commit an offence in connection with the exercise of his office (art. 247, § 3, of the Criminal Code); d) with the purpose of inducing the person exercising a public office, to use their established or possible influence acquired by virtue of his office to obtain the performance or omission of an act of a public authority or a public administration (art. 247, § 4, of the Criminal Code). Articles 246 and 247 of the Criminal Code cover all categories of persons exercising any public office, and irrespective of their status: federal, regional, community officials, provincial or municipal officers or officials, elected representatives, public officers, persons who temporary or permanently exercise a part of the public authority, and even private persons charged with a public service mission. The group of people targeted by this last subcategory is very large and even includes persons who aren't charged explicitly with a public service mission but can affect the decision-making of such public services anyway (e.g. financial consultants). Persons who are assimilated to a person exercising a public office are: persons who are a candidate for a public office; persons who give the impression that they will hold a public office; persons who, by making use of false capacities, make believe that they exercise a public office. Specific sanctions are provided for when the act of bribery concerns a police officer, an officer of judicial police or member of the public prosecution (art. 248 Criminal Code), an arbitrator (art. 249, § 1, Criminal Code), a judge-assessor or a member of a jury (art. 249, § 2, Criminal Code), or a judge (art. 249, § 3, Criminal Code). Article 250 of the Criminal Code extends the bribery offences as described in articles 246-249 of the Criminal Code to the bribery of persons who exercise a public office in a foreign country as well as the bribery of persons who exercise a public office in an international public organisation.

5. Who may be held liable for bribery? Only individuals, or also corporate entities?

Both individuals and corporate entities can be held criminally liable for bribery. The criminal liability of private legal entities and public legal entities has been introduced respectively by the Act of 4 May 1999 and the Act of 11 July 2018. The liability of the legal entity is autonomous: it must be demonstrated by the Public Prosecutor that the company itself was willing to commit the offence and that it was linked (intrinsically) to its purpose or the preservation of its interests or was committed on its behalf. The mere fact that one of its employees or directors committed a criminal offence, cannot give rise to its liability.

6. What are the civil consequences of bribery and

corruption offences in your jurisdiction?

A person who suffered damages resulting from bribery or corruption can seek relief before the court; the victim can choose to direct himself to a civil or to a criminal court. If a criminal case is initiated prior to or during civil proceedings, such civil proceedings are suspended until the finalisation of the criminal proceedings. The Act of 20 March 1991 on the approval of contractors provides for the possibility of refusing or suspending the recognition of a contractor if they commit certain acts of public bribery. The person convicted of public bribery cannot apply for public contracts according to the Act of 17 June 2016 on Public Procurement.

