



## **BELGIUM: PHASE 2**

# **FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS ON THE APPLICATIONS OF THE CONVENTION AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 10 January 2008.

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## SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

### *a) Summary of findings*

1. At the Working Group's meeting in October 2007, Belgium presented its written follow-up report, outlining its response to the recommendations that the Working Group on Bribery made during the phase 2 examination in 2005. The Working Group welcomed the information provided by the Belgian authorities in the course of this exercise and recognized Belgium's efforts to implement the recommendations made by the Working Group. The Working Group noted however that 7 recommendations made during the phase 2 examination have not yet been fully implemented.

2. The Group notably acknowledged Belgium's efforts to raise awareness about the Convention and the foreign bribery offence, called for in Recommendations 1a and 1b. The Group considers however that the measures that Belgium has taken to raise awareness among the country's public officials did not cover adequately the offence of bribery of foreign public officials (Recommendation 1a) but were centred on domestic bribery. The Working Group considers further that measures to raise awareness of the foreign bribery offence among Belgian enterprises that operate abroad were still insufficient and that the private sector should receive more support in establishing preventive measures to counter the risk of bribery of foreign public officials (Recommendation 1b). The Working Group thus considers that Recommendations 1a and 1b have not yet been implemented.

3. The Group acknowledged the progress that Belgium has made with regard to the denial of public subsidies, public procurement contracts, and other advantages to enterprises determined to have bribed foreign public officials (Recommendation 2a). Belgium has passed legislation that requires denial of such advantages, and intends to establish a central criminal record for legal persons that is expected to further enhance the effect of these new regulations.

4. In the phase 2 report, the Working Group called upon Belgium to enhance mechanisms that would help detect the occurrence of foreign bribery (Recommendations 3a-3e). In response to these recommendations, the Belgian authorities have disseminated, among federal public officials, a circular that reminds them of the obligation to inform the prosecuting authorities of occurrences of the offence (Recommendation 3b); the Working Group considers that this recommendation has not been fully implemented, as the scope of addressees was so far limited to federal officials. The Belgian authorities have further prepared a circular to tax officials that underscores the general prohibition of giving advantages to foreign public officials (Recommendation 3c). The authorities have also clarified the obligation of auditors to inform management about evidence of foreign bribery that they might find in the course of their mission (Recommendation 3d). The Government has also set up an inter-ministerial working group comprising the main actors involved in the fight against bribery (Recommendation 3e). The Belgian authorities reported that the introduction of a whistleblower protection system in the private sector as recommended by the Working Group (Recommendation 3a) is not planned; the Working Group thus considers this recommendation to be not implemented.

5. The Belgian authorities have also undertaken various measures to implement the recommendations that the Working Group made with regard to the prosecution of foreign bribery (Recommendations 4a-4e). The criminal policies as of the time of the report place corruption and bribery in 3<sup>rd</sup> place of priorities (Recommendation 4a). Various training programs for authorities involved in prosecution of foreign bribery are being implemented (Recommendation 4b). Belgian criminal law henceforth defines foreign public officials autonomously, i.e. without respect to the classification of the status of the official in his or her country and the legal provisions governing extraterritorial jurisdiction have been amended, both in light of Recommendation 4c. Mutual legal assistance procedures have also been eased as suggested by the Working Group's phase 2 report in Recommendation 4e; as these changes are limited to some countries only, the Working Group considers that this recommendation has been partly implemented. The Belgian authorities have also brought a reform bill on the criminal responsibility of legal persons that would address, once entered into force, the concerns that Working Group had expressed in Recommendation 4d. This recommendation is considered as not implemented, pending the entry into force of the new legislation.

6. The Working Group considers that all three recommendations it had made to Belgium with respect to sanctioning bribery of foreign public officials (Recommendations 5a-5c) have been implemented. The Belgium authorities have drawn the public prosecutors' attention to the need to prosecute accounting violations vigorously as accounting violations may conceal the payment of a bribe to a foreign public official (Recommendation 5a). Further, companies that are determined to have bribed a foreign public official are now to be debarred from participation in public procurement, as suggested by Recommendation 5b. Lastly, Belgian law does no longer allow the deduction from taxable income of any advantage given to a foreign public official (Recommendation 5c).

***b) Conclusions***

7. Based on the findings of the Working Group with respect to Belgium's implementation of the phase 2 recommendations, the Working Group concluded that Belgium has fully implemented recommendations 3c, 3d, 3e, 4a, 4b, 4c, 5a, 5b, and 5c; that Belgium has partially implemented recommendations 2a, 3b, and 4e; and that recommendations 1a, 1b, 3a, and 4d have not yet been implemented. The Working Group stressed the priority that it attaches to the implementation of recommendations 1a and 1b that encourage Belgium to raise the awareness of the offence of foreign bribery within the Belgium public administration and the private sector.

8. The Working Group invited Belgium to report orally, one year after the written follow-up examination, i.e. by October 2008, on the implementation of the recommendations that the Group considers to be not yet fully implemented.

## Written Follow-up to Phase 2 Report

**Name of country:** Belgium

**Date of approval of Phase 2 Report:** 21 July 2005

**Date of information:** 6 July 2007

### Introduction

In October 2005 the OECD published its report on the application in Belgium of the Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions.

That report assessed the application of anti-bribery laws in Belgium, with respect to prevention, sanctions and prosecutions alike.

Overall, the Working Group found that Belgium had made significant efforts to implement the Convention of 17 December 1997. The report noted a number of positive aspects of the fight against foreign bribery in Belgium.

It should be recalled that Belgian legislation was amended in 2004 to expand options for seizing and confiscating the object of an offence, items derived from an offence and personal property. Belgium has also bolstered the investigative capabilities of its judicial authorities to investigate organised crime, including foreign bribery. The Belgian Government is especially concerned with the criminal responsibility of legal entities and has embarked on substantial legislative reform in this area to facilitate enforcement of its 1999 legislation.

The report did, however, recommend a number of improvements. The Minister of Justice summoned the Criminal Policy Office not only to co-ordinate initiatives taken in response to OECD recommendations, but to draft this report as well.

A multidisciplinary working group was set up to explore legislative, regulatory and practical shortcomings. The group is co-chaired by representatives of the Minister of Justice and the Criminal Policy Office.

The group comprises members of the strategy units (cabinets) of the Federal Departments (Ministries) of Justice, the Budget, Finance and the Civil Service, the State Secretariat for Financial Modernisation and the Fight Against Tax Evasion, the Network of Experts on Economic, Financial and Tax Crime (judiciary - College of Principal Crown Prosecutors), the Assistant Magistrate for Economic, Financial and Tax Crime, the Federal Police (and more specifically the Central Office for the Prevention of Bribery) and representatives of the Federal Departments of Justice (Criminal Policy Office), Finance, the Budget and so on.

This interdepartmental working group has met three times, the bulk of its work having been done via e-mail correspondence. Meeting minutes may be found in Annex 9.

The working group, bringing together the heads of various departments and institutions, constitutes a real platform for co-operation and strategic planning in the fight against corruption. It has already been decided that the interdepartmental group will be maintained, not only to prepare the forthcoming strategy papers for the various departments and institutions, but to be able to respond to new evaluations as well. As a result, it will be possible to institute an integrated and comprehensive anti-bribery policy at all levels.

The working group will most certainly be convening when the new Belgian Government takes office. Because of federal elections in June 2007, a number of projects and legislative proposals could not be finalised under the previous parliament. It goes without saying that the legislative process will be resumed as soon as the new Ministers have been appointed.

The following report sets forth the measures taken in response to the recommendations.

## **PART I. RECOMMENDATIONS FOR ACTION**

### **Text of recommendation:**

1. With respect to awareness-raising efforts to promote the OECD Convention and prosecution of the offence of bribery of foreign public officials under Belgian anti-corruption law, the Working Group recommends that Belgium:
  - a. develop its efforts to raise awareness of the offence of bribery of foreign public officials within the administration and in the quasi-governmental sector, particularly for those employees likely to play a part in the detection and reporting of acts of transnational bribery, and those coming into contact with Belgian businesses exporting or investing abroad, as well as with the Belgian public (Revised Recommendation, Section I).

### **Actions taken as of the date of the follow-up report to implement this recommendation:**

1. At the federal level

Negotiations on the text of a federal-level Code of Conduct took place in 2005 and early 2006 between the Minister of Justice, the Minister of the Budget and Management Control and the Minister for the Civil Service. On 30 June 2006, the Council of Ministers approved a comprehensive memorandum on federal preventive integrity policy<sup>1</sup>.

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<sup>1</sup> See Annex 1.

The memorandum stipulates that all parties concerned should take responsibility: the federal government through an explicit pledge to carry out an integrity policy, and senior officials and federal employees by making the integrity policy a tangible part of their everyday administration.

