Legal 500
Country Comparative Guides 2024

Belgium
White Collar Crime

Contributor

Liedekerke

Magda Vandebotermet

Partner | m.vandebotermet@liedekerke.com

Margot Vandebeek

Senior Associate | m.vandebeek@liedekerke.com

This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Belgium.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

Belgium: White Collar Crime

1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

First and foremost, it should be emphasized that all criminal offences are applicable to both companies as well as natural persons (**question 2**). Nevertheless, certain (financial crime) offences will be withheld more often towards companies than other offences (eg, companies will more often be prosecuted for fraud and money laundering than for drugs offences).

Furthermore, it should be noted that all criminal offences consist of several constituent elements, both material components as well as a moral component. These constituent elements have to be established on the part of the offender in order for them to be convicted. The material components are defined by law and describe the required criminal conduct. The moral component is the required criminal intent. The most common types of criminal intent are general intent (acting knowingly and willingly) and negligence (a lack of care or foresight). Moreover, a specific intent can be required, which means that one not only acts knowingly and willingly, but also with a particular motivation.

With regard to the sentencing, note that when the law stipulates a prison sentence, this sentence does not apply to legal entities. A conversion mechanism converts the prison sentences into penalties applicable to legal entities (Article 41bis, Criminal Code (CC)).

Additionally, all fines that are mentioned in the CC and in the other Belgian laws should be increased by a multiplication factor. Since 1 January 2017, this multiplication factor has been eight – eg, a fine of EUR50 mentioned in the law implies a fine of EUR400 in practice. The criminal fines that are mentioned in this contribution have not been multiplied with this multiplication factor yet and should thus be increased by multiplication factor eight.

Finally, it should be stressed that although the relevant articles as such only mention a prison sentence and/or a fine, depending on the nature of the offence, other – and even more important – penalties can be imposed as well (eg, a conviction for certain offences can give rise to a professional ban, as well as/or to the confiscation of the means used for or the assets generated by the offence). These additional penalties will not always be mentioned when discussing the different offences.

- **Criminal fraud**

The constituent elements of criminal fraud (Article 496, CC) are:

- aiming to obtain an undue economic advantage for themselves or another person;
- through fraudulent means (such as a false name or forged documents);
- with a fraudulent intent.

Criminal fraud may give rise to imprisonment from one month to five years and/or a fine ranging between EUR26–3,000 for natural persons, and to a fine ranging between EUR500–120,000 for legal entities. If the victim is in a vulnerable state, higher sentences can be imposed.

- **Money laundering**

With regard to money laundering there are both a preventive and a repressive framework.

Preventive framework

In accordance with the Act of 18 September 2017 (and the corresponding Directives of the European Union), several institutions (mostly professionals from the financial sector) have to fulfil a number of obligations to prevent money laundering, such as:

- identifying their clients, as well as their clients' agents and ultimate beneficial owners;
- detecting atypical operations of their clients; and
- reporting their suspicions.

When not fulfilling these obligations, the Financial Services and Markets Authority (FSMA) is competent to impose an administrative fine. Depending on the nature of the violation, one risks an administrative fine up to EUR5 million (to which the above-mentioned multiplication factor does not apply).

Furthermore, the Act of 18 September 2017 provides a

 © 2024 Legalease Ltd

criminal fine for companies that impede investigations and audits by public authorities or refuse to provide documents they are required to provide. The amount of this fine depends on the type of obliged entity. Whereas entities under the control of the Belgian National Bank or the FSMA risk a fine ranging between EUR250–2.5 million, other entities risk a fine ranging between EUR150–5,000.

Repressive framework

Article 505 of the CC distinguishes three different money laundering offences:

- the act of buying, receiving, exchanging, possessing, keeping, or managing assets with an illicit origin, while the offender knew or should have known about that origin;
- the act of converting or transferring assets with an illicit origin, whereby the offender must have the intent to conceal the illicit nature of the assets or to help any person involved in the predicate offence to avoid legal consequences; and
- the act of concealing or disguising the nature, the origin, the location, the disposition, the movement, or the ownership of assets with an illicit origin, while the offender knew or should have known about this illicit origin.

These offences can give rise to imprisonment of 15 days to five years and/or a fine ranging between EUR26–100,000 for natural persons and a fine ranging between EUR500–200,000 for legal persons.

- **Forgery and the use of forged documents**

Forgery (Article 193 and following, CC) requires:

- the manipulation;
- of a written document that imposes itself on the public trust (ie, the people taking cognizance of it can trust in its veracity – there is no verification requirement as with an invoice);
- with fraudulent intent or with the intent to harm;
- which can cause prejudice.