7. What are the criminal consequences of bribery and corruption offences in your jurisdiction?

Depending on the purpose of the bribery and the accompanying circumstances, the penalties in case of passive or active bribery of persons who execute a public office, constitute a fine ranging between 100 EUR and 100,000 EUR and/or an imprisonment of 6 months to 5 years. If the passive or active bribery concerns a police officer, a person with the capacity of officer of judicial police or a member of the public prosecution, the maximum sanction is twice as high. If the passive or active bribery concerns an arbitrator and relates to an act belonging to his judicial office, the penalties constitute a fine ranging between 100 EUR and 100,000 EUR and an imprisonment of 1 year to 5 years. If the passive or active bribery concerns a judge assessor or a member of a jury and concerns an act belonging to their judicial office, the penalties constitute a fine ranging between 500 EUR and 100,000 EUR and an imprisonment of 3 years to 10 years. If the passive or active bribery concerns a judge and relates to an act that belongs to his judicial office, the penalties constitute a fine ranging between 500 EUR and 100,000 EUR and an imprisonment of 5 years to 15 years. In case the abovementioned types of public bribery involve a person exercising a public office in a foreign State or in a public international organisation, the aforementioned minimum fines shall be tripled, and the maximum fines shall be multiplied by five. Depending on the circumstances the penalty for individuals for private bribery constitutes a fine ranging between 100 EUR and 100,000 EUR and/or an imprisonment of 6 months to 3 years. The penalties for embezzlement constitute a fine ranging between 500 EUR and 100,000 EUR and imprisonment of 5 to 10 years. Extortion can give rise to a fine ranging between 100 EUR and 50,000 EUR and to imprisonment of 6 months to 5 years unless it was committed by force or threat. In that case, the penalties constitute a fine ranging between 500 EUR and 100,000 EUR and imprisonment of 5 to 10 years. The penalties for conflict of interest constitute a fine ranging between 100 EUR and 50,000 EUR and to imprisonment of 1 to 5 years. For all criminal offences discussed above, the special confiscation can be ordered as well. Additionally, some specific penalties can be imposed. Whereas the dispossession of civil and political rights can be ordered for a certain period of time for both (public and private) bribery and extortion, an occupational ban can be imposed for (public and private) bribery, extortion, and conflict of interest (see Royal Decree No. 22 of 24 October 1934). With regard to all fines, it should be noted that as from 1 January 2017, a multiplication factor of eight should be taken into account, meaning that all abovementioned fines should be multiplied by eight. In the event a legal entity is subject to conviction, Belgian law provides a conversion mechanism in order to convert the prison sentences defined in the Criminal Code into penalties applicable to legal entities. The conversion mechanism is defined in article 41bis of the Criminal Code and must be applied separately to each penalty according to the following method: Given that the law provides for an imprisonment (whether this is with or instead of a fine) in the event of corruption or bribery, the minimum fine for a legal entity will amount to 500 EUR multiplied by the number of months of the minimum imprisonment, which cannot be lower than the minimum fine for corruption or bribery for natural persons. The maximum fine for a legal entity will amount to 2,000 EUR multiplied by the number of the months of the maximum imprisonment which cannot be lower than twice the maximum fine for corruption or bribery for natural person. For example, if the penalty (for natural persons) is an imprisonment between 6 months and a year and/or a fine between 100 EUR and 10,000 EUR, the penalty for legal entities will be a fine ranging between 3,000 EUR and 24,000 EUR (multiplied by eight – see above).
Furthermore, it should be stressed that since 30 July 2018, public legal entities can also be convicted for bribery or corruption. However, to some of them, the penalties for legal entities cannot be applied. Hence, with regard to the Federal State, the regions, the communities, the provinces, the assistance zones, the pre-zones, the Brussels agglomeration, the municipalities, the multi-municipal zones, the intermunicipal territorial bodies, the French Community Commission, the Flemish Community Commission, the Joint Community Commission, and the public centres for social welfare, only a declaration of guilt can be pronounced, excluding any other penalty.

8. Does the law place any restrictions on

hospitality, travel and/or entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials? Are there specific monetary limits for such expenses?

As outlined above, under Belgian law, a bribe can constitute an offer, promise or benefit of any kind. Due to this broad scope of application, it includes hospitality, travel, and entertainment expenses. In principle, every offer, promise or benefit, regardless of its value, could lead to criminal prosecution (in case all of the other conditions have been united), without differentiating according to the involvement of Belgian or foreign public officials. For the sake of completeness, it should be noted that in certain sectors specific legislation regulating this aspect exists, such as the Act of 25 March 1964 regarding the pharmaceutical products.

9. Are political contributions regulated? If so, please provide details.

Political contributions are governed by the Act of 4 July 1989 on the limitation and control of election expenses engaged for the election of the House of Representatives, as well as funding and open accounting of political parties. According to article 16bis of that Act only natural persons (and no legal entities or natural persons who act as an intermediary for a legal entity) are allowed to give gifts to political parties, to electoral lists, to candidates and to political mandates. According to this Act, political parties, electoral lists, candidates, and political mandates can receive a maximum contribution of 500 EUR or its equivalent per year from the same natural person. Natural persons may contribute up to a maximum total annual amount of 2,000 EUR or its equivalent to political parties, electoral lists, candidates, and political mandates. Any gift of 125 EUR and above must be transferred electronically by wire transfer, a payment order, or a bank or credit card. The total amount of cash gifts from the same person may not exceed 125 EUR per year. Anyone who makes or accepts a donation in breach of the aforementioned rules may be subject to criminal fines.

10. Are facilitation payments prohibited or regulated? If not, what is the general approach to such payments?

The Belgian Criminal Code does not provide an exception of liability in case of facilitation payments. Facilitation payments fall within the scope of corruption and bribery and are therefore prohibited under Belgian law.

