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White-Collar Crime 2024

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Belgium: Law and Practice

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BELGIUM



Law and Practice

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1. Criminal Law

1.1 Criminal Offences

Categories of Criminal Offences

In Belgium there are three types of criminal offences: infractions, misdemeanours, and crimes. Infractions are in general minor criminal offences (such as traffic offences), misdemeanours (such as theft) are more severe, and crimes are the most serious criminal offences (such as manslaughter).

The distinction is made based on the penalties with which the criminal offences can be legally punished in accordance with the Belgian Criminal Code (CC):

- infractions are punishable by one to seven days' imprisonment and/or a fine of EUR1–25;
- misdemeanours are punishable by eight days to five years' imprisonment and/or a fine higher than EUR25; and
- crimes are punishable by more than five years' imprisonment and possibly a fine higher than EUR25.

The fines that are mentioned in the Criminal Code (and in 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. Consequently, all fines that are mentioned in this contribution should be increased by the applicable multiplication factor.

Constituent Elements of a Criminal Offence

A criminal offence consists of several constituent elements: both material components and a moral component.

The material components are defined by law and describe the required criminal conduct – eg, theft requires that one takes a good that belongs to someone else.

The moral component is the required criminal intent. The most common types of criminal intent are general intent and negligence. General intent exists when one acts knowingly and willingly – ie, the act in question is performed deliberately. For negligence, the existence of a lack of care or foresight suffices. Finally, specific intent can be required, which means that one not only acts knowingly and willingly, but also with a particular motivation – eg, fraudulent intent.

A Punishable Attempt

In certain cases, an attempt to commit a criminal offence can result in a conviction as well. In accordance with Articles 52 and 53 of the CC, attempted crimes are always punishable, whereas attempted misdemeanours are only punishable when it is explicitly stated so in the law. In principle, the attempt to commit an infraction is not punishable, but exceptions exist.

The alleged conduct qualifies as a punishable attempt when the intention to commit the criminal offence has been manifested by external acts which constitute the beginning of the execution of the criminal offence; acts that have only been ceased or lost their effect because of circumstances independent of the will of the offender (such as a police intervention).

1.2 Burden of Proof

In accordance with the general principle of law, in Belgium one is presumed innocent until the contrary has been proven. Therefore, an accused must not prove their innocence; the burden of proof rests with the public prosecutor's office (unless the plaintiff started the criminal proceed-

ing with a direct summons, in which case it rests with the plaintiff).

The public prosecutor's office (or plaintiff) has to prove that there is no reasonable doubt with regard to the offender's guilt: reasonable doubt must lead to an acquittal (in dubio pro reo).

Even if one is presumed to be innocent until the contrary is proven, the legal framework regarding money laundering provides an important exception to this principle: in money laundering cases the public prosecutor's office must not prove the illegal origin of the assets, but only that a legal nature of these assets is excluded. In such cases, it is up to the accused to show the legal origin of the assets.

1.3 Statute of Limitations

Statute of Limitations Periods

The statute of limitations periods – which have been amended significantly in 2024 – depend on the nature of the criminal offence. In principle, but exceptions exist, 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.

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

Commencement of the Statute of Limitations Period

The statute of limitations period commences on the day the criminal offence was committed. In case of a continuing offence (ie, an offence that persists in a continuous state of delinquency perpetuated by the offender, such as the act of concealing the nature of assets derived from an illegal source in the case of money laundering), the period will start on its last day – eg, the day that the perpetrator stopped concealing the assets' nature.

Furthermore, when several criminal offences are committed with the same intent and each new offence was committed before the statute of limitations period of the previous offence expired, the statute of limitations period for each of these offences will only commence on the (last) day of the last offence – eg, when a thief commits one theft each year for ten years, the statute of limitations of all these thefts (which each have an individual statute of limitations period of ten years) will only expire ten years as from the last theft.

Suspension of the Statute of Limitations Period

The statute of limitations period runs, in principle, continuously: when a ten-year period starts on 1 January 2022, it expires on 31 December 2031. Nevertheless, this period can be suspended.

Such suspension implies that the statute of limitations period is put on hold because of a legal impossibility to prosecute. After this suspension, what remains of the period will continue to run from the point where it was when the suspension started.

1.4 Extraterritorial Reach and Cross-Border Co-operation

Extraterritorial Reach

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.

As for criminal offences that are committed abroad, Belgian courts can enforce their authority in the situations that are listed in Articles 6–12 of the Preliminary Title of the Code of Criminal Procedure (PT CCP), such as:

- every misdemeanour or crime that has been committed abroad (such as fraud and money laundering), if:
  - (a) the offender has Belgian nationality and/or has their main residence in Belgium and can be found in Belgium; and
  - (b) the misdemeanour or crime is also punishable in the country where it was committed (Article 7, PT CCP); and
- public bribery committed abroad, if the offender can be found in Belgium (irrespective of their nationality or main residence and regardless of its penalisation in the country concerned – Article 10quater, PT CCP).