To improve co-ordination and harmonise initiatives and supervision, an advisory group on administrative ethics and professional conduct was set up at the Office of Administrative Ethics and Professional Conduct, reporting to the Federal Department of the Budget and Management Control.

This advisory group is made up of representatives of the Prime Minister's Office, the Federal Departments of Personnel & Organisation, the Budget and Management Control, Interior, Finance and Justice, and representatives of the Board of General Administrators of Social Parastatals. If necessary, the group can refer to scientific experts.

The Office of Administrative Ethics and Professional Conduct, which started up on 1 July 2006, was commissioned by the Council of Ministers on 30 June 2006 to draft a "Code of Professional Conduct", rules governing the system for reporting improprieties and a directive concerning conflicts of interest.

The Code of Professional Conduct, to which all federal government employees must adhere, will specify, *inter alia*, what behaviours are considered unacceptable and/or undesirable, such as improper use of public resources.

Moreover, any federal department may opt for additional directives on professional conduct if special circumstances relating to their particular activities so require.

For the reporting of improprieties ("whistleblowing"), the Office will design a legally sound system that will not only make it possible to report suspicious happenings but will also provide adequate protection for both whistleblowers and the persons they report. The system will have to comply with the opinion handed down in November 2006 by the Privacy Protection Board<sup>2</sup>.

The provision on conflicts of interest will clearly draw attention to the borderline between public interest and private interest. It will then be up to the heads of federal departments to enforce the new regulations, while taking the particularities of each department into account. The Office will monitor enforcement of the new system.

Two documents were approved by the Council of Ministers on 8 March 2007<sup>3</sup>:

- A draft Royal Decree amending certain regulatory provisions<sup>4</sup>;

This decree deals primarily with the following:

- Introducing the concept of conflict of interest into the rules governing State employees;
- Redefining the rights and duties of State employees;
- Amending the legislation governing plurality of offices;

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<sup>2</sup> See Annex 2.

<sup>3</sup> See Annex 3.

<sup>4</sup> See Annex 3.

- Introducing the option of establishing, alongside the general ethical framework, additional guidelines for professional conduct specific to each government department that feels the need for them;
- Requiring managers and executives to take the same oath as do other State employees;
- Requiring State employees and contract workers to state before being hired that they are not in a conflict-of-interest situation.

- A draft framework for professional conduct<sup>5</sup>.

Regulatory provisions are found exclusively in the rules governing State employees (see above) or in other laws (which explains the difference between the concepts of a code and a framework for professional conduct), the illustration of this difference lying in the framework for professional conduct. The draft framework compiles and explains common values as well as the rules of conduct applicable to federal government employees.

Both documents were approved by the Council of Ministers on 8 March 2007. They were submitted for successful negotiations with the trade unions on 28 March 2007. For its part, the draft Royal Decree amending various regulatory provisions has been submitted to the Council of State for its opinion.

Lastly, a memorandum on the broad principles for reporting irregular, illegal or unprofessional practices, along with a circular on conflicts of interest in government procurement, will be presented to the Council of Ministers at a later date under the next government.

## 2. At the Community level

Readers may refer to the Flemish Decree of 7 July 1998 instituting the Flemish Mediation Office<sup>6</sup> (Ministry for the Flemish Community) as amended by the Decree of 7 May 2004 which contains the following relevant provisions:

Among the Flemish mediator's missions is to examine reports by staff members of administrative bodies of the Flemish Community or the Flemish Region who, in the course of their duties, had witnessed improprieties or offences (hereinafter "irregularities") within the administrative authority for which they work, and who consider either:

- That after notifying their hierarchical superior, and then Internal Auditing, there was no or insufficient follow-up on their report within thirty days; or,
- That on the sole basis of the publication or reporting of these irregularities, they have been or will be subject to disciplinary action or some other form of public or concealed sanction (Article 3, §2).

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<sup>5</sup> See Annex 3.

<sup>6</sup> See Annex 4.

Article 12bis stipulates that “any member of the staff of an administrative body of the Flemish Community or the Flemish Region may report to the Flemish Mediation Office, either orally or writing, any negligence, impropriety or offences as specified in Article 3, §2 and the conditions described therein”.

Article 13, §4 explains that “the Flemish mediator shall examine the merits of the report of an irregularity as specified in Article 3, §2. If he deems, after a preliminary review, that the report is admissible and not manifestly groundless, he shall continue to review the facts pursuant to Articles 14 to 17 inclusive. Otherwise, he shall notify the staff member in question, in writing, of the reasons why he deems the matter inadmissible or manifestly groundless.

“In the event of a judicial inquiry or investigation into the irregularity being reported, the action of the Flemish mediator shall be limited to a summary review in order to arrange for the protection of the staff member concerned.”

Lastly, Article 17bis provides that “the member of staff who has reported an irregularity as specified in Article 3, §2 shall, at his request, be placed under the protection of the Flemish mediator. To this end, the Flemish Government shall establish a protocol with the Flemish Mediation Office. Besides the duration of the period of protection, the protocol shall include as protective measures, at a minimum, the suspension of disciplinary procedures and rules specifying the burden of proof. The Flemish Government shall incorporate provisions for the execution of the protocol into its staff rules. Immediately after taking on the case, the Flemish mediator shall inform the hierarchical superior of the civil servant in question of that protection.”

At this time there are no equivalent provisions in the Walloon Government.

In the Brussels-Capital Region, there is currently no equivalent to the system existing in Flanders, but a Complaints Office has been set up to receive citizens’ complaints about government agencies, by telephone, fax or online form. Nothing prevents the system from being used to report actions that are ethically dubious or incompatible with government service.

Contacts will be made with regional and Community authorities and institutions to explore the possibility of harmonising these systems. The project will get underway during the next parliament.

**Text of recommendation:**

1. With respect to awareness-raising efforts to promote the OECD Convention and prosecution of the offence of bribery of foreign public officials under Belgian anti-corruption law, the Working Group recommends that Belgium:
  - b. take the necessary measures, in cooperation with the professional organisations and sectors of the economy concerned, to increase private sector awareness of the offence of bribery of foreign public officials, and to promote and assist in the implementation of preventive organisational measures within businesses present in foreign markets (Revised Recommendation, Sections I and V C. (i)).

### **Actions taken as of the date of the follow-up report to implement this recommendation:**

As soon as the evaluation report was published, a press release was issued by the strategy unit of the Minister of Justice, giving the evaluation the public exposure necessary to be able to respond to the various recommendations formulated therein.

In December 2005, professional organisations were informed of the evaluation report, and of this recommendation in particular, in a letter from the Criminal Policy Office. Attached to the letter was a questionnaire asking for the following: contact details, additional information about the organisation and whether it had already taken initiatives in this area or had any suggestions. The Corporate Auditors' Institute (IRE), the Association of Consulting Engineers, Engineering and Consultancy Bureaus (ORI), the Belgian Finance Federation (Febelfin) and the Professional Union of Insurance Brokers (UPCA) furnished detailed responses. The responses were as follows:

- The Professional Union of Insurance Brokers (UPCA) stated that it had already held training sessions on the fight against money laundering and terrorist financing. The Union had a code of professional conduct within the industry.
- The Corporate Auditors' Institute (IRE) pursued a mission of keeping its members informed and aware:
- The IRE Handbook, which is in fact a compilation of laws and doctrine in the field of auditing, is destined for the Institute's entire membership of corporate auditors. It contains a chapter on legislation relating to the enforcement of laws against bribery (Act of 10 February 1999 amending the Criminal Code);
- The IRE's training programme includes a course that examines the criminal law aspects of cases involving bribery;
- IRE annual reports cover legislative developments and conferences on the subject, such as the conference held in May 1999 by Transparency International Brussels on "The Fight Against International Corruption";
- Periodic informational bulletins available on the Institute's Internet site ([www.ibr-ire.be](http://www.ibr-ire.be)), which publish interviews with specialised experts;
- On 22 November 2005, a day-long focus session on the fight against money laundering and terrorist financing was held jointly by the Financial Information Processing Task Force (CTIF-CFI) and IRE.
- In conjunction with the second evaluation of Belgium by evaluators from the Group of States Against Corruption (GRECO), a meeting was held with representatives of the accounting professions in Belgium. The Institute's President was invited to answer the evaluators' questions about the profession's contribution to the international fight against fraud, money laundering and corruption.
- The Belgian Finance Federation (Febelfin): Financial institutions play a more specific role in this area via rules against money laundering (detecting bribery through money laundering). By virtue of the Royal Decree of 8 October 2004 approving the Banking, Finance and Insurance

Commission's rules for the prevention of money laundering and terrorist financing, financial institutions are required to introduce a suitable customer screening policy. For example, Article 31 of the Royal Decree stipulates who must be considered a "politically exposed person". When accepting a politically exposed person as a customer, a financial institution is required to take reasonable measures to ascertain the origin of the funds that are, or will be, engaged in the business relationship or a proposed one-off transaction. In the realm of information, the Belgian Bankers' and Stockbroking Firms' Association (BBA) promptly and regularly keeps its member financial institutions abreast of all new domestic and international standards and initiatives in the area of preventing and combating money laundering and terrorism. The BBA has also developed a suitable programme of ongoing training. Lastly, FEBELFIN and BBA regularly convene meetings of working groups and committees made up of compliance officers to deal with issues that involve money laundering (and thus bribery as well) and the fight against terrorist financing.