Forging a document suffices: even when the forged document is not used, one is criminally liable. Furthermore, the (intentional) use of a forged document is a criminal offence itself.

The sanctions for these offences vary according to a number of elements, such as the offender's capacity (eg, public servant or not) and the nature of the document(s) (eg, authentic, bank and/or private). In accordance with the CC, forgery of commercial documents and the use of such documents by a private natural person can give rise to imprisonment from five to ten years (but in practice, a criminal court will always accept mitigating circumstances for this offence and impose an imprisonment ranging from one month to five years). Taking into account mitigating circumstances, a criminal court can impose a fine ranging between EUR500–120,000 on legal entities.

- **Tax fraud**

Article 449 of the Income Tax Code 1992 (ITC) criminalises any violation of the ITC that has been committed with fraudulent intent or with the intent to harm. Such offence may give rise to imprisonment of eight days to two years (five years in case of 'serious tax fraud') and/or a fine ranging between EUR250–500,000 for natural persons, and to a fine ranging between EUR500–1 million for legal entities.

Furthermore, Article 450 of the ITC criminalises the forgery and the use of forged documents, committed with the view of committing the offence described in Article 449 ITC. The constituent elements are the same as for normal forgery and use of forged documents, with this nuance that this must be done with a view to committing tax fraud. These criminal offences can lead to imprisonment of one month to five years and/or a fine ranging between EUR250–500,000 for natural persons, and to a fine ranging between EUR500–1 million for legal persons.

There are similar criminal provisions with regard to the VAT and corporate tax legislation.

- **Market abuse**

Market abuse is criminalised by Article 39 of the Act of 2 August 2002 on the supervision of the financial sector and on financial services. Market abuse can take several forms, such as entering into a transaction or placing an order to trade as well as any other behaviour which (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or (ii) secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level.

Market abuse may give rise to imprisonment from one

 © 2024 Legalease Ltd

month to four years and/or a fine ranging between EUR300–10,000 for natural persons, and to a fine ranging between EUR500–96,000 for legal entities. Furthermore, as for insider dealing, the offender may be ordered to pay a sum corresponding to no more than the triple of the amount of the financial benefit that they derived from this market abuse.

- **Corruption**

With regard to bribery, there is a distinction between:

  - active bribery – the act whereby one proposes directly or through intermediaries, to a person, an offer, promise or benefit of any kind in favor of this person or a third party to have certain acts performed or to refrain from certain acts; and
  - passive bribery – requesting, accepting, or receiving, directly or through intermediaries, in favor of themselves or a third party, an offer, a promise or a benefit of any kind to perform certain acts or to refrain from performing certain acts.

Furthermore, a distinction must be made between public bribery, which concerns domestic and foreign public officials (Article 246 and following, CC), and private bribery, which concerns private persons (Article 504bis and following, CC).

The sentencing depends on the nature of the bribery, as well as of the targeted person and the purpose of the bribery. Whereas a natural person risks a fine ranging from EUR100-500,000 and/or an imprisonment of six months to three years, a fine ranging from EUR3,000-360,000 can be imposed on legal entities.

- **Sanctions**

The violation of financial sanctions can mostly be found in several United Nations Resolutions and EU Council Regulations. The latter directly apply in Belgium and their violation has been criminalised by the Act of 13 May 2003 implementing the restrictive measures taken by the Council of the European Union against states, certain individuals, and entities. In accordance with this Act, the violation of these European Regulations can give rise to (i) an administrative fine ranging between EUR250–2.5 million or (ii) imprisonment of eight days to five years and a criminal fine ranging between EUR25–25,000 for a natural person, or a (criminal) fine ranging between EUR500–120,000 for a legal entity.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

Yes. On 2 July 1999, corporate criminal liability was introduced in Belgium for all criminal offences. Whereas initially, only a limited number of (mostly private law) legal entities could be held criminally liable, all legal entities can be held criminally liable since 30 July 2018. Nonetheless, on certain public law legal entities that can be found criminally liable nowadays, a court cannot impose any criminal sanction (Article 7bis, CC). Their criminal conviction is nevertheless important, since this can constitute the basis for a civil conviction for damages caused by the offence.

In addition to legal entities in the strict sense, Article 5 CC lists a number of entities which do not have legal personality but can be held criminally liable as well.