Cross-Border Co-operation

The collection of evidence

With regard to the collection of evidence, there is, firstly, the so-called European Investigation Order, which allows the judicial authority of a European Union member state to carry out investigative measures to gather evidence (in criminal matters) in another member state.

Furthermore, several legal instruments have been adopted at the level of the Council of Europe and subsequently implemented in Belgian law (eg, the Act of 9 December 2004 on Mutual International Legal Assistance).

Finally, several bilateral and multilateral treaties have been concluded.

The seizure or confiscation of assets

Within the European Union, two legal instruments are relevant:

- 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.

Whereas Directive 2014/42/EU – which has been transposed into Belgian law by the Act of 4 February 2018 – sets out minimum standards for each European Union member state relating to freezing and/or confiscating property, Regulation (EU) 2018/1805 sets out under which circumstances the member states must recognise and execute other member states' freezing and confiscation orders.

Non-EU member states' requests 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.

Extradition

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). Member states must recognise and act on requests that are made by other member states to hand over a person (so that a criminal prosecution can be conducted or so that they can be placed in custody or detention). The execution of such a warrant can only be refused if certain conditions are met, such as the

fact that another EU member state has already handed down a final judgment on the person concerned for the same offence or when the required (sanction) thresholds are not exceeded.

Furthermore, 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. It stipulates (inter alia) that one shall not be extradited for political offences or when one risks the death penalty, and that the requested state can refuse to extradite its citizens.

Finally, several (bilateral or multilateral) treaties exist. Without such legal basis, one cannot be extradited from Belgium.

1.5 Corporate and Personal Liability

Criminally Liable (Legal) Entities Under Belgian Law

Since 30 July 2018, in Belgium, all legal entities can be held criminally liable for any criminal offence, regardless of its nature. Before 30 July 2018, certain public law legal entities with a political nature (eg, the federal state, the communities, the regions, the provinces and the municipalities) enjoyed immunity from criminal proceedings. Although this latter category of legal entities may currently be found criminally liable as well, a court can still not impose any criminal sanction on them (Article 7bis, CC).

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, such as temporary associations and associations in the process of incorporation.

Requirements for Legal Entities' Criminal Liability

In accordance with Article 5 of the CC, in order to establish the material constituent element on the part of a legal entity, a criminal offence must be:

- intrinsically linked to the realisation of the entity's corporate purpose;
- intrinsically linked to the realisation of the entity's interests; or
- according to the circumstances, committed on the entity's behalf.

Belgian law does not specify how or when the moral constituent element should be attributed to a legal entity, which implies that this issue will have to be examined based on the facts of each particular case. Negligence can take various forms and can be demonstrated, inter alia, by a lack of organisation and/or insufficiently organised supervision. To determine a general or specific intent, one will often refer to the will and knowledge of the legal entities' management bodies.

Simultaneous Liability of a Natural Person and a Legal Entity

If a criminal offence has been committed by both an individual and a legal entity, both can be brought (together or not) before (and convicted by) the court.

Nevertheless, there is one exception: in the event of an unintentional criminal offence that has been committed before 30 July 2018, both persons can be brought before court, but only the (natural or legal) person who has committed the most serious fault can be convicted.

Practice shows that the public prosecutor's office usually prosecutes both the natural and

the legal person (for intentional and unintentional crimes, regardless of when they were committed).

Criminal Liability of a Legal Entity's Managers and/or Directors

Belgian criminal law is governed by the principle of individual criminal liability, which implies that one cannot be held criminally liable only because of another's criminal liability. The managers' and/or directors' criminal liability requires both the material and the moral constituent elements on their part.

Nevertheless, it should be stressed that being a member of a collegial body (such as a board of directors) can entail criminal liability as well. Collegial decision-making assumes that all persons involved take a well-informed part in the debate. By not intervening in the case of a (potential) criminal offence, one is deemed not to have carried out their tasks as they should be carried out, which implies personal conduct that is directly related to the offence (and can be seen as an act of complicity).

Furthermore, the principle of individual criminal liability does not detract from the fact that courts often hold the person with actual decision-making power liable for criminal offences, since this person is deemed to have been able to prevent the offence. However, personal conduct (ie, fault) on the part of the superior must be proven; the mere criminal conduct of their subordinate is not sufficient.

Effects of Corporate Restructuring on the Successor

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).

Nevertheless, exceptions are foreseen if:

- one can prove that the liquidation, judicial dissolution or dissolution without liquidation was organised to avoid prosecution;
- the legal entity had been indicted by the investigating judge pursuant to Article 61bis of the CCP, prior to the loss of legal personality;
- the legal entity has been referred to the criminal court by a pre-trial court prior to the loss of legal personality; or
- the legal entity has been summoned to appear before the criminal court prior to the loss of legal personality.

If these exceptions apply, the initial legal entity's successor can be held criminally liable for the criminal offences committed by its predecessor.

1.6 Sentencing and Penalties

Penalties Prescribed by Law

Every criminal provision provides a minimum and a maximum sentence, which leaves a margin of flexibility to the courts. These penalties apply in all cases to natural persons and, where the law provides only for a fine, also to legal entities.