- At a meeting of the federally-run Permanent Concertation Platform on Corporate Security, an oral explanation was given to the attending private-sector partners on the evaluation report and the OECD's recommendation on the subject.
- The Permanent Concertation Platform on Corporate Security brings together the most important partners from the private and public sectors and provides a forum for private/public co-operation in this area. The Platform is co-ordinated by the Criminal Policy Office.
- Another noteworthy event was the publication of a brochure entitled *Internationaler ondernemen, kansen voor Vlaanderen*. This brochure was published by VOKA<sup>7</sup> (the Flemish business network), in collaboration with Kauri<sup>8</sup>, and is devoted to commercial activities at the international level – the opportunities they hold out, but the financial and ethical risks as well. From this standpoint, it can be seen as an initiative to build awareness in the private sector<sup>9</sup>.
- On 14 and 15 March 2007, the Belgian Government (the Minister of the Interior and the Minister of Development Co-operation), in association with the World Bank and the OECD, held an international conference of representatives from government, international organisations, the private sector, non-governmental organisations and academia on the topic of "Improving Governance and Fighting Corruption: New Frontiers in Public-Private Partnerships". The goal was to formulate policy recommendations for implementation at the national as well as international levels.

**Text of recommendation:**

2. With respect to other measures of prevention, the Working Group recommends that Belgium:
  - a. examine the principles and procedures in force in all the bodies and authorities responsible for granting public subsidies, public procurement contracts or other advantages awarded by public

<sup>7</sup> Vlaams Netwerk van Ondernemingen.

<sup>8</sup> A working group and think-tank composed of persons emanating from businesses and non-governmental organisations (NGOs) which seeks to forge proper economic, social and cultural ties between North and South by tapping their expert knowledge and network of contacts.

<sup>9</sup> See Annex 5.

authorities, in order to ensure that there is a fully efficient system for refusing such advantages to enterprises determined to have bribed foreign public officials (Revised Recommendation, Sections II v) and VI).2.

**Actions taken as of the date of the follow-up report to implement this recommendation:**

***1. Consultations with the most important partners as regards Community-level fraud***

At the interdepartmental working group's meeting of 18 October 2005, it was said that the issue would be presented at the 16 January 2006 session of the Round Table on Community-level Fraud. The Round Table's main objectives are to convene all partners concerned and provide a framework for networking and exchanging information. The Round Table is co-chaired by the Federal Department of Economic Affairs and the Criminal Policy Office of the Federal Department of Justice. The question was put to the partners by e-mail and by letter.

The responses were as follows:

- The Customs and Excise Administration responded that its mission was limited to checking goods and documents in connection with exports. Export refunds are the EAGGF agricultural subsidies granted and paid by the Belgian Intervention and Restitution Office (BIRB).
- The Flemish European Social Fund (ESF) agency provided the following list of regulations and procedures currently in force:
- Council Regulation (EC) No. 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds;
- Regulation (EC) No. 1262/1999 of the European Parliament and of the Council of 21 June 1999 on the European Social Fund;
- Commission Regulation (EC) No. 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No. 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds;
- Commission Regulation (EC) No. 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No. 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds;
- Commission Regulation (EC) No. 1145/2003 of 27 June 2003 amending Regulation (EC) No. 1685/2000 as regards the rules of eligibility for co-financing by the Structural Funds;
- Commission Regulation (EC) No. 2035/2005 of 12 December 2005 amending Regulation (EC) No. 1681/94 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field (European Anti-Fraud Office – Anti-Fraud Information System).
- The European Anti-Fraud Office (OLAF) responded as follows: “Insofar as contracts, subsidies and other benefits are awarded by the Community, there is a clear obligation to exclude economic

agents who have been found guilty of corruption under Article 93 (1) (e), read in conjunction with Article 114 of the Financial Regulation (Regulation No. 1605/2002) and Article 133 of the detailed rules for implementation (Regulation No. 2342/2002).

"To enforce these provisions, there is an early warning system accessible to correspondents in each commission department concerning recipients of Community funding who have (or who are suspected of having) committed 'wrongful administrative acts or fraud'.

"In respect of subsidies or other benefits administered by the competent authorities of the Member States, it is domestic law that should require the exclusion of these financial operators. If the subsidies or other benefits administered by the competent authorities of the Member States are at least partially funded by the Community, a conviction for corruption could also be considered an irregularity, the administrative sanction for which could be ineligibility for the benefits during a period subsequent to the irregularity (Article 5 (1) (d), Regulation No. 2988/1995)".

Like all other government agencies, the Belgian Intervention and Restitution Office (BIRB) enforces both European and domestic legislation and recommendations in this area.

Nevertheless, in respect of agricultural products and merchandise, the applicable provisions include Council Regulation (EC) No. 1469/1995 of 22 June 1995 on measures to be taken with regard to certain beneficiaries of operations financed by the Guarantee Section of the EAGGF and Commission Regulation (EC) No. 745/1996 of 24 April 1996 laying down detailed rules for the application of the aforementioned Council Regulation.

These regulations stipulate the sanctions that may be imposed on operators who are shown to have failed to meet their obligations and who thus present a risk of non-reliability in the realm of contract awards, export refunds and reduced-price sales of intervention products – all operations financed by the Guarantee Section of the EAGGF.

Such sanctions may range from intensified checking of the operations pursued by the operator to exclusion of the operator for a given period and from operations to be determined, and, where appropriate, suspension of the release of the security relating thereto, until the administrative determination of an irregularity or the lack of any irregularity.

## **2. Consultations with FINEXPO and DUCROIRE**

FINEXPO<sup>10</sup> and DUCROIRE<sup>11</sup> were also contacted and invited to the meeting on 22 March 2007. DUCROIRE/ONDD was present at the meeting and provided the following information. First, the structure of the Ducroire export promotion mechanisms was explained.

On the one hand is the National Del Credere Office (Office national du DUCROIRE, or ONDD); and on the other is DUCROIRE SA. ONDD is an independent public institution whose mission is to foster international economic relations. ONDD insures risks arising from international transactions and foreign direct investment. In connection with the OECD, there is also an Export

<sup>10</sup> FINEXPO is an advisory committee whose aim is to provide financial support for Belgian exports of capital goods and services by reducing or stabilising the interest rates on loans granted to finance Belgian exports.

<sup>11</sup> The National Del Credere Office (Office national du DUCROIRE) insures businesses against political and commercial risks inherent in international trade in, *inter alia*, capital goods, industrial projects, general contracting work and services.

Credit Group.

The following are ONDD's views as regards the OECD and international business transactions. ONDD has taken the following steps to implement the new recommendation to combat bribery<sup>12</sup>:

- The application form was modified<sup>13</sup>.
- An enhanced due diligence and disclosure procedure was instituted after approval by the Board of Directors<sup>14</sup>.
- Instructors are to be given training, which will focus on both awareness-building and providing information.

### **3. *Creation of a central criminal records file for legal entities***

The preliminary draft legislation creating a central criminal records file for legal entities and amending certain provisions of the Code of Criminal Procedure was approved by the Council of Ministers in late December 2005 and subsequently submitted to the legislative section of the Council of State for an opinion. The wording is being reworked on the basis of technical remarks formulated by the Council of State for submission to the Chamber of Representatives.

Court rulings will be recorded, and information released, in the same way as for individuals. Legal entities will be able to request copies of their criminal records from the clerk of the commercial court with which their articles of incorporation are filed, or, if none are filed in Belgium, from the central criminal records file. Legal entities may have their records expunged, just like individuals.

The bill also calls for the use of the national registry ID number for magistrates, police departments, investigative units and prison administrators. For legal entities, the business registration number will be used.

Lastly, the bill calls for the repeal of Article 23 §1, 20° of the Act of 16 January 2003 creating a Central Enterprise Databank (Banque-Carrefour des Entreprises, BCE), under which the BCE would be notified of all decrees and rulings convicting legal entities, and which had been adopted to compensate for the lack of criminal records for such entities. Henceforth, the only decisions the Databank will be recording are those prohibiting a firm from doing business, as in respect of individuals, dissolving a business or shutting it down.

#### **Text of recommendation:**

3. With respect to detection, the Working Group recommends that Belgium:
  - a. adopt measures to ensure that employees who in good faith denounce suspected acts of bribery are given effective and adequate protection so that they can report those acts to the prosecuting authorities without fear of being dismissed or taken to court (Revised Recommendation, Section I).