The criminal liability of a legal entity requires that both the material and the moral constituent element(s) of this offence are established on its own part. It does not suffice that these elements are established on the part of its directors or employees.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

When a company is prosecuted, their director(s) will usually be prosecuted along with them, and for the same offences. We therefore refer to the first question.

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

Both the public prosecutor's office and the investigating judge have investigative powers.

Therefore, white-collar offences can be the subject of two types of investigations: a preliminary inquiry (under the supervision of the public prosecutor's office) and a judicial inquiry (led by the investigating judge).

The investigating judge has more extensive powers and can order more far-reaching measures than the public prosecutor's office.

The power to prosecute is reserved for the public prosecutor's office. When an (alleged) offender has to appear before the criminal court (whether it is after a preliminary inquiry or after a judicial inquiry), the public

 © 2024 Legalease Ltd

prosecutor's office will request their conviction (or, if appropriate, acquittal) and the penalties it considers appropriate for the offences committed. The final decision, however, lies with the criminal court.

5. Which courts hear cases of financial crime? Are they determined by tribunals, judges or juries?

In principle, financial offences are treated by the criminal court. There can be one or three judges in the criminal court. In case a party appeals the judgment of the criminal court, the case will be heard for a second time by the court of appeal. There are always three judges in the court of appeal. Neither the criminal court nor the court of appeal has a jury.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

A preliminary inquiry can be initiated:

- by a victim or a witness, who reports an offence to the police (Article 48, Code of Criminal Procedure (CCP)) or directly to the public prosecutor's office (Article 31, CCP); and
- at the public prosecutor's office own initiative.

A judicial inquiry can be initiated both by the (alleged) victim (Article 63, CCP) or by the public prosecutor's office and requires more formal acts. Exceptionally, investigating judges can initiate a judicial inquiry themselves (Articles 28septies and 59, CCP).

Both the public prosecutor's office and the investigating judge can ask the person(s) concerned to provide certain documents that they consider to be helpful to uncover the truth. However, they cannot force a suspect to handover documents. Furthermore, they can ask a third party to hand over these documents. Finally, when it concerns a judicial inquiry, the investigating judge can also impose a search of premises if certain conditions are met. In case certain documents are found or handed over (by a suspect or a third party), they can be seized by the public prosecutor's office and the investigating judge.

7. What powers do the authorities have to conduct interviews?

The public prosecutor's office and the investigating judge can interrogate any suspect, victim, or witness.

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

Both suspects and witnesses have to be informed at the beginning of the interrogation about certain rights, such as the right to be under no circumstances obliged to incriminate themselves. In principle, the interview is (only) transcribed. Only in exceptional situations the interviews will be recorded.

Furthermore, suspects have some additional rights, such as the right to be assisted by a lawyer during the interrogation and the right to be informed in advance about the subject of the interrogation. This right to be informed is limited and only concerns the nature and timing of the offences; the suspect does not have a right to access the file prior to their interrogation.

9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

A criminal offence is deemed to have been committed in Belgium if at least one of its material constituent elements can be located in Belgium. Therefore, Belgian courts have jurisdiction with regard to criminal offences that took place either wholly or partially on Belgian territory.

However, Belgian courts can enforce their authority with regard to certain offences that have been committed abroad if certain conditions are met. These situations are listed in Articles 6–12 of the Preliminary Title of the Code of Criminal Procedure (PT CCP).

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

The authorities cooperate with foreign authorities, each time within the applicable regulatory framework. Different rules apply to the extradition, the collection of evidence and the seizure and/or confiscation of assets.

 © 2024 Legalease Ltd

Every extradition by Belgium requires a legal basis.

Within the European Union, member states can use the European arrest warrant (Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between EU countries). Moreover, Belgium is a member of the European Convention of 13 December 1957 on Extradition (of the Council of Europe), which establishes the rules that apply to extradition between its members. Finally, several (bilateral or multilateral) treaties exist.

With regard to the collection of evidence, there are the so-called European Investigation Order and several legal instruments that have been adopted at the level of the Council of Europe and were subsequently implemented in Belgian law (eg, the Act of 9 December 2004 on Mutual International Legal Assistance). Furthermore, several bilateral and multilateral treaties have been concluded.

Finally, as to the seizure or confiscation of assets, a difference must be made between:

- the relations within the European Union (regulated by Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union and Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders); and
- the relations with non-EU member states, which require a bilateral or multilateral treaty and are executed in accordance with the Act of 20 May 1997 on international co-operation with regard to the execution of seizures and confiscations.