However, in the event a legal entity is subject to conviction and the law provides for an imprisonment (whether this is with or instead of a fine), Article 41bis, CC provides a conversion mechanism, converting prison sentences into fines applicable to these legal entities. In accordance with this conversion mechanism, the minimum fine for the legal entity will amount to EUR500 multiplied by the number of months of the minimum imprisonment (and cannot be lower than the minimum fine that was initially provided in

the criminal provision). The maximum fine for the legal entity will amount to EUR2,000 multiplied by the number of the months of the maximum imprisonment (and cannot be lower than twice the maximum fine that was initially established). As mentioned in **1.1 Criminal Offences**, a multiplication factor applies to all fines. This also includes the fines which are applicable to legal entities, which means that the fines which are calculated in accordance with Article 41bis, CC must be multiplied by this multiplication factor as well. The fines that are mentioned in this contribution have not yet been multiplied by this multiplication factor.

Assessment of Penalties in General

The courts can take into account anything they consider relevant when determining the penalty (eg, a (clean) criminal record and co-operation with the authorities).

In cases of repeat offending or aggravating circumstances, courts can impose a higher sentence (than provided by the criminal provision). In the event of mitigating circumstances, courts can impose a lower sentence.

Assessment of Penalties in the Event of Multiple Criminal Offences Committed at the Same Time or Concurrence of Offences

In the event that a court has to rule (at the same time) on multiple criminal offences committed by one offender, specific rules apply (Article 58 and following, CC).

For example, in case the court has to rule on multiple misdemeanours, all of the penalties must in principle be imposed, but the final penalty cannot exceed the double of the highest individual penalty (Article 60, CC).

In the event one act constitutes several offences or when several offences are the successive and continued execution of the same criminal intent, the court will only impose the highest penalty (Article 65, CC).

Assessment of Penalties in the Case of a Deferred Prosecution Agreement or a Plea Agreement

In the case of an amicable settlement, the public prosecutor's office will propose a lump sum. This sum cannot exceed the maximum fine imposed by the law for the offence in question. In the event of multiple criminal offences, their maximum penalties can be cumulative.

In the case of a plea agreement, the law states that the public prosecutor's office can propose a lower sentence than the one they would have proposed if there was no plea agreement, as well as a deferred sentence or suspended sentence, whether or not subject to the fulfilment of certain conditions.

1.7 Damages and Compensation

Individual Compensation

Victims can claim compensation for their loss both in a criminal proceeding as well as in a civil proceeding.

First, the victim can assert their rights before the criminal court in the context of the criminal proceeding against the offender. Therefore, the victim must prove that the offender's criminal conduct caused damage. Although this is the most common procedure, the civil claim does not have to be treated by the criminal court at the moment of the criminal proceeding: the victim can bring their civil suit before the criminal court at a later stage as well (Article 4, PT CCP).

Furthermore, the victim can also claim their compensation before the civil court (Article 4, PT CCP). Although the victim does not have to wait for the outcome of the criminal proceeding to start such procedure, the civil court in principle must wait for a final decision with regard to the (deemed) offender's criminal liability, to avoid conflicting decisions. As before the criminal court, the victim must prove their damage and its causal link with the offender's conduct.

Class Actions

In particular cases, multiple victims who have suffered individual harm as a consequence of a common cause can start a class action, but only in the context of consumer law (Article XVII.35 and following of the Code of Economic Law).

Class actions have to be initiated by consumers before the business court. A victim cannot take part in a criminal proceeding against the (deemed) offender and in a class action at the same time.

2. Enforcement

2.1 White-Collar Enforcement Authorities

Competent Authorities in the Context of a Criminal Proceeding

A criminal investigation can be led by an investigating judge or by the public prosecutor's office. Prosecution and enforcement, on the other hand, are always in the hands of the public prosecutor's office (unless there would be violations of the regulations regarding customs and excise, which falls under the General Administration of Customs and Excise's competence).

During the investigation, the investigating judge and the public prosecutor's office are assisted by the (federal or local) police. Both the federal police and some local police forces are placed into divisions according to the matters they deal with, such as financial-economic criminal offences. Within the federal police there is a special division for corruption-related investigations, the Central Anti-Corruption Office.

White-collar offences are brought before the criminal court, a division of the court of first instance. Although there are no special (criminal) courts for such offences, in courts with multiple chambers, this type of offence is often assigned to the same chamber.

Administrative Enforcement

For certain offences, the competent administrative authority can impose an administrative sanction (instead of a criminal sanction). The competent authority then will settle the case definitively, usually by imposing a fine.

Which administrative authority is competent depends on the nature of the offence(s). By way of example, reference can be made to:

- the Financial Services and Markets Authority (FSMA) for offences relating to market abuse, anti-money laundering and insider dealing;
- the Belgian Competition Authority (BMA) for violations of the competition law; and
- the Federal Public Service Economy (FPS Economy) for offences relating to consumer protection and intellectual property.