<sup>12</sup> OECD Council Recommendation on Bribery and Officially Supported Export Credits.

<sup>13</sup> See Annex 6.

<sup>14</sup> See Annex 7.

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The aim of this recommendation is to institute a “whistleblowing” system for civil servants and workers under contract to the federal government [see response to Recommendation 175 a)]. The system for reporting improprieties that is currently being devised by the advisory group on administrative ethics and professional conduct will make no distinction between civil servants and workers under contract to the government.

The Flemish public sector also has a rule on reporting irregularities to the Flemish Mediation Office [see Decree of 7 July 1998 instituting the Flemish Mediation Office, as amended by the Decree of 7 May 2004<sup>15</sup>, and Recommendation 175 a)].

At this time, there is nothing similar in the Walloon Government.

Contacts are going to be made between regional and Community bodies and entities to explore the possibility of harmonising the systems. This project will get underway during the next parliament.

**If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

There are currently no plans for introducing a whistleblowing system in the private sector.

Nevertheless, awareness-building efforts are continuing in the private sector via the Permanent Concertation Platform on Corporate Security.

**Text of recommendation:**

3. With respect to detection, the Working Group recommends that Belgium:
  - b. remind public officials, through a circular or other means, of their obligation under Article 29, paragraph 1 of the Code of Criminal Procedure to inform the prosecuting authorities of any offence of bribery of foreign public officials that comes to their knowledge in the performance of their functions, and examine the appropriateness of instituting a comprehensive system of sanctions for non-compliance with this obligation (Revised Recommendation, Sections I and II(v)).

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Again, see Annex 4.

**Actions taken as of the date of the follow-up report to implement this recommendation:**

In and of itself, enforcement of Article 29 of the CIC raises a number of legal and practical difficulties (definition of “civil servant” according to the Council of State, etc.).

Reminders of the obligation to comply with Article 29 must be done in a way that is consistent with the future whistleblowing system, as well as with the existing disciplinary system.

In this regard, co-ordination will be needed between all parties responsible for enforcing these three aspects.

To this end, a working group will soon be set up.

In conjunction with this, the various regional, Community and federal bodies will also be convened in order to analyse the extent to which harmonisation might be feasible.

Moreover, an initial draft circular of 20 July 2006<sup>16</sup> was sent to the strategy unit (cabinet) of the Minister of Justice, and to the Criminal Policy Office. Its purpose was to remind all tax officials of the blanket prohibition, under criminal law, against providing any benefits whatsoever to a foreign public official.

An explanatory memorandum from the Federal Department of Justice accompanies the above circular. In addition, an opinion has been requested from the Network of Experts on Economic, Financial and Tax Crime. An opinion from the tax collection authorities must still be formulated, and the draft circular is being translated into Dutch.

**Text of recommendation:**

3. With respect to detection, the Working Group recommends that Belgium:

- c. prepare a circular as soon as possible for all tax officials, reminding them of the general prohibition, under criminal law, on giving any kind of advantage to a foreign public official (Convention, Article 1; Revised Recommendation, Section IV).

**Actions taken as of the date of the follow-up report to implement this recommendation:**

As of 20 July 2006, an initial draft circular<sup>17</sup> had been sent to the strategy unit (cabinet) of the Minister of Justice and to the Criminal Policy Office.

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<sup>16</sup> See Annex 8.

<sup>17</sup> See Annex 8.

An explanatory memorandum from the Federal Department of Justice accompanies the above circular. In addition, an opinion has been requested from the Network of Experts on Economic, Financial and Tax Crime. An opinion from the tax collection service must still be formulated, and the draft circular is being translated into Dutch.

The major points analysed in the circular are as follows:

#### **I. Definition of bribery under criminal law**

1. Bribery of a Belgian public official
2. Bribery of a person performing a private function in Belgium
3. Bribery of a foreign public official
4. Jurisdiction of Belgian courts

#### **II. Reminder of civil servants' professional conduct vis-à-vis bribery**

1. Royal Decree of 2 October 1937 establishing rules for State employees
2. Code of Criminal Investigation
  - 2.1. Definition
  - 2.2. Official denunciation
  - 2.3. Denunciation by tax officials
3. Federal preventive policy with regard to integrity

#### **III. Tax provisions of the act of 11 May 2007 adapting anti-bribery legislation**

- A. Text of the law
- B. Commentary
  1. Introduction
  2. Abolition of regime of secret commissions authorised by Ministerial decree
  3. New non-deductibility as business expenses
  4. New improper expense not eligible as “definitively taxed income” or “exempt investment”
  5. New denial of exemption via other deductions
  6. Taxation at a distinct rate of 309 percent
  7. Entry into force

#### **IV. Practical aspects of uncovering bribery**

1. Evidence of fraud or payments constituting bribery
  - 1.1. Expenses or deductions
  - 1.2. Fictitious jobs
  - 1.3. Bookkeeping ledgers and supporting vouchers
  - 1.4. Taxpayer behaviour
  - 1.5. Dissimulation methods
2. Schedule of audits and checks on regulatory compliance
3. Information from other public bodies
4. Information available from co-signatories of treaties to prevent double taxation
  - 4.1. Exchange of information
  - 4.2. Simultaneous tax audits
5. Auditing techniques
6. Interviews: purpose

- 6.1. Who should be interviewed?
- 6.2. Documentation for interviews
- 6.3. Interviewing techniques
- 6.4. Formulating questions
- 7. Evaluation of taxpayer's internal control mechanisms
  - 7.1. Main stages in the evaluation of internal control
  - 7.2. Audit conditions
  - 7.3. Accounting system
  - 7.4. Auditing procedures
- 8. Special auditing procedures
  - 8.1. Slush funds
  - 8.2. Irregular corporate payment procedures
  - 8.3. Questionnaire to be used for auditing

Table 1: Questionnaire to be used for auditing

Table 2: Principles governing the use of a questionnaire on a company's slush funds during audits in subsequent years

**Text of recommendation:**

- 3. With respect to detection, the Working Group recommends that Belgium:
  - d. clarify the requirement that auditors of company accounts who uncover evidence of possible acts of bribery must inform management and, as appropriate, the corporate monitoring bodies of the company, and consider making it an express legal obligation for auditors to report to the prosecuting authorities any involvement of the company whose accounts they audit in acts of bribery in foreign markets, in cases where the auditor has duly notified the corporate bodies concerned but they have failed to act (Convention, Article 8; Revised Recommendation, Section V iv)).

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The Corporate Auditors' Institute (IRE) was asked for its position on this recommendation, and the Institute opposes its implementation.

It is not necessary to require an auditor to report any act of bribing a foreign official to the prosecuting authorities if the corporate body has failed to act, in view of the following elements:

Corporate auditors, including statutory auditors in the exercise of their duties, are required to report any suspicion of money laundering, including instances of bribery, to the Financial Information Processing Task Force (CTIF-CFI). Insofar as bribery is generally tied in with money laundering, all instances of bribery are presumably already covered by this reporting obligation. The CTIF can then decide to report the facts of the case to the prosecuting authorities if it deems there is sufficient convergent circumstantial evidence of money laundering. Belgian legislation in this area stems from European directives, and it would be inappropriate to depart therefrom.

Statutory auditors play a preventive role against fraudulent offences in general and bribery in particular; that preventive role would be diminished, and auditors' access to the information they need for audits would be scaled back, if the firms being audited had to fear that its auditors would be compelled to disclose information above and beyond the requirements already in effect at the Belgian, EU and broader international levels.

The statutory auditor's role in the event fraud, including bribery, is uncovered is governed by Belgian and international auditing standards; in this regard, ISA 240<sup>18</sup> on fraud will be mandatory in the European Union by virtue of the new Directive approved on 11 October 2005. It would therefore be inappropriate to depart from the uniform rules applicable at the EU level.

**Text of recommendation:**

3. With respect to detection, the Working Group recommends that Belgium:

- e. set up multidisciplinary coordination among the different judicial and police departments, accompanied by a memorandum of understanding with the public services, with regard to the control and detection of bribery of public officials (Revised Recommendation, Section I).

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The institution of the inter-Ministerial working group, comprising the most important parties in the fight against corruption, has already met this recommendation. Reports of the meetings have been sent to the OECD working group<sup>19</sup>.

<sup>18</sup> International Standards on Auditing (ISAs) are checklists and uniform standards used by auditors. They are formulated by the International Federation of Accountants (IFAC).

<sup>19</sup> See Annex 9.

**Text of recommendation:**

4. With respect to prosecution, the Working Group recommends that Belgium:
  - a. formally clarify, by circulars or any other official means, its criminal policy with regard to active bribery of foreign public officials, to encourage police and prosecutors to systematically seek to establish the liability of persons suspected of having committed the offence (Revised Recommendation, Section I).