11. Are there any defences available to the bribery and corruption offences in your jurisdiction?

There is no specific defence for bribery, embezzlement, or extortion; the defence will depend on the factual context of the case. With regard to conflict of interests, the law provides that one cannot be prosecuted (and thus convicted) if they could not promote their private interests through their employment and acted openly (art. 245, 2nd paragraph, of the Criminal Code). In all other cases, again, the defence will depend on the factual context.

12. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery and corruption offences in your jurisdiction?

The impact of the compliance programs is not regulated by the Criminal Code. However, a legal entity can put forward, as part of its defence, that it has a compliance program in place. The legal entity will then have to show it has compliance guidelines and procedures (e.g., on which gifts can be accepted or given and who then has to be informed) in place as well as their effectiveness. Therefore, it is advised that a legal entity also has operational anti-bribery and anti-corruption structures in place. Such programs and structures might however, depending on the specific circumstances of the case, still be insufficient to escape conviction.

13. Has the government published any guidance advising how to comply with anti-bribery and corruption laws in your jurisdiction?

In 2016, an anti-corruption guide for Belgian enterprises overseas has been drafted. This guide can be found on the website of the Federal Public Service Economy (https://economie.fgov.be/nl/publicaties/anticorruptiegids-voor). In this guide, which is also useful for Belgian entities who (only) do business in Belgium, advice is provided regarding the elements constituting a compliance program. The compliance program must comprise three actions: prevent, detect, and respond. This guide also refers to the ICC Rules on Combating Corruption (2011)24 – nowadays there is a more recent version, from 2023 – as guideline for an effective compliance program.

14. Are mechanisms such as Deferred

Prosecution Agreements (DPAs) or Non-Prosecution Agreements (NPAs) available for bribery and corruption offences in your jurisdiction?

In principle, it is possible in Belgium to enter into a DPA, including for corruption and bribery, as long as certain conditions are met (art. 216bis of the Code of Criminal Proceedings). Both the Public Prosecutor's Office and the accused person are free to enter into negotiations or not. In practice, the Public Prosecutor's Office sometimes refuses to do so on principle for bribery and corruption. A DPA is subject to a number of conditions and can be concluded only if the criminal court has not yet pronounced a final judgment in first instance, and the (alleged) offender (i) is willing to pay a lump sum, (ii) has acknowledged in writing their civil liability for the damaging event and (iii) has compensated the uncontested part of the harm that was suffered by the victim of this event. The lump sum cannot exceed the maximum fine imposed by the law for the offence in question. If a DPA is reached, a criminal court has to verify that all conditions were met and homologate it before it enters into force.

Furthermore, and in accordance with article 216 of the Code of Criminal Proceedings, an offender can admit their guilt in exchange for an agreed-upon sentence, provided that certain conditions are met ("plea bargaining"). If so, the Public Prosecutor's Office can propose a lower penalty than it would have claimed if the offender had not acknowledged their guilt; or a (wholly or partly) suspended penalty, whether or not subject to the fulfilment of certain conditions. If the offender agrees with the proposed penalty, an agreement is concluded. This agreement must be approved by the criminal court. This mechanism, introduced in 2016, has not been used very often in Belgium to date (in general).

Belgian law does not provide for a NPA mechanism.

15. Does the law in your jurisdiction provide protection to whistle-blowers? Do the authorities in your jurisdiction offer any incentives or rewards to whistle-blowers?

Belgian law indeed provides protection to whistle-blowers.

The Act of 28 November 2022 on the protection of reporters of breaches of Union or national law discovered within a legal entity in the private sector implemented the EU Whistle-blower Directive (2019/1937) into Belgian law for the private sector (the Whistle-blower Act). An Act of 8 December 2022 did the same for the federal public sector and a Flemish Decree of 18 November 2022 for the Flemish public sector, whilst the regional legislators in Wallonia and Brussels are also working on legislative proposals to implement the aforementioned EU Whistle-blower Directive at regional level in the public sector.