One has to opt for either administrative or criminal enforcement: they cannot be combined. The relationship (including any possible priority rules) between administrative and criminal enforcement is established in the relevant regulations. In most cases, the administrative authority is left with the choice of either settling the case itself or

handing it over to the public prosecutor's office for further action.

2.2 Initiating an Investigation

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

A Preliminary Inquiry

A preliminary inquiry can be initiated:

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

A Judicial Inquiry

A judicial inquiry can be initiated both by the (alleged) victim and by the public prosecutor's office and requires more formal acts. If this inquiry is initiated by the (alleged) victim, this victim must file a criminal complaint (Article 63, CCP) and pay a security deposit.

Exceptionally, the investigating judge can initiate a judicial inquiry themselves (Articles 28septies and 59, CCP).

Both the investigative judge as well as the public prosecutor's office have to seek evidence against and in favour of the offender.

2.3 Powers of Investigation

Powers of Investigation in the Context of Criminal Proceedings

Both the public prosecutor's office and the investigating judge have investigation powers. However, the investigating judge has more extensive powers, and can therefore order more far-reaching measures than the public prosecutor's office.

Both public prosecutors' offices as well as investigating judges can (in the context of a criminal investigation) ask the person concerned to provide certain documents that they consider to be helpful to uncover the truth. Furthermore, they can both seize documents. Such seizure requires that it concerns documents that can serve as evidence of a committed offence and/or that are susceptible to confiscation.

A search of premises, on the other hand, can in principle only be imposed by an investigating judge and only when there are reasons to believe that (i) evidence of a committed offence will be found, or (ii) items susceptible to confiscation are present. Such a search requires, in principle, a search warrant, unless the investigating judge executes the search of the premises themselves. A search of premises can only be commenced between 5am and 9pm.

Finally, both the public prosecutor's office and the investigating judge can interrogate an employee, officer or director of a company under investigation, or a third party. Both suspects and witnesses have to be informed at the beginning of the interrogation about certain rights, such as the fact that they cannot be obliged to incriminate themselves. 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(s) of the interrogation.

Powers of Investigation of Administrative Authorities

Administrative authorities do not have the same powers of investigation as the public prosecu-

tor's office and/or the investigating judge. Nevertheless, when certain conditions are met, they can (inter alia) ask persons to provide them with documents, enter premises and/or interrogate the persons concerned. The specific powers of investigation of these authorities and the circumstances under which they can be exercised are established in the respective laws.

2.4 Internal Investigations

Although internal investigations are becoming more common in Belgium, Belgian law does not (yet) provide a specific framework for them. Nevertheless, certain rules and rights should be borne in mind when conducting such an investigation, including (but not exclusively):

- the rules (as set out in the relevant collective bargaining agreements (CBA) and in the (international) jurisprudence) which regulate (inter alia) the possibility of placing cameras in the workplace (CBA 68) and the monitoring and screening of online communication data (CBA 81); and
- the employees' (and other interviewed persons') general rights to privacy and data protection.

A breach of these rules and/or rights can constitute an offence.

Provided that the internal investigation has been established with respect to all applicable rules, a report could be handed over to the enforcement authorities to start or help a criminal investigation.

2.5 Prosecution

White-collar offences can be brought before the criminal court in three ways, depending on whether or not there was a preliminary or judicial inquiry.

Referral to the Criminal Court by the Council Chamber (or the Chamber of Indictments)

Once the investigating judge has finished their judicial inquiry, the public prosecutor's office assesses which persons have to appear before the Council Chamber, unless they were explicitly identified and accused by the plaintiff in the criminal complaint; then the public prosecutor's office has no discretionary power and has to summon them before the Council Chamber. This Council Chamber will then decide (in chambers and having heard all the parties, including the plaintiffs (ie, the victims) and the public prosecutor) whether there are indications of guilt or not. If so, the accused persons will be referred to the criminal court; if not, the case is dismissed.

In case the Council Chamber dismisses the case, the plaintiff and/or the public prosecutor can appeal against this decision. Such appeal will bring the case before the Chamber of Indictments, which may still decide to refer the accused persons to the criminal court.

A Summons by the Public Prosecutor's Office

In the case of a preliminary inquiry, the public prosecutor's office can decide freely, at any stage of the inquiry, to dismiss or prosecute a case. Guidelines are periodically established (both within the local public prosecutor's office and at the federal level) specifying the type of offences to which priority must be given. The public prosecutor's office can only bring infractions and misdemeanours before the court with a summons.

A Summons by the Plaintiff

If the public prosecutor's office has dismissed a case and/or the plaintiff is of the opinion that they have enough evidence themselves to get the alleged offender convicted, they can issue a direct summons against the alleged offender.

However, as is the case for the public prosecutor's office, such a direct summons is only allowed for infractions and/or misdemeanours.

The Decision of the Criminal Court

Once a case is brought before the criminal court, it is up to this court to decide whether to convict the alleged offender(s). The criminal court is in no way bound by the position of the public prosecution and/or the plaintiff and must decide in good conscience whether there is sufficient evidence. If it is of the opinion that there is indeed sufficient evidence, it is in principle obliged to convict the person in question.

