COUNTRY COMPARATIVE GUIDES 2023

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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 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. 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. Furthermore, the Investigating Judge is obliged to collect both incriminating and exculpatory evidence. 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, 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 affect the EU budget, it then can be investigated and prosecuted by the EPPO.

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

Under Belgian law, there is the distinction between public and private corruption, but there is also a distinction 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 purpose of the bribery and its public or private nature, additional conditions may apply.

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is 'public official' defined? 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 and bribery of private persons. 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 a 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. What are the civil consequences of bribery in your jurisdiction?

A person who suffered damages resulting from a bribery 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 he/she commits 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.

6. What are the criminal consequences of bribery 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. Where the bribery provided for in articles 246 – 249 of the Criminal Code concerns a person exercising a public office in a foreign State or in a public international organisation, the minimum fines shall be tripled and the maximum fines shall be multiplied by five. Furthermore, the special confiscation may be ordered as well as the dispossession of civil and political rights for a certain period of time, and an occupational ban can be imposed (see Royal Decree No. 22 of 24 October 1934). 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. Additionally, as with the public bribery, the special confiscation may be ordered and an occupational ban can be imposed (see Royal Decree No. 22 of 24 October 1934). With regard to the fines for both public and private bribery (and all other criminal offences), 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). To date, the Belgian legislator is working on a new Belgian Criminal Code. The draft act provides for both adjusted penalties for natural persons, as well as the abolition of the conversion mechanism and the introduction of specific fines for legal entities. It is, however, uncertain whether (and if so, when) this draft act will actually be adopted and come into force. Moreover, 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 intramunicipal 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.

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials? Are there specific monetary limits?

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). Nevertheless, in certain sectors specific legislation regulating this aspect also exists, such as the Act of 25 March 1964 regarding the pharmaceutical products.

8. 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.

9. Are facilitation payments 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.

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

No specific type of defence in case of corruption or bribery exists; the defence will depend on the factual context of the case.

11. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery 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 as: financial means and competent personnel to implement these guidelines and follow-up on (the respect of) the compliance procedures, means of verifying/audit, etc. Such programs and structures might however, depending on the specific circumstances of the case, still be insufficient to escape conviction. Who may be held liable for bribery? Only individuals, or also corporate entities?

12. 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 the bribery, cannot give rise to its liability.

13. Has the government published any guidance advising how to comply with anti-corruption and bribery 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 as guideline for an effective compliance program.

14. Does the law in your jurisdiction provide protection 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.

15. 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.

16. What are the recent and emerging trends in investigations and enforcement in your jurisdiction? Has the Covid-19 pandemic had any ongoing impact and, if so, what?

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 (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. However, this will require the necessary funds. Finally, following the Covid-19 pandemic, a lot of investigations were put on the back burner, since several investigative acts (such as interviews and searches) could not (or less easily) be carried out. However, this has not proven to be a lasting impact.

17. Is there a process of judicial review for challenging government authority action

and decisions? If so, please describe 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.

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

A new Criminal Code has been drafted, but has not yet been voted in the Belgian Parliament, reason why it is uncertain at this time whether or not it will be adopted. According to the information we currently (March 2023) have, there will be a new sanction system in place that is applicable to all offences. Therefore, the current sanctions will slightly change. As the definition of private bribery is concerned, changes to said definition are not foreseen, except for some minor differences (e.g. the intent is specifically mentioned in the new definition). The definition of public bribery should however change based on recommendations of the GRECO (Group of States against Corruption) and the OECD (Organisation for Economic Cooperation and Development). Since this new Criminal Code has not yet been put to a vote in the Belgian Parliament, it may finally include other changes we are not aware of yet.

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

Belgium signed the following Conventions that entered into force: Convention against Corruption (UN, 31 October 2003); 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 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) and the Convention Against Transnational Organized Crime (UN, 15 November 2000).

20. 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.

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 carried out by auditors who also have a legal privilege.

21. 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. By way of example, reference can be made to the investigation into corruption of members of the european parliament by third states. 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. Furthermore, although possible in theory, at present the Public Prosecutor (sometimes) refuses to conclude a settlement with the (alleged) perpetrators of (public) corruption, as a matter of principle. Finally, as explained under Question 16, the National Security Plan 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.

22. Generally how serious are 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 2022, Belgium was ranked 18th 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 their (amongst others) 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.

23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?

As mentioned above (see question 16), an internal report on the Central Anti-Corruption Service shows that the lack of resources is the biggest challenge as there has been a serious shortage of staff and resources for a number of years. As a result, only few cases regarding corruption are being investigated and prosecuted. Therefore, in order to effectively implement the National Security Plan, more resources will need to be provided for the fight against corruption.

24. 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.

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

Companies should develop structures and have policies in place to prevent individuals from committing acts of corruption or bribery at their own initiative, such as the instalment of double signature policies. In addition, companies must undertake preventive measures and provide for trainings (throughout the whole organisational structure) to prevent that corruption or bribery would take place and that the company as a consequence incurs losses and reputational damage. This is a point of attention not only for companies working in countries where corruption is common but also in Western countries or local structures.

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

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

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