Based on the Whistle-blower Act, whistle-blowers in the private sector who made a report on information that they became aware of in a work-related context (or outside of a work-related context if the report relates to legislation on financial services, products and markets or anti-money laundering and terrorism financing) are protected against retaliation provided that (i) they had reasonable grounds to believe that the information they reported on was correct, (ii) they made a report with respect to one of the domains that fall in scope of the Whistle-blower Act, and (iii) they reported the information through one of the available reporting channels, i.e. an internal reporting channel, an external reporting channel or public disclosure.

The criterion of 'reasonable grounds' will be assessed in light of a person who would be placed in a similar situation and who would have similar knowledge.

It must be noted that protection against retaliation will only be offered to whistle-blowers who made use of public disclosure if they had (i) first reported their concern internally and externally (or directly externally) but no appropriate action was taken, or (ii) reasonable grounds to believe that the breach may constitute an imminent or manifest danger to the public interest, or there is a risk of retaliation or low prospect of the breach being effectively addressed.

Victims of retaliation are entitled to compensation of between 18 and 26 weeks' remuneration, if they are employees, or actual damages if they are not bound by an employment agreement. Moreover, if the report relates to violations of legislation on financial services, products and markets or anti-money laundering and terrorism financing, the compensation will be equal to up to 6 months' remuneration (or actual damages if the victim was not bound by an employment agreement). In the latter case, if the whistle-blower was an employee and the act of retaliation consisted of a dismissal, the whistle-blower can ask to be reintegrated into the organisation.

Victims of retaliation can also file a complaint with the federal coordinator who will initiate an extrajudicial procedure to verify the existence of retaliation. The burden of proof that no retaliation had taken place will

rest on the company. In case there is a reasonable suspicion of retaliation, the federal coordinator will first ask the highest executive of the legal entity to demonstrate that no retaliation has taken place. If it appears that there is a reasonable suspicion of retaliation, he will subsequently give recommendations within 20 days following receipt of the answer (in the form of a duly justified report) from the highest executive of the company, make recommendations to reverse the retaliation or remedy the harm that was caused. The highest executive then has 20 days to accept or reject these recommendations.

As already mentioned, similar protection is provided to whistle-blowers in the public sector. The Act of 8 December 2022 provides that all statutory officials and all other persons working within or with federal public institutions will be protected as a whistle-blower, when they report or disclose information they received in a work-related context on possible integrity violations of the public institution. They also need to have reasonable grounds too to believe that the information is correct and falls within the scope of the whistle-blowing act. Such integrity violation is any threat to or violation of the public interest and is either a (i) violation of legislation, (ii) a risk to life, health or safety of persons or environment or (iii) a serious deficiency in professional duties or in good governance.

Protection is offered to whistle-blowers, but also to facilitators, third parties and legal entities linked to the whistle-blowers.

Finally, no particular rewards or incentives are offered to individuals to make reports.

16. Does the law in your jurisdiction enable individual wrongdoers to reach agreement with prosecutors to provide evidence/information to assist an investigation or prosecution, in return for e.g. immunity or a reduced sentence?

The Public Prosecutor may provide an undertaking to a person who delivers substantial, revealing, sincere, and complete statements concerning the involvement of third parties and, where applicable, their own involvement in certain (serious) committed or attempted criminal offenses. Such an undertaking may be made in the context of criminal prosecution, the execution of the sentence, or pre-trial detention, provided that the investigation requires it and that other investigative methods appear insufficient to uncover the truth (Articles 216/1 to 216/8 of the Code of Criminal Proceedings).

17. How common are government authority investigations into allegations of bribery? How effective are they in leading to prosecutions of individuals and corporates?

As explained above under Question 2, bribery investigations are led by the Public Prosecutor or by the Investigating Judge and not by government authorities. However, please note that the Minister of Justice has a positive right of injunction, meaning that the Minister can oblige the Public Prosecutor to investigate a case. Nevertheless, this does not entail that the Minister of Justice can carry out investigation acts.

18. What are the recent and emerging trends in investigations and enforcement in your jurisdiction?

Whereas an internal report in 2019 on the Central Anti-Corruption Service showed that the investigations and enforcement of corruption were not optimal due to a lack of resources and especially the investigation of private corruption did not seem to be a priority, this approach seems to be changing. The Minister of Justice and the Minister of Internal Affairs validated in March 2022 the so- called National Security Plan 2022-2025 (Nationaal Veiligheidsplan/Plan National de Sécurité), which covers the security themes that require special attention from the police over the next four years and which mentions corruption as one of these security themes. Furthermore, not only are Public Prosecutors less inclined to settle corruption-related proceedings through a Deferred Prosecution Agreement, in order to send a strong message to society. Lastly, in April 2025, the Public Prosecutor's Office announced that it will intensify its efforts to combat corruption among public officials and politicians

19. Is there a process of judicial review for challenging government authority action and decisions? If so, please describe the key features of this process and remedy.