The criminal court must justify its decision in writing.

2.6 Deferred Prosecution

Criminal investigation cannot only be resolved through a proceeding before the criminal court, but also through an amicable settlement (Article 216bis, CCP), which means that one pays a lump sum to the public prosecutor's office in exchange for the charges being dropped.

The conclusion of such an amicable settlement is subject to a number of conditions, such as:

- the criminal court has not yet pronounced its final judgment;
- the criminal offence(s) did not constitute a serious violation of a person's physical integrity;
- the public prosecutor's office believes that the offender must not be punished by a prison sentence of more than two years (or, for legal persons, a fine of EUR48,000 or more); and
- the offender has acknowledged in writing their civil liability for the damaging event and has compensated the uncontested part of the harm that was suffered by the victim of this event.

If the offender committed tax or social law offences, the offender must have compensated the taxes or social security contributions that are due, including interest, and the tax or social security authorities must have approved the settlement.

When these conditions are met, the public prosecutor's office can propose that the offender pays a lump sum, which cannot exceed the maximum fine imposed by the law for the offence in question. If the offence gives rise to confiscation, the public prosecutor's office shall request that the offender surrenders the seized goods or assets or, if the goods or assets have not yet been seized, to surrender them.

Although in theory an amicable settlement can be concluded for all criminal offences meeting the above conditions, practice shows that the public prosecutor's office is reluctant to enter into such settlement for corruption-related offences.

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

3. White-Collar Offences

3.1 Criminal Company Law and Corporate Fraud

The main offences recognised in criminal company law and corporate fraud are forgery (and the use of forged documents), abuse of corporate assets, criminal fraud and bankruptcy-related criminal offences.

For each of these offences, the offender not only risks the sanctions that are described below, but also a professional ban, and the loss of civil and political rights for a certain period, as well as confiscation. In practice, the consequences of these sanctions are often far more severe than the (often suspended) imprisonment and/or the fine that are established by the specific provisions.

Forgery and the Use of Forged Documents

Forgery (Article 193 and following, CC) requires:

- the manipulation;
- of a written document;
- with fraudulent intent or with the intent to harm; and
- which can cause prejudice.

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 and the nature of the document(s). In accordance with the Criminal Code, forgery of commercial documents and the use of such documents by a private natural person can give rise to imprisonment for a period ranging from five to ten years (but in practice, a criminal court will always accept mitigating circumstances for this offence and impose an imprisonment for a period ranging from one month to five years). Taking into account these mitigating circumstances, legal entities may be punished by a fine ranging between EUR500 and EUR120,000.

Abuse of Corporate Assets

Abuse of corporate assets (Article 492bis, CC) requires:

- an offender, who is a director of a legal entity;
- who uses intentionally;
- for personal direct or indirect purposes;
- the goods and/or the assets of the legal entity; and
- knowing that this use was significantly detrimental to the financial interest of the legal person and its creditors or associates.

Committing abuse of corporate assets may give rise to imprisonment for a period ranging from one month to five years and/or a fine ranging between EUR100 and EUR500,000 for natural persons, and to a fine ranging between EUR500 and EUR1 million for legal entities.

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 cunning tricks); and
- with fraudulent intent.

Criminal fraud may give rise to imprisonment for a period ranging from one month to five years and/or a fine ranging between EUR26 and EUR3,000 for natural persons, and to a fine ranging between EUR500 and EUR120,000 for legal entities. If the victim is in a vulnerable state, higher sentences can be imposed.

Bankruptcy-Related Criminal Offences

Articles 489 and following of the CC criminalise fraudulent conduct in the context of a bankruptcy, such as the misappropriation of (a part of) the assets.

The sanctions for these criminal offences vary. Natural persons risk imprisonment for a period

ranging from one month to five years and/or a fine ranging between EUR100 and EUR500,000, and legal persons risk a fine ranging between EUR50 and EUR1 million.

3.2 Bribery, Influence Peddling and Related Offences

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 on one's own behalf or that of 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, on one's own behalf or that of 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 exists 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.

- For domestic public bribery, a natural person risks, in principle, a fine ranging between EUR100 and EUR100,000 and/or an imprisonment for a period ranging from six months to five years; when certain conditions are met, the imprisonment might be more severe (up to 15 years). Legal persons risk, in principle, a fine ranging between EUR3,000 and EUR200,000 (EUR360,000 if certain conditions are met).
- In the event of public bribery against a foreign public official, the above-mentioned minimum fine must be tripled, and the maximum fine must be quintupled.
- For private bribery, a natural person risks a fine ranging between EUR100 and EUR100,000 and/or an imprisonment for a period ranging from six months to three years, whereas a legal person risks a fine ranging between EUR3,00 and EUR200,000.

Furthermore, the offender might risk a professional ban, a special confiscation and the loss of civil and political rights for a certain period of time.

3.3 Anti-bribery Regulation

Under Belgian law, there is no legal obligation for companies to maintain a compliance programme to prevent (active and/or passive) bribery.