**Actions taken as of the date of the follow-up report to implement this recommendation:**

In Belgium, the main emphasis has been on training. A subsequent stage will examine whether or not it is necessary to issue circulars.

The High Council of Justice was contacted with a request to provide special sessions on bribery when the training schedule for magistrates is drawn up.

A day-long session on bribery was held on 10 May 2007 as part of the training programme on “Economic and Financial Criminal Law”. The target group consisted of prosecuting judges, investigating magistrates, correctional court judges and judicial interns.

The following topics were addressed: constituent elements of the offence of bribery and issues involving the burden of proof, investigations and the consequences of bribery, a case study, international aspects of bribery and a criminological definition of corruption.

**Text of recommendation:**

4. With respect to prosecution, the Working Group recommends that Belgium:
  - b. carry out an adequate training policy for those involved in criminal proceedings (police, prosecutors and examining magistrates) for the offence and establish a specialised branch to deal with economic and financial crime cases (Revised Recommendation, Section I; Annex to the Revised Recommendation, Paragraph 6).

**Actions taken as of the date of the follow-up report to implement this recommendation:**

**1. Training for the judiciary**

Training sessions of the High Council of Justice will pay more attention to economic and financial matters.

Training sessions will also focus on whistleblowing-related issues. It was decided that other

departments should also be part of this process because of their involvement in prosecutions. Tax authorities will therefore be solicited when judicial training schedules are next negotiated.

A meeting on this subject was held with the High Council of Justice. A session on bribery was held on 10 May 2007 as part of the training programme on “Economic and Financial Criminal Law” (See Recommendation 178 i.).

The Act of 31 January 2007 on judicial training and creating the Judicial Training Institute<sup>20</sup> was published in the official gazette (*Moniteur belge*) on 2 February 2007.

This law institutes formal initial training during judicial internships and when judges take up duty, ongoing training and training as a part of career support. A Judicial Training Institute was also established. It will dispense judicial training for professional judges, lawyers, lay judges, commercial court and sentencing judges, judicial interns, law clerks, prosecutors, appeals court attachés, court clerks and prosecutors’ secretaries.

## 2. *Training for the police*<sup>21 22</sup>

*Basic training for police officers:*

- “Adopting desirable professional conduct and identifying behaviours that can have disciplinary or criminal consequences” (12 hours)
- “Getting acquainted with the applicable statutory and administrative rules” (12 hours)

*Basic training for inspectors:*

- Begins with same basic training as for police officers

*Preparatory training for mid-level and senior inspectors:*

- “Adopting desirable professional conduct and identifying behaviours that can have disciplinary or criminal consequences” (19 hours)
- “Getting acquainted with the applicable statutory and administrative rules” (5 hours)
- Basic training for mid-level inspectors:
- “Professional ethics” (12 hours)

*Incremental ongoing training:*

**“Professional conduct” (8 hours)**

<sup>20</sup> See Annex 10.

<sup>21</sup> The list of federal police training courses is accessible at the following address: <http://www.police.ac.be>.

<sup>22</sup> See Annex 11. It should be noted that the attached schedule is under revision.

## 1. Objectives:

### a) Overall objectives:

- Convey the importance and scope of ethics and professional conduct for the police as a whole and for individual officers;
- Enforce the police's ethical standards and rules of professional behaviour.

### b) Specific objectives:

- Indicate which provisions of the police's code of professional conduct apply in any given situation, however it is presented;
- In any given situation, ascertain individually and/or as a group the proper behaviours from the standpoint of professional conduct, and justify them.

## 2. Content:

### Introduction:

### Content of presentation:

The order of the items listed below may be changed, depending on the type of initial discussion.

Here, the expert can base his presentation on the following documentation, which is annexed hereto:

- King's report
- Code of Professional Conduct for Police Departments, and in particular Part 1: Introduction to the Code of Professional Conduct
- Syllabus entitled "Commentary on the Code of Professional Conduct"
- Selected published articles, including "Déontologie versus discipline: clarification" ("Professional Conduct versus Discipline: Clarification").

## 3. Items for further discussion:

- Is a Code of Professional Conduct necessary?  
The Code is an instrument of cultural change (harmonisation of mentalities, etc.).  
It is an aid for staff.  
It gives staff a frame of reference.
- What are the Code's main features?  
The Code is the result of a long maturing process. It is the fruit of a group effort. Substantively, it incorporates an entire set of pre-existing elements.  
The Code is a co-ordinated compilation of all elements involving professional conduct.  
The Code is not a mere disciplinary instrument. It does not stipulate breaches of discipline and lays down no sanctions or disciplinary measures.  
The Code is intended as a practical work aid in which staff can find everything they need relating to their professional conduct as members of the police.  
It conveys a positive message and helps foster good practices within the police.  
Lastly, it can adapt with change. A number of topics dealt with by the Code can evolve in the short or medium term.
- Whom does the Code target?  
ALL members of staff.  
The Code also applies to those who are subject to another particular code of professional conduct (Example: doctors, etc.).  
Some items address particular categories of staff, such as unit heads, administrative or

logistical staff, etc.

- What are the Code's structure and contents?

A preamble

Five chapters: General provisions; overall mission of police departments; guarantees that policing will operate smoothly; exercise of police functions; other aspects of professional police conduct.

## USE OF THE CODE

- Theoretical introduction

The Code serves as a rulebook.

It is recommended not to consult a single point only. In many cases, answers to a given problem can be found in various places in the Code.

The Code has a table of contents and an alphabetical index of keywords dealt with directly or indirectly in the Code.

Commentary on the Code has been written. It is contained in a syllabus and may also be consulted on the Human Resources website – <http://www.hrpol.be> (On the French-language site, see section on “*Intégrité et déontologie*”), which also contains other information (such as case law, doctrinal elements, etc.).

- Method for use

Using a practical example that can be illustrated by a film clip (Professional Conduct CD), a “comic strip”, or an actual case that has been rendered anonymous, a semi-directed individual exercise in the use of the Code is conducted, seeking out instances of ethical dysfunction.

The <http://www.hrpol.be> website is presented by an expert. The demonstration is available in PowerPoint and can be found on the annexed CD.

## THEMES TO BE ADDRESSED IN WORKSHOPS

This practical portion of the seminar takes place in three phases:

*Phase 1:* Each participant responds individually to a questionnaire dealing with a series of situations involving the police.

*Phase 2:* Next, participants form groups (workshops) of roughly 15 persons.

Each group is then invited to fill out the same questionnaire as mentioned above.

Goal: To formulate a single group response to each question.

A rapporteur is appointed for each group.

If possible, a leader is chosen for each workshop.

*Phase 3:* At the conclusion of the exercise, the workshops come together in a joint meeting to convey their conclusions via their rapporteurs.

## “Professional conduct as an instrument of culture change” (8 hours)

### 1. Objectives:

#### a) Overall objective:

- Understand the role of officers in promoting and implementing the police Code of Professional Conduct;
- Understand the importance and scope of police ethics and professional conduct

b) Specific objective:

- As a group, establish a plan of action implementing a principle of professional conduct to bring about a change in staff mentalities in line with the police culture.

2. Content:

Theoretical presentation by experts

- Introduction: question on the culture of organisation
- General framework: harmonisation of various cultures
- Clarification of concepts
- Culture, values, standards
- Professional conduct
- Code of professional conduct: emphasis on leadership, integrity, well-being at work and motivation

**All-level ongoing training:**

*“Introduction to the Police Code of Professional Conduct” (4 hours):*

**“Specialised Financial Investigations: Module 2: Corruption” (3 hours)**

1. Objectives

Candidates must:

- be familiar with and comment on Articles 246 to 252 and 504bis and ter of the Criminal Code, especially as concerns influence peddling, international civil servants and private corruption;
- be able to enforce Articles 10quater and 90ter of the CIC;
- be able to incorporate these legislative provisions into bribery investigations.

2. Content

- Act of 10 February 1999 on the prevention of bribery;
- Art. 90ter CIC;
- New international treaties on bribery;
- Investigative techniques and tactics.

3. Prerequisites

- No entry examination;
- Training intended for inspectors, senior inspectors and commissars of specialised federal police units (financial sections and central departments);
- On an exceptional basis, the Personnel Department may authorise certain persons to take part in some or all of this training.
- Voluntary participation in courses.

4. Methods

- Theoretical presentation
- Case studies
- Question-and-answer session with participants (interactivity)

Operational criminal police training for entry-level, mid-level and senior officers of the federal and local police:

Module 4, 3: Crimes and misdemeanours committed by persons holding public office (3 hours): corruption via improper exercise of authority

*General training for all integrated police staff:*

**“Culture, professional conduct and integrity”:**

1. Objectives:

Update and adjust the skills of integrated police staff.