The legal provisions regarding the investigation and prosecution of bribery or corruption do not foresee decisions or actions by a government authority.

20. Have there been any significant developments or reforms in this area in your jurisdiction over the past 12 months?

First of all, reference can be made to the fact that the statutory limitation period was extended by the Act of 9 April 2024. As a result, Public Prosecutors now have more time to investigate, among other things, complex bribery, and corruption cases and to bring them before the criminal court.

Secondly, a new Criminal Code has been adopted in April 2024 and will in principle enter into force in April 2026. In this new Criminal Code, the definition of public bribery is simplified and the distinction of punishment according to the capacity of the bribed person largely disappears. The definitions of private bribery, extortion, embezzlement, and conflict of interest are retained, subject to some modernization. Furthermore, (all) criminal offences will be punished according to eight levels of penalties. The new Criminal Code provides for both eight sanction levels for natural persons as well as for eight sanction levels for legal entities. The conversion mechanism whereby penalties for natural persons had to be converted to penalties for legal entities will therefore no longer be applicable.

21. Are there any planned or potential developments or reforms of bribery and anti-corruption laws in your jurisdiction?

In principle, the aforementioned Criminal Code will enter into force in April 2026, which will primarily impact sentencing. For offences committed prior to the entry into force of this new Criminal Code but judged afterwards, it will always be necessary to determine whether the conduct is still punishable and if so, whether the old or the new penalty is the least severe one, since it will be this least severe penalty that will have to be imposed. If the conduct is no longer criminalised, the court will not be able to convict the offender.

Furthermore, we refer to the (under Question 18 cited) announcement of the Public Prosecutor's Office in April 2025 that it will intensify its efforts to combat corruption among public officials and politicians.

22. To which international anti-corruption conventions is your country party?

Belgium signed the following Conventions that entered into force: Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (Council of the European Union, 26 May 1997); Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 17 December 1997); Criminal Law Convention on Corruption (Council of Europe, 27 January 1999); Civil Law Convention on Corruption (Council of Europe, 4 November 1999); Convention Against Transnational Organized Crime (UN, 15 November 2000), and the Convention against Corruption (UN, 31 October 2003).

23. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection. Does it cover internal investigations carried out by in-house counsel?

In Belgium, the concept of legal privilege exists. Its violation is criminally sanctioned (Art. 458 of the Criminal Code). Legal privilege is considered to be fundamental to the legal order of Belgium and a fundamental pillar of the right of defence. Legal privilege includes attorney-client privilege (i.e. the confidentiality of the documents and information exchanged while providing legal assistance). The specific provisions of (and the exceptions to) the legal privilege are set out in the Codex Deontology for Lawyers (The European Deontology Codex (CCBE) also foresees the concept of legal privilege). In Belgium, an internal audit is often carried out by auditors who also have a legal privilege.

Article 5 of the Act of 1 March 2000 establishing the Institute for In-house counsels provides that advice provided by an in-house counsel to his employer in his capacity of legal advisor is confidential. This confidentiality also extends to internal correspondence containing a request for an opinion, internal correspondence concerning that request, draft opinions and internal documents prepared in preparation for the opinion. Depending on the nature of the internal investigation, it could be argued that the internal investigation was conducted in that regard and that the documents prepared relate to the drafting of an opinion. It should be noted, however, that there is debate in (Belgian and European) case law about the scope of the legal privilege of in-house counsel. Therefore, there might be a risk that it would ultimately be ruled by a court that the internal investigation carried out by the in-house counsel and the documents drafted are not covered by this legal privilege.

Furthermore, it should be stressed that unless the investigation is aimed at investigating company processes and procedures, without being focused on certain persons, the Act of 18 May 2024 regarding Private Investigations applies to the investigation.

24. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

The importance of the fight against corruption seems to increase in Belgium. First of all, and as explained under Question 18, the National Security Plan 2022-2025 that has been adopted in March 2022 shows that corruption is one of the security themes that require special attention from the police over the next four years. Furthermore, practice shows that after an investigation is completed, severe sanctions are asked before the Court by the Public Prosecutor. When the bribery or corruption is considered to have been perpetrated, the courts often apply those severe sanctions. In addition, as also indicated above, Public Prosecutors (sometimes) refuses to conclude DPA with the (alleged) perpetrators of (public) corruption, as a matter of principle. Finally, and by way of example, reference can be made to the investigations into corruption of members of the European parliament by third states and a telecommunication company, demonstrating effective attention to this.

25. Generally, how serious are corporate organisations in your country about preventing bribery and corruption?

We are aware that companies doing business in countries listed rather high on the Corruption Perceptions Index of Transparency International, give extensive attention to undertaking the necessary measures to prevent bribery and corruption (in 2024, Belgium was ranked 22nd out of the 180 countries according to that index. It is an indicator of public sector corruption where number 1 is considered the least corrupt country and number 180 is considered the most corrupt country). In addition, the prevention of bribery and corruption is an important point of attention for companies that derive a significant part of their turnover from public work contracts. Trainings and a code of conduct with specific provisions regarding bribery and corruption are usually foreseen in these companies. In addition, according to the Act of 3 September 2017 regarding disclosure of non-financial and diversity information by certain large companies and groups, certain companies have to disclose (on an annual basis) significant information about (amongst others) their policies in relation to anti-corruption and bribery and the outcome of these policies, which is an additional incentive to draft (and comply with) such policies.

26. What are the biggest challenges businesses face when investigating bribery and corruption issues?

The biggest risk for the legal entities is being found criminally liable themselves when there is bribery and corruption within their organisation. Therefore, it is recommended to implement an effective anti-corruption compliance programme, even when one is not legally obliged to implement such programme.

27. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction? How have they sought to tackle these challenges? What do you consider will be their areas of focus/priority in the next 18 months?

A lack of investment in the relevant services continues to result in insufficient resources to systematically combat white collar crime, and particularly corruption and bribery.

Nevertheless, the public prosecutor's office has announced that it will use the available resources as much as possible to investigate and prosecute corruption and public bribery, even if this may come at the expense of addressing other (types of) offences.

Furthermore, it must also be noted that when cross-border elements and/or (rather complex) cyber aspects are involved, investigations often become more difficult. Where possible, foreign authorities and/or specialized cybercrime investigation units will be called upon, but in practice, their heavy workload often hampers the efficiency of the investigative process.

28. How have authorities in your jurisdiction sought to address the challenges presented by the significant increase of electronic data in either investigations or prosecutions into bribery and corruption offences?

Within the police forces there are specialized computer crime units, which can assist other investigators as needed when investigations involve electronic data and related difficulties. In practice, however, these units are found to be understaffed and overworked, so investigations may suffer significant delays as a result and/or be conducted incompletely. In the context of actual prosecution, (the increase of) electronic data does

not really lead to problems.

29. What do you consider will be the most significant bribery and corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

Due to the absence of any legal framework regarding potential obligations for companies to prevent bribery and corruption, insufficient initiatives are sometimes taken in this regard. As a result, in practice, it can be difficult for companies to demonstrate that they have done everything possible to prevent such offences and are therefore not involved in the acts in question. Precisely because there is no such obligation, companies are often unaware of the importance of adopting a policy and actively ensuring compliance, which can put them in a vulnerable position — even when they are wrongfully prosecuted.

Another practical obstacle is that, pursuant to the Act of 18 May 2024 regarding Private Investigations, certain measures must now be implemented before internal investigations can be conducted. Companies are strongly advised to seek appropriate guidance on this matter as well.

30. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

A sufficient legal framework exists in Belgium for the investigation and prosecution of bribery and corruption cases. Nevertheless, due to a lack of available resources (mainly personnel) the investigation and prosecution of bribery and corruption lacks efficiency and efficacy. We therefore advocate for an improvement in this regard. Furthermore, we would establish a legal framework for the prevention of corruption, introducing an obligation for (all) legal entities to establish an anti-corruption compliance programme.

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