3.4 Insider Dealing, Market Abuse and Criminal Banking Law

Insider Dealing

Insider dealing is criminalised by Article 40 of the Act of 2 August 2002 on the supervision of the financial sector and on financial services (which is based on the so-called Market Abuse Regulation). There is insider dealing when one:

- possesses inside information; and
  - (a) knowingly and willingly uses this information;
  - (b) by acquiring or disposing of financial instruments to which that information relates;
  - (c) both for its own account or for the account of a third party, as well as directly or indirectly.

Engaging another person in insider dealing is criminalised as well.

Committing insider dealing may give rise to imprisonment for a period ranging from three months to four years and/or a fine ranging between EUR50 and EUR10,000 for natural persons, and to a fine ranging between EUR1,500 and EUR96,000 for legal entities. Engaging another person in insider dealing can give rise to imprisonment for a period ranging from three months to two years and/or a fine ranging between EUR50 and EUR10,000 for natural persons, and to a fine ranging between EUR1,500 and EUR48,000 for legal entities. In addition, for both types of insider dealing, the offender may be ordered to pay a sum corresponding to no more than triple the amount of the financial benefit that they derived directly or indirectly from the insider dealing.

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, placing an order to trade or any other behaviour which:

- 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
- 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.

Nevertheless, there is no offence when the transaction, order or behaviour has been carried out for legitimate reasons and conforms with an accepted market practice. These "accepted market practices" can be established by the competent authorities, who will take into account the criteria that have been listed in the Market Abuse Regulation, such as the transparency of the market and the impact on market liquidity and efficiency.

Market abuse may give rise to imprisonment for a period ranging from one month to two years and/or a fine ranging between EUR300 and EUR10,000 for natural persons, and to a fine ranging between EUR500 and EUR48,000 for legal entities. Furthermore, an insider-dealing offender may be ordered to pay a sum corresponding to no more than triple the amount of the financial benefit that they derived directly or indirectly from this market abuse.

Unlawfully Providing Credit Institution Services

One can only commence credit institution activities after obtaining an authorisation to do so. Providing credit institution services without such authorisation is criminalised by Article 348 of the Bank Act of 25 April 2014, and may give rise to imprisonment for a period ranging from one month to one year and/or a fine ranging between EUR50 and EUR10,000 for natural persons, and a fine ranging between EUR500 and EUR24,000 for legal persons.

3.5 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 for a period ranging from eight days to two years and/or a fine ranging between EUR250 and EUR500,000 for natural persons, and a fine ranging between EUR500 and EUR1

million for legal persons. In case of "serious tax fraud", a natural person risks imprisonment for up to five years; the sentencing for legal persons remains unchanged.

Furthermore, Article 450 of the ITC criminalises the forgery and the use of forged documents, committed with the view of committing the offences described in Article 449 ITC. The constituent elements are the same as for normal forgery and use of forged documents (see **3.1 Criminal Company Law and Corporate Fraud**), supplemented by the requirement that this must be done with a view to committing tax fraud. These criminal offences can lead to imprisonment for a period ranging from one month to five years and/or a fine ranging between EUR250 and EUR500,000 for natural persons, and a fine ranging between EUR500 and EUR1 million for legal persons.

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

For the sake of completeness, it should be noted that there is no specific obligation to prevent tax evasion: the legislature has only established repressive provisions.

3.6 Financial Record-Keeping

Obligation to Keep Financial Records

Belgian companies must keep certain accounting documents (such as books and accountability documents) for a predetermined period, varying from three to seven years. The obligations to keep certain documents are spread over several acts, such as the tax codes and the Code of Economic Law.

Not complying with such obligation may give rise to different criminal penalties. Violations of the Code of Economic law, for example, might be sanctioned with a fine ranging between EUR26 and EUR10,000. Please refer to **3.5 Tax Fraud** for the sanctions for any intentional violation of the ITC.

Obligation to Disclose Financial Information

In accordance with the Belgian Code of Companies and Associations, legal entities must disclose, on an annual basis, a financial account to the National Bank of Belgium. Furthermore, certain companies must also disclose an annual report, which must contain (inter alia) a faithful and true overview of the development and the results of the company and its position.

Failure to disclose the financial account and/or the annual report is punishable by a fine ranging between EUR26 and EUR10,000 and/or imprisonment for a period ranging from one month to one year for natural persons, and a fine ranging between EUR500 and EUR24,000 for legal persons. Furthermore, forgery of the financial account (and the use of such forged account) may give rise to imprisonment for a period ranging from five to ten years (but in practice, after accepting mitigating circumstances, maximum five years) and a fine ranging between EUR26 and EUR2,000 for natural persons and a fine ranging between EUR500 and EUR120,000 for legal persons.

3.7 Cartels and Criminal Competition Law

In Belgium, prohibited market-distorting practices can only give rise to administrative liability. The prohibited practices are listed in Book IV of the Code of Economic Law. The main offences are:

- agreements between undertakings, decisions by association of undertakings, and concerted practices which have as object or effect to appreciably prevent, restrict or distort compe-

tition on the relevant Belgian market or within a substantial part of it;
- not notifying the Belgian Competition Authority about an impending merger which meets certain thresholds;
- abuse of a dominant position; and
- abuse of economic dependence.

In accordance with Article IV.16 and following of the Code of Economic Law, such offences can give rise to administrative fines and penalty payments (imposed by the Belgian Competition Authority). The fines due can be substantial; some of them may even amount up to maximum 10% of the turnover of the (associations of the) undertakings concerned.

3.8 Consumer Criminal Law

In the context of consumer law, the main offences relate to prohibited unfair (ie, misleading and aggressive) commercial practices against consumers (Article VI.96 of the Code of Economic Law).

Such violation can give rise to both criminal and administrative sanctions, but not at the same time.

The extent of the sanctions varies depending on the nature of the rule that has been violated. The most severe sanction a natural person risks is imprisonment for a period ranging from one month to five years and a fine ranging between EUR500 and EUR100,000. The equivalent for a legal person is a fine ranging between EUR1,000 and EUR200,000. The administrative maximum fines correspond to the criminal maximum fines.

3.9 Cybercrimes, Computer Fraud and Protection of Company Secrets

Cybercrime and Computer Fraud

The main offences relating to cybercrime and computer fraud are computer-related forgery, illegal access (hacking) and digital criminal fraud.

Computer-related forgery (Article 210bis, CC) requires the input, alteration, deletion, or suppression of computer data, resulting in a change of the legal significance of such data. As with "normal" forgery, the use of the forged data can give rise to criminal liability as well. The offender who is a natural person can be punished with imprisonment for a period ranging from six months to five years and/or a fine ranging between EUR26 and EUR100,000. A legal person risks a fine ranging between EUR3,000 and EUR200,000.

Hacking (Article 550bis, CC) consists of intentionally gaining access to an information system without permission to do so. Hacking may give rise to imprisonment for a period ranging from six months to three years and/or a fine ranging between EUR26 and EUR25,000 for a natural person, and to a fine ranging between EUR3,000 and EUR72,000 for a legal person.

Finally, digital criminal fraud (Article 504quater, CC) requires the input, alteration, deletion, or suppression of computer data by means of an IT system and the intention, on the part of the person responsible, to obtain an undue economic advantage for themselves or for another (such as the use of someone's credit card, without their consent, to withdraw money). The same sanction applies as for computer-related forgery.

Protection of Company Secrets

Article 309 of the CC stipulates that someone who maliciously or fraudulently discloses to others the secrets of the factory in which they work or have worked, can be punished with imprisonment for a period ranging from three months to three years and a fine ranging between EUR50 and EUR2,000. In case the offender is a legal person, the offender can be punished with a fine ranging between EUR500 and EUR72,000.

3.10 Financial/Trade/Customs Sanctions

In respect of financial sanctions, it should be stressed that (at least most of) the relevant legislation can be found in several United Nations Resolutions and EU Council Regulations, which directly apply in Belgium.

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 the European Regulations can give rise to:

- an administrative fine ranging between EUR250 and EUR2.5 million; or
- imprisonment for a period ranging from eight days to five years and a (criminal) fine ranging between EUR25 and EUR25,000 for a natural person, or a (criminal) fine ranging between EUR500 and EUR120,000 for a legal person.

3.11 Concealment

Concealment (Article 505, paragraph 1, CC) requires:

- the possession or property of goods that have been acquired as a result of a crime or misdemeanour committed by a third party; and
- the knowledge of the unlawful origin of the goods prior to or at the time of their possession or property.

Concealment can follow any infringement of a person's property (such as criminal fraud, theft and abuse of confidence), but the predicate offence has to be committed by a third party: one cannot conceal a property one has unlawfully obtained oneself.

Concealment may give rise to imprisonment for a period ranging from 15 days to five years and/or a fine ranging between EUR26 and EUR100,000 for natural persons and a fine ranging between EUR500 and EUR200,000 for legal persons. Furthermore, special confiscation can be imposed.

3.12 Aiding and Abetting

Not only is an offender criminally liable; a person who helps an offender to commit a criminal offence can be held criminally liable as well, even when the constituent elements of the criminal offence are not united on their part. To be criminally liable, it is sufficient that one helped the offender, knowing that this conduct (which is not necessarily the required criminal conduct) helped the accomplishment of a criminal offence.

There are two levels of complicity. A co-perpetrator's involvement is significant and crucial, whereas an accomplice's role is useful but not crucial. A co-perpetrator will therefore be punished in the same way as the offender themselves, whereas the accomplice will be punished less severely.

3.13 Money Laundering

Under Belgian law, there are two sets of rules concerning money laundering: a repressive framework and a preventive framework.

Main Offences in Relation to Money Laundering

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

- the act of buying, receiving, exchanging, possessing, keeping, or managing assets with an illicit origin, while the offender knew or should have known about the illegal 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 the same sentences as concealment (see **3.11 Concealment**), as well as to special confiscation.

Preventing Money Laundering

In accordance with the Act of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash, several institutions (mostly professionals from the financial sector, such as credit institutions, settlement institutions and insurance companies) have to fulfil a number of obligations to prevent money laundering, such as:

- identifying their customers, as well as these customers' agents and ultimate beneficial owners (which will allow them to determine the risk their client is or will be money laundering);
- detecting atypical operations of their clients; and
- reporting their suspicions.

When not fulfilling these obligations, the FSMA is competent to impose an administrative fine. Depending on the nature of the violation, one risks an administrative fine of up to EUR5 million.

Furthermore, the Act of 18 September 2017 provides a 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 BNB or the FSMA risk a fine ranging between EUR250 and EUR2.5 million, other entities risk a fine ranging between EUR150 and EUR5,000.

4. Pleas and Defences

4.1 White-Collar Defences

Some defences are often heard in criminal courts, such as the arguments that:

- the constituent elements of the criminal offence(s) are not proven;
- there is statute of limitations (although this will probably decrease significantly pursuant to the new legislation);
- the right to trial within reasonable time has been violated;
- the right of defence has been violated; and
- there were procedural irregularities during the investigation.

Furthermore, in case of white-collar offences such as bribery and corruption, legal entities often argue having a compliance programme as a defence. As indicated in **3.3 Anti-bribery Regulation**, such a compliance programme is not regulated (or obligatory) under Belgian law, but it might help to mitigate criminal liability.

4.2 De Minimis

Belgian criminal law provides several exceptions, but they are of little practical interest for white-collar offences.

Nevertheless, the unavoidable mistake, a ground of exculpation, is sometimes raised. When an offender raises such unavoidable mistake, they admit they committed the criminal offence, but

state they did not know the set behaviour was criminally curbed. To be accepted as an unavoidable mistake, any normal, prudent and reasonable person placed in the same circumstances should make the same mistake.

4.3 Plea Agreements, Co-operation, Self-Disclosure and Leniency

Plea Bargain

In accordance with Article 216 of the CPP, an offender can admit their guilt in exchange for an agreed-upon sentence.

The following conditions must be met:

- the preliminary inquiry is still ongoing, or the offender has been sued before/referred to the criminal court, which has not yet pronounced its final judgment;
- the offender acknowledges that they are guilty of committing the criminal offences with which they are charged; and
- the public prosecutor's office believes that the offender does not have to be punished by a prison sentence of more than five years (or, for legal persons, a fine of EUR120,000 or more).

If these conditions are met, the public prosecutor's office can propose (i) a lower penalty than they would have claimed if the offender had not acknowledged their guilt; or (ii) 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.

Lower Sentence in Exchange for Co-operation With the Authorities

In addition to the above-mentioned plea bargaining, there is the possibility for an offender to co-operate with the authorities and to make substantial, revealing, truthful and complete statements regarding the involvement of third parties (and, where appropriate, their own involvement) in committed or attempted criminal offences in exchange for certain concessions (such as a lower penalty) from the public prosecutor's office (Article 216/1 and following, CCP).

The statements must relate to certain criminal offences (eg, money laundering and cybercrime) and the other measures of investigation may not appear sufficient to reveal the truth.

The offender and the public prosecutor's office will sign a memorandum that mentions (inter alia) (i) the charges against the offender, (ii) the facts about which the offender is willing to make statements and (iii) the commitments of the public prosecutor's office.

Finally, this memorandum must be approved by the competent judicial body.

Spontaneous Co-operation and Self-Disclosure

Beyond the formalised procedures described above, there are no proceedings that guarantee any penalty reduction in the event of co-operation. However, the court can nonetheless take this into account when determining the sentence.

4.4 Whistle-Blower Protection

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 on a regional level, four other

legal instruments implement the Directive for each competent legislature, namely the public sector of the Flemish and Walloon Region and the French- and German-speaking Community.

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 when they meet the following requirements:

- they had reasonable grounds to believe that the information they reported on was correct;
- their report concerns one of the domains that fall in scope of the Whistle-Blower Act; and
- they reported the information through one of the available reporting channels – ie, an internal reporting channel, an external reporting channel or public disclosure.

Whistle-blowers who made use of public disclosure are protected against retaliation as well, but only if they:

- had first reported their concern internally and externally (or directly externally) but no appropriate action was taken; and
- had 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 whistle-blower was an employee, their report relates to violations of legislation on financial services, products and markets or anti-money laundering and terrorism financing, and the act of retaliation consisted of a dismissal, they can ask to be reintegrated into the organisation.

Victims of retaliation can also file a complaint with the federal co-ordinator who will initiate an extrajudicial procedure to verify the existence of retaliation. In the affirmative case, they can make recommendations to reverse the retaliation or remedy the harm that was caused.

As already mentioned, similar protection is provided to whistle-blowers in the (federal and regional) public sector. 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. Such integrity violation is any threat to or violation of the public interest and includes:

- a violation of legislation;
- a risk to life, health or safety of persons or environment; or
- a serious deficiency in professional duties or in good governance.

Regional legislatures have implemented the Directive autonomously but similarly. Protection is offered to whistle-blowers, but also to facilitators, third parties and legal entities linked to the whistle-blowers.

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