2. Content:

1. Introduction

Like any other private- or public-sector organisation, the police has its distinctive characteristics and rules of ethics.

There exist a police culture and a code of professional police conduct.

2. Culture

The two-tiered integrated police, at the federal and local levels, results from a merger of several different police forces.

Each of these police forces had its own culture.

2.1 Definition and components

There is universal agreement that culture must evolve to adjust to new circumstances.

But what exactly is meant by “culture”?

Culture is in fact the cement that binds together all components of the organisation (structure, procedure, personnel, environment, etc.). It encompasses the organisation’s values, principles, goals, standards, rules, symbols and so on.

Above all, it is reflected in the behaviours of each member of staff.

It is therefore important to understand how these components interact in order to be able to act on the culture to make desired changes (see Infodoc Nos. 74, 77, 79, 78, and 81).

2.2 Actions

A big initial challenge for the new police, apart from the restructuring aspect, is to get people from different backgrounds to work together and effectively.

To meet this challenge, an evolving culture approach was deemed preferable to one of change. This approach is embodied in a programme of action (see Infodoc No. 74).

3. Professional conduct

In this general framework, professional conduct plays an important role. It is a part of how culture works. It constitutes a set of rules and standards that influence how members of staff behave.

### 3.1 The role of a code of professional conduct

Within the integrated police, this is embodied in the Code of Professional Conduct. The Code enumerates the principles and standards to which all members of staff – police and non-police – must conform.

It is both a vehicle of performance for staff and a means of transparency vis-à-vis citizens and the authorities who thus know how their police operate (see the Report to the King on the Code of Professional Conduct).

### 3.2 Importance of integrity

Among these standards, the authorities pay special attention to integrity. This does not mean there is any special problem within the police force, but that integrity is a critical success factor.

Each breach of integrity, each behaviour that departs from standards, irrespective of form, impairs the credibility of the police, either internally or externally. Trust in the police is considerably altered when police officers transgress the laws they are sworn to uphold. The confidence of government and of citizens is enhanced or diminished as a result of police credibility (see Infodocs 79 and 72, Infonouvelles<sup>23</sup> 1412, 1381, 1374, 1367, 1365). Consequently, integrity is one of the most basic values for each police officer.

## **“Public procurement fraud” (6 hours):**

### 1. Objectives

Candidates should be able to:

- Explain the various stages in awarding a public procurement contract;
- Make the connection with criminal offences involving public procurement;
- Pay full attention to the weaknesses in public procurement procedures that can lead to fraud.

### 2. Content

- Mechanics of how public procurement contracts are made and how they work
- Regulatory framework (Act of 24 December 1993 and implementing decrees)
- Basic rules (fixed basis – advertising – equality)
- General specifications
- Particular specifications
- Concluding the contract
- Performance of public contracts
- Notification
- Guarantees
- Means of action for contracting authorities and contractors
- Reception, provisional and final technique
- Progress
- Measurement and amendments
- Criminal provisions

<sup>23</sup>

Infodoc and Infonouvelles are in-house federal police publications appearing in electronic or print versions.

- Violations involving public procurement fraud: Bribery / Influence peddling / Misappropriation of public funds / Forgery and use of forged documents / Swindling / money laundering

### 3. Prerequisites

No entrance examination;

Training intended for inspectors, senior inspectors and commissars of specialised federal police units (financial sections and central departments);

On an exceptional basis, the Personnel Department may authorise certain persons to take part in some or all of this training.

Voluntary participation in courses.

### 4. Methods

Ex cathedra

Instructive dialogue

Case studies

### **3. *The Network of Experts on Economic, Financial and Tax Crime as a specialised resource for dealing with cases of economic or financial crime.***

The aim of the Network of Experts is to lend support to all prosecuting authorities, and more specifically the College of Principal Crown Prosecutors under the general management of the Brussels Crown Prosecutor, pursuant to its mission under Article 2-2° of the Royal Decree of 6 May 1997 on the specific duties of members of the College of Principal Crown Prosecutors.

This work is supplemented by assisting in the formulation and implementation of criminal policy with an ongoing aim of ensuring that the prosecutor's office operates smoothly. In this, the Network's activities are part of broader, coherent criminal policy efforts co-ordinated by the Minister of Justice and the College of Principal Crown Prosecutors.

The Network of Experts is the initial contact point for liaising with the College of Principal Crown Prosecutors for federal prosecutors, general prosecutors, general labour inspectorates, district prosecutors and labour inspectorates.

The Network of Experts also serves as a contact point for persons, departments or institutions outside the public prosecutor's office that are concerned with the fight against economic, financial and tax crime.

The Crown Prosecutor at the Brussels Court of Appeal ("the Crown Prosecutor") is responsible for overall management of the Network of Experts. The Crown Prosecutor is assisted by a co-ordinating staff, one member of which he or she appoints as senior co-ordinator.

The co-ordinating staff is made up of one or more magistrates from each prosecutor's office, appointed by the competent crown prosecutor, and the General Counsel for Criminal Policy (or the Counsel's representative). The co-ordinating staff has the support of members of the Network of Experts and of the ad hoc working groups and is backed up by contact points in the various

jurisdictions. Members of the co-ordination staff serve as the staff's direct contact points in their respective jurisdictions.

In each district prosecutor's office, a magistrate is appointed as the contact point for the co-ordination team.

**Text of recommendation:**

4. With respect to prosecution and sanctions, the Working Group recommends that Belgium:
  - c. define an autonomous notion of foreign public official that fully complies with the requirements of the Convention and, with the same aim, take remedial legislative measures to ensure the full effectiveness of Belgium's extra-territorial and universal jurisdictions over bribery of foreign public officials committed outside Belgium (Convention, Article 1; Phase 1 Evaluation; Convention, Articles 4 and 5).

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The said recommendations were implemented in their entirety in the Act of 11 May 2007 modifying the anti-bribery legislation (*M.B.* 8 June 2007), at the request of the Minister of Justice, the Minister of Finance and the Secretary of State for the Modernisation of the Finance Department and Combating Tax Evasion<sup>24</sup>.

1. With regard to the definition of a foreign civil servant:

In contrast with other international instruments for combating bribery (such as the European Union and Council of Europe Conventions), which refer to the internal definition used by the country in which the civil servant carries out his duties, the OECD requires the contracting parties to use an autonomous definition of the notion. In 1999, Belgian lawmakers adopted the European approach in the Bribery Prevention Act of 10 February 1999.

The OECD Working Group considered that this approach was consistent neither with the autonomous definition in Article 1 of the Convention, nor with its objectives which are, inter alia, to guarantee a homogeneous application of the Convention. In particular, the Working Group expressed the fear that the Belgian approach would prevent the implementation of the Convention.

To remove any ambiguity, the Belgian Government sought to adapt and simplify Articles 205 and 251 of the Criminal Code.

The solution adopted was to merge Articles 250 (foreign public officials) and 251 (international public officials) into a single article.

Article 250 will keep the assimilation rule without the restrictions previously contained in Articles 250 and 251. Where prevention is concerned, for example, any person in public service

<sup>24</sup>

See Annex 12.

employment in a foreign State or in a public international law organisation is put in the same category as a Belgian public official.

The Belgian Government did not therefore opt for the inclusion in the Criminal Code of a new definition of the notion of “foreign public official” which would have been consistent with the definition contained in Article 1 of the OECD Convention.

For the government, the aim is not that the status of the person concerned should be decisive, but rather that of the duties performed, i.e. their public nature.

The emphasis here is on the notion of “public service employment”, which should be interpreted in the same way whether one is a Belgian public official or not. In other words, the definition of a foreign public official is, in the final analysis, the same as that of a Belgian public official.

It should also be said that case law and doctrine have, over the years, given a very broad meaning to the notion of public service employment, which turns out to be completely consistent with the definition in Article 1 of the OECD Convention, in fact going even further than the latter.

The notion of “any person exercising a public function” covers all categories of persons who, whatever their status, exercise a public function of any kind:

- federal, regional, community, provincial or communal civil servants or public officials;
- elected officials (i.e. any persons holding legislative, communal or other elected office);
- public officers;
- temporary or permanent holders of a portion of public power or authority;
- persons, even private individuals responsible for a public service mission ...).

Moreover, managers of private enterprises are deemed to exercise public functions to the extent that the act of bribery affects a public service mission entrusted to the enterprise. The government’s aim is that the crucial factor should not be the status of the person concerned, but the function exercised, which must be of a public nature. This functional approach is in line with the interpretation given by previous case law. Thus, a political party official in a single party is considered to be a public official if he performs public functions<sup>25</sup>.

Article 250, § 2 of the Criminal Code has therefore been removed from the new Act. The definition has to be the same for both European and non-European citizens. Article 251, § 2 has been repealed for the same reasons. Article 251 has been repealed. There will be an Article 250 which will encompass the present Articles 250, § 1 and 251, §1. This gives the following provisions:

“Art. 250. When the bribery referred to in Articles 246 to 249 concerns a person who exercises a public function in a foreign State or in a public international organisation, the penalties will be those laid down in these provisions”.

Persons exercising a public function abroad or in a public international organisation are therefore put in the same category as Belgian civil servants. The definition of a foreign civil servant thus

<sup>25</sup>

Doc. Parl., Senate, 1997-98, 1-207/4, and D. Flore, *L’incrimination de la corruption. La nouvelle loi belge du 10 février 1999*, Brussels, Editions La Chartre, 1999, p. 85.

covers the entire field of application required by the OECD Convention and will therefore guarantee the homogeneous application of the said Convention.

2. With regard to extraterritorial competence:

With regard to extraterritorial competence, Article 10*quater* of the Preliminary Title of the Code of Criminal Procedure went much further than was required by the international instruments in that it introduced universal competence.

The Article punished “any person” and therefore concerned both Belgians and foreigners who committed an act of bribery abroad. However, certain restrictive criteria were introduced subsequently.

Article 10*quater* also provided for different regimes depending on the authority for which the person exercised a public function in Belgium, in another Member State of the European Union, in a non-Member State of the European Union, a European institution or another international organisation.

In the new Act, Article 10*quater* is divided into two paragraphs.

“Art. 10*quater*, § 1: Any person may be prosecuted in Belgium for having committed outside Belgian territory:

1° an offence under Articles 246 to 249 of the Criminal Code;

2° an offence under Article 250 of the same Code, when the person exercising a public function in a foreign state or in a public international organisation is Belgian, or when the public international organisation for which the person exercises a public function has its headquarters in Belgium”.

Paragraph 1 therefore maintains the principle of universality. Any person may be prosecuted in Belgium for acts of bribery committed abroad against Belgian public officials.

Extraterritorial competence is unlimited in the case of bribery involving persons exercising a public function in Belgium. This competence is based on the protection principle, whereby the State can reserve the right to pronounce on offences committed abroad, the aim of which is to harm the legal interests of that State.

Also considered to be “Belgian public officials” are public officials of Belgian nationality who perform their functions in a foreign State or in a public international organisation.

It should also be added that the Belgian judge will always be authorised to give judgements on acts of bribery committed abroad with respect to both Belgian and foreign public officials when the public official in question performs his functions in a public international organisation with its headquarters in Belgium.

This is justified on the one hand by the requirements of the EU Convention on Bribery and, on the other, by the fact that numerous international organisations have their headquarters on Belgian territory.

“Art. 10*quater*, § 2. Any Belgian, or any person whose principal residence is on the territory of the Kingdom and who, outside that territory, is guilty of an offence listed in Article 250 of the Criminal Code, may be prosecuted in Belgium, on condition that the offence is punished under the legislation of the country where it was committed”.

In accordance with Article 4.2. of the OECD Convention, Belgium has to establish its extraterritorial competence with regard to the bribery of a foreign public official on the basis of these same principles. According to the OECD, the earlier distinction that Belgian legislation made between the public officials of EU Member States and other foreign public officials is a threat to equality of treatment with regard to the competence rules concerning the bribery of foreign public officials.

The projected §2 of Article 10<sup>quater</sup> therefore removes this distinction. Also abolished is the condition requiring that the legislation of the other State should also punish bribery concerning a person exercising a public function in Belgium, and the same applies to the need for a prior opinion to be given by the authorities of the foreign State. The only remaining condition is that of double incrimination. Also, extraterritorial competence now applies solely in the case of Belgians or persons whose principal residence is in Belgium. With regard to bribery concerning foreign public officials, the universality principle has therefore been narrowed down to an active personality principle.

The conditions laid down in Article 7, §2 do not apply, meaning that prosecution is possible without the victim making a complaint or the foreign authorities giving an official opinion.

**Text of recommendation:**

4. With respect to prosecution, the Working Group recommends that Belgium:
  - d. clarify, within the framework of the the bill currently being drafted to amend the law concerning the criminal liability of legal persons, how the mental element is imputed for the intentional offence of transnational bribery, in order to facilitate prosecution (Convention, Articles 2 and 3; Revised Recommendation, Section I).

**Actions taken as of the date of the follow-up report to implement this recommendation:**

1. Bill amending the law on the criminal liability of legal persons.

The Directorate-General for Criminal Legislation of the Federal Department of Justice (*SPF Justice*) has prepared, in collaboration with the Criminal Police Office, a draft bill amending the law concerning the criminal liability of legal persons.

The bill proposes to abolish the limiting of responsibilities when the offence was not committed intentionally, and to introduce a special penalty of being forbidden to tender for procurement contracts.

Also sought was the opinion of the Federation of Belgian Enterprises.

Having been approved by the Council of Ministers on 31 March 2006, the draft reparation bill was submitted to the Council of State which gave its opinion on two separate occasions: 17 May and 6 June, after the the bill had been amended. The draft bill was put before the Federal

Parliament on 19 February 2007<sup>26</sup>.

2. Draft bill introducing central police records for legal persons.

The draft bill introducing central police records for legal persons and amending certain provisions of the Code of Criminal Procedure was approved by the Council of Ministers in late December 2005 and then submitted to the Council of State's legislation section. The wording of the draft bill is currently being amended to take account of the technical comments made by the Council of State, and will then be put to the Chamber of Representatives.

The judicial decisions will be recorded and the information made known in the same way as for natural persons. Legal persons will be able to ask for a copy of the extracts from their police record from the clerk to the commercial court with which their articles of association are registered or, if no articles have been registered in Belgium, from the central police records. Legal persons will be able to clear their name in the same way as natural persons.

The draft bill also stipulates the use of the identification number in the national registry for magistrates, the police, the intelligence service and the prison authorities. For legal persons, the company registration number will be used.

The text provides for the deletion of Article 23 §1, 20° of the Act of 16 January 2003 setting up a Central Enterprise Databank (BCE). The article in question provided that decisions and judgements condemning legal persons should be forwarded to the BCE; it was adopted originally to make up for the lack of central police records for legal persons.

As in the case of natural persons, the BCE will in future only be informed of decisions banning the exercise of a profession, winding up a legal entity or closing down a company.

**Text of recommendation :**

4. With regard to prosecution and sanctions, the Working Group recommends that Belgium:
- e. ensure, as part of the ongoing reform of mutual legal assistance in criminal matters, on the one hand, that simplified national procedures are introduced for active and passive mutual assistance in the absence of an international agreement (Convention, Article 9); and, on the other hand, that it is clarified that invoking Belgium's essential interests to deny mutual legal assistance in cases of foreign bribery will not be influenced by the considerations mentioned in Art. 5 of the Convention.

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<sup>26</sup>

See Annex 13.

### **Actions taken as of the date of the follow-up report to implement this recommendation:**

The Act of 9 December 2004<sup>27</sup> on international mutual legal assistance in criminal matters, amending Article 90<sup>ter</sup> of the Code of Criminal Procedure, lays down the first legislative foundations, in Belgian law, for mutual legal assistance in criminal matters. However, it does not cover everything to do with mutual legal assistance, or with extradition proceedings.

The Act of 2004 facilitates procedures:

- between Member States of the EU: Article 873, § 2, on Ministry of Justice authorisation, is no longer applicable for the purpose of implementing, in Belgium, a request for foreign mutual legal assistance - Art. 5 of the Act;
- if so provided by an international Convention, as for example in the 2nd additional protocol to the Council of Europe's 1959 Convention on Mutual Assistance in Criminal Matters, or if so decided by the Belgian judicial authorities, it is possible to apply the law of the applicant State when implementing, in Belgium, a request for foreign mutual legal assistance ("*forum regit actum*" principle) - Art. 6 of the Act;
- if so provided by an international convention: requests for mutual assistance will be transmitted directly between judicial authorities - Art. 7 § 2.

With regard to the grounds for refusal in Article 4, § 2, 1<sup>o</sup>: this is written into the 1959 Convention of the Council of Europe and was not called in question in the framework of the 2000 Convention of the European Union. Theoretically, therefore, it can still be invoked against the other Member States of the European Union.

In the framework, however, of the new mutual recognition instruments adopted within the European Union, and which are intended to replace the conventions applying in the case of mutual assistance, these grounds no longer exist. It should be pointed out, too, that these grounds for refusal are no longer applicable in practice and, in view of their disappearance from the most recent instruments still being negotiated, it is only a matter of time before Article 4, § 2, 1<sup>o</sup> is definitively removed from Belgian law – both in practice and from the texts governing this matter.

It also needs to be remembered that, in the new Act of 11 May 2007 modifying the anti-bribery legislation<sup>28</sup>, Article 10<sup>quater</sup> is split into two paragraphs.

“Art. 10<sup>quater</sup> § 1<sup>er</sup>: Is liable to prosecution in Belgium, any person who has committed, outside Belgian territory:

1<sup>o</sup> an offence under Articles 246 to 249 of the Criminal Code;

2<sup>o</sup> an offence under Article 250 of the same Code, when the person exercising a public function in a foreign State or in a public international organisation is Belgian or when the public international organisation for which the person is exercising a public function has its headquarters in Belgium.”

Paragraph 1 therefore maintains the principle of universality. Any person may be prosecuted in

<sup>27</sup> See Annex 14.

<sup>28</sup> Act of 11 May 2007 modifying the anti-bribery legislation, *M.B.*, 8 June 2007. See Annex 12.

Belgium for acts of bribery committed abroad against Belgian public officials. Extraterritorial competence is unlimited in the case of bribery involving persons exercising a public function in Belgium. This competence is based on the protection principle, whereby the State can reserve the right to pronounce on offences committed abroad, the aim of which is to harm the legal interests of that State. Also considered to be “Belgian public officials” are public officials of Belgian nationality who perform their functions in a foreign State or in a public international organisation.

It should also be added that a Belgian judge will always be authorised to pronounce judgement on acts of bribery committed abroad against both Belgian and foreign public officials when the public official in question performs his functions in a public international organisation with its headquarters in Belgium. This is justified on the one hand by the requirements of the EU Convention on Bribery and, on the other, by the fact that numerous international organisations have their headquarters on Belgian territory.

“Art. 10<sup>quater</sup>, § 2. Any Belgian, or any person whose principal residence is on the territory of the Kingdom and who, outside that territory, is guilty of an offence listed in Article 250 of the Criminal Code, may be prosecuted in Belgium, on condition that the offence is punished under the legislation of the country where it was committed.”

In accordance with Article 4.2. of the OECD Convention, Belgium has to establish its extraterritorial competence with regard to the bribery of a foreign public official *on the basis of these same principles*. The projected paragraph 2 of Article 10<sup>quater</sup> thus removes this distinction. The only remaining condition is that of double incrimination.

Also, extraterritorial competence no applies solely in the case of Belgians or persons whose principal residence is in Belgium. With regard to bribery of foreign public officials, the universality principle has therefore been narrowed down to an active personality principle. The conditions laid down in Article 7, § 2 do not apply, meaning that prosecution is possible without the victim making a complaint or the foreign authorities giving an official opinion.

**Text of the recommendation :**

5. With regard to sanctions, the Working Group recommends that Belgium:
  - a. draw the attention of prosecutors to the importance of vigorously pursuing accounting violations that could conceal the payment of a bribe to a foreign public official (Convention, Article 3 ; Revised Recommendation, Section V A) iii)).

**Action taken as of the date of the follow-up report to implement this recommendation:**

This recommendation has already been fully covered by the “training – High Council of Justice (*Conseil Supérieur de la Justice*) plan”, the main purpose of which is to inform and provide continuous training for magistrates (see the reply to the recommendations 178 i) under j)).

The public prosecutor's office also had its attention drawn to this issue at the time of the drafting of a circular by the College of Principal Crown Prosecutors<sup>29</sup> reiterating the main principles of the Act of 11 May 2007 modifying the anti-bribery legislation.

It will be remembered that the purpose of this Act is to translate into Belgian law some of the recommendations of the Working Group on Bribery in International Business Transactions of the Organisation for Economic Co-operation and Development (OECD).

The circular explains that the new law contains a legal section (criminal and criminal procedure) and a tax section, the object of which is to put a stop to the tax deductibility of bribes to foreign public officials. The "secret commissions" system in particular has been ended. The aim of these provisions is to bring tax law into line with criminal law.

The circular indicates that the legal section of the Act basically contains three amendments to the provisions on bribery. The said amendments concern the definition of active bribery, the definition of the notion of a foreign public official and the definition of the Belgian judge's extraterritorial competence with regard to offences relating to bribery of foreign public officials.

**Text of recommendation:**

5. With regard to sanctions, the Working Group recommends that Belgium:

- b. consider, either as part of the revision of the law on criminal liability of corporations or by any other means, the disqualification by law from public procurement of enterprises that are convicted of bribery of foreign public officials (Convention, Article 3; Revised Recommendation, Section VI ii)).

**Actions taken as of the date of the follow-up report to implement this recommendation:**

The Directorate-General for Criminal Legislation of the Federal Department of Justice (*SPF Justice*) has prepared, in collaboration with the Criminal Police Office, a draft bill amending the law concerning the criminal liability of legal persons.

The bill proposes to abolish the limiting of responsibilities when the offence was not committed intentionally, and to introduce a special penalty of being forbidden to tender for procurement contracts. Also sought was the opinion of the Federation of Belgian Enterprises.

Having been approved by the Council of Ministers on 31 March 2006, the draft reparation bill was submitted to the Council of State which gave its opinion on two separate occasions: 17 May and 6 June, after the bill had been amended. The draft bill was put before the Federal Parliament on 19 February 2007<sup>30</sup>.

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<sup>29</sup> See Annex 16.

<sup>30</sup> See Annex 13.

The new Act of 15 June 2006 on public procurement and certain public works, public supply and public service contracts was published in the *Moniteur belge* on 15 February 2007<sup>31</sup>.

The following are the provisions in the Act which are of direct interest here:

“Art. 20 – The King makes the rules on both right of access and also those concerning the qualitative selection of candidates and bidders.

Unless otherwise dictated by the general interest, participation in any procurement contract is prohibited for candidates or bidders who have been the subject of a sentence pronounced by a binding judicial decision, of which the awarding authority is aware, for having participated in a criminal organisation, bribery, fraud or money laundering.

Art. 24 When, in an invitation to tender, the awarding authority decides to award the contract, the latter must go to the tenderer who has submitted the lowest legitimate bid, failing which a lump sum is payable equal to ten per cent of the amount of the bid, excluding value added tax. The said lump sum may if appropriate be supplemented by a payment designed to make good the entire amount of the loss incurred, if the latter is the result of an act of bribery within the meaning of Article 2 of the Civil Law Convention on Corruption, done at Strasbourg on 4 November, 1999.

Art. 77, 3° The following amendments are made to the Act of 20 March 1991 organising the approval of public works contractors:

1° in Article 1, 2°, the words “the Act on government procurement: the Act of 24 December 1993 on government procurement and certain public works, public supply and public service contracts” are replaced by the words: the Act on government procurement: the Act of 15 June 2006 on government procurement and certain public works, public supply and public service contracts.”

2° in Article 2, sub-paragraph 1 is replaced by the following sub-paragraph: “The present Act shall be applicable to public works contracts as defined in Article 3, 2° of the Act of 15 June 2006 on government procurement and certain public works, public supply and public service contracts, which shall be awarded by the awarding authorities and public enterprises as defined in Article 2, 1° in 2°, of the same Act;”

3° Article 4, § 1<sup>r</sup>, 4°, a), is replaced by the following provision: “4° a) not to be the subject of a sentence pronounced by a binding judgement for:

- participating in a criminal organisation as defined in Article 2, § 1 of Council Joint Action 98/773/JAI;
- bribery, as defined in Article 3 of the the Council Act of 26 May 1997 and in Article 3, § 1 of Council Joint Action 98/742/JAI;
- fraud, within the meaning of Article 1 of the Convention on the protection of the European Union’s financial interests;
- money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering;
- any other offence the nature of which affects the the professional ethics of the entrepreneur.”

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<sup>31</sup> See Annex 15.

**Text of recommendation:**

5. With regard to sanctions, the Working Group recommends that Belgium:
  - c. introduce expeditiously into Belgian tax law a general prohibition on the tax deductibility of any kind of advantage given to a foreign public official (Phase 1 Report; Revised Recommendation, Sections II vii) and IV).

**Action taken as of the date of the follow-up report to implement this recommendation:**

At the request of the Minister of Justice, the Minister of Finance and the Secretary of State for Financial Modernisation and Combating Tax Evasion, this recommendation was adopted in its entirety in the Act of 11 May 2007 modifying the anti-bribery legislation<sup>32</sup> (*M.B.* 8 June 2007).

Article 8 of the new Act introduces a new Article 53, 24° in the Income Tax Code 1992 (ITC 92), which enforces non-deductibility - as professional expenses - of commissions, brokerage fees, trade or other discounts, occasional or other fees, bonuses, all kinds of other payments and advantages which are awarded, directly or indirectly, as elements of public or private bribery in Belgium, as referred to in Articles 246 and 504*bis* of the Criminal Code, or as elements of public bribery of a person exercising a public function in a foreign State or in a public international organisation, as referred to in Article 250 of the same Code.

This provision applies both to personal income tax, corporation tax and the taxation of non-residents. Article 58 (ITC), which introduced the “secret commissions system”, has been abrogated by Article