For the sake of completeness, it should also be noted that investigations can be conducted in Belgium under the direction of the European Public Prosecutor's Office (EPPO). In that case, the investigation orders are given by a (delegated) prosecutor of the EPPO, but the investigation measures are carried out by the Belgian investigators.

11. What are the rules regarding legal professional privilege? What, if any, material is protected from production or seizure by financial crime authorities?

In Belgium, the concept of legal professional privilege includes attorney-client privilege. Therefore, documents and information that have been exchanged between an attorney and their client for the purpose of legal assistance may not be consulted or copied by any person other than the addressee(s), nor may they be seized by the authorities or the courts. In case there is discussion about the confidential nature of documents, they will have to be seized under closed envelope. It will then be necessary to verify, in the presence of a representative of the Bar Association, whether or not they are covered by legal privilege.

Advice and related communications by in-house lawyers also are covered by a certain protection, but its exact scope is disputed.

The violation of legal professional privilege is criminally sanctioned (Art. 458, CC).

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

The preliminary and the judicial inquiry are secret and can only be consulted with the authorization of the public prosecutor's office or the investigating judge. Intentionally disclosing information from such inquiry to the detriment of one of the persons concerned is punishable (Article 460ter, CC).

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

In accordance with Article 20, PT CCP, criminal proceedings against legal persons are in principle no longer admissible after the closing of a liquidation, upon judicial dissolution or upon dissolution without liquidation (eg, merger or acquisition).

However, exceptions are foreseen, eg, when one can prove that the liquidation, judicial dissolution, or dissolution without liquidation was organised to avoid prosecution or when the legal entity has been referred to the criminal court by a pre-trial court prior to the loss of legal personality. In case one of these exceptions applies, the initial legal entity's successor can be held criminally liable for the criminal offences committed by its predecessor.

Furthermore, the criminal liability for offences that have been committed before an acquisition rests in principle with the initial offender in case of a partial acquisition (eg, asset deal).

 © 2024 Legalease Ltd

14. What factors must prosecuting authorities consider when deciding whether to charge?

With regard to a judicial inquiry, the public prosecutor's office does not have a discretionary authority. The suspects have to be heard by the council chamber, who will assess whether there are indications of guilt on the part of these suspects and if so, refer them to the criminal court.

Nevertheless, the public prosecutor's office has a certain discretionary authority in case of preliminary inquiries.

Whereas the existence of sufficient evidence will play a significant role in this, it is not the only factor that will be taken into account. Other factors can be, amongst others:

- the National Security Plan that has been validated by the Minister of Justice and the Minister of Internal Affairs, determining for which offences prosecution is a priority on a national level;
- the prosecution priorities that have been determined on the territory of the investigating public prosecutor's office (taking into account amongst others the available resources).

15. What is the evidential standard required to secure conviction?

To be convicted, one must be deemed to have committed the offences they are charged with beyond any reasonable doubt.

16. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

The statute of limitations period depends on the nature of the criminal offence. In principle the statute of limitations expires:

- after one year for infractions;
- after ten years for misdemeanours;
- after 15 years for crimes that could lead to maximum 20 years of imprisonment;
- after 20 years for crimes that could lead to maximum 30 years of imprisonment; and
- after 30 years for crimes that could lead to life imprisonment.

Furthermore, certain (albeit not (purely) financial crime) offences cannot be time-barred.

The statute of limitations period runs, in principle, continuously. Nevertheless, this period can be suspended, which means that this period is put on hold because of a legal impossibility to prosecute.

Once a case has been brought before the criminal court, it can no longer be time-barred.

17. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

Prosecution might end with an amicable settlement (Article 216bis, CCP), which means that a suspect pays a lump sum in exchange for the charges being dropped.

Such settlement is subject to a number of conditions: it can only be concluded if (i) the criminal court has not yet pronounced its final judgment, (ii) the offender 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. Special conditions apply for tax or social law offences.

When these conditions are met, the public prosecutor's office can propose that the offender pays a lump sum, to avoid a conviction by the criminal court. In addition, the public prosecutor's office can also impose a confiscation and a professional ban (for certain offences).

Finally, the settlement must be approved by a judicial body. Which judicial body is competent depends on the stage of the criminal proceeding.

18. Is there a mechanism for plea bargaining?

In accordance with Article 216, CPP, an offender can admit their guilt in exchange for an agreed-upon sentence, provided that certain conditions are met.

If so, the public prosecutor's office can propose (i) a lower penalty than it would have claimed if the offender had not acknowledged their guilt; or (ii) a (wholly or partly) suspended penalty, potentially 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.

 © 2024 Legalease Ltd

19. Is there any obligation to disclose discovered misconduct to prosecuting authorities, or any benefit to making a voluntary disclosure? Is there an established route or official guidance for making such disclosures?

Although this can be taken into consideration when determining the penalty, Belgian law does not explicitly provide any benefit for a person or entity that voluntary discloses (information with regard to) offences that they have committed itself.

However, with regard to the involvement of third parties, there is the possibility for an offender to co-operate with the authorities. In case the offender makes substantial, revealing, truthful and complete statements regarding the involvement of these parties (and, where appropriate, their own involvement) in committed or attempted criminal offences, the public prosecutor's office can make certain concessions in return (such as a lower penalty; Article 216/1 and following, CCP).

20. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

Every criminal provision provides a minimum and a maximum sentence, which leaves a margin of appreciation to the courts. Within these limits, the criminal courts are free to determine the exact sentence, taking into account anything they consider relevant (eg, a (clean) criminal record and co-operation with the authorities). In cases of repeat-offending or aggravating of mitigating circumstances, courts can deviate from these legal caps.

21. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?

It is advisable to have both a policy as well as to take all necessary measures to ensure compliance with this policy, in order to be able to prove that, as a company, one has done everything possible to avoid possible offences.

22. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

First and foremost, natural persons risk a fine, possibly in combination with (suspended) imprisonment. Furthermore, they risk for the proceeds of crime to be confiscated, a professional ban and the loss of civil and political rights for a certain period.

For legal entities, the most commonly imposed sanction is also a fine, whether or not together with a confiscation. Furthermore, they risk a temporary or permanent prohibition from carrying out an activity that is part of their object and a temporary or permanent closure of one or more of their establishments.

23. What rights of appeal are there?

The public prosecutor's office, the convicted defendant and the victim can appeal the criminal court's judgment. Such appeals bring the matter before the court of appeal. The scope of the court of appeal's jurisdiction will depend on the parties appealing and the exact scope of their appeal.

Furthermore, parties can appeal the judgment of the court of appeal. Such appeal brings the matter before the Supreme Court. However, the latter does not have full jurisdiction: it can only assess whether the law has been applied correctly, without examining the facts.

24. How active are the authorities in tackling financial crime?

Although efforts are being made here and this is one of the prosecution priorities (according to the National Security Plan – **question 25**), there is no denying that there is a lack of resources, which makes successful prosecution often difficult.

25. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

The Minister of Justice and the Minister of Internal Affairs have validated a National Security Plan in 2022. This plan covers the security themes that require special attention from the police between 2022 and 2026 including, inter alia, social and tax fraud, corruption, and cybercrime.

Furthermore, there are voices calling for stiffer punishment for corruption, which results in a decreasing willingness of the public prosecutor's office to enter into an amicable settlement for such offence.

Finally, there is an increasing focus on (the providers of)

 © 2024 Legalease Ltd

crypto assets, given the anonymity that often accompanies them and provides certain (not always legal) opportunities, as well as on greenwashing.

26. Have there been any landmark or notable cases, investigations or developments in the past year?

Notwithstanding the above (**question 25**), since 2021, a lot of investigative resources go into a very large-scale investigation into drug offences and the use of encrypted communication networks, often pushing other investigations somewhat into the background.

27. Are there any pending or proposed changes to the legal, regulatory and/or enforcement framework?

A new Criminal Code has been adopted. This will enter into force in April 2026. The new Criminal Code aims to provide a modernised and clear criminal law. It does this by, among other things, (i) dividing the possible penalties into eight levels (for both natural persons and legal entities, thus making the conversion mechanism redundant), (ii) removing a number of offences and (iii) adding new offences. This new Criminal Code will also impact the sentencing of criminal offences that are defined in other acts than the Criminal Code.

28. Are there any gaps or areas for improvement in the financial crime legal framework?

Due to a lack of available resources (personnel and material) the investigation and prosecution of financial crime offences lack efficiency and efficacy. We advocate for an improvement in this regard. Furthermore, with regard to corruption, we propose to establish a legal framework for its prevention, introducing a duty for (all) legal entities to establish an anti-corruption compliance programme.

Contributors

Magda Vandebotermet
Partner
m.vandebotermet@liedekerke.com



Margot Vandebeek
Senior Associate
m.vandebeek@liedekerke.com



 © 2024 Legalease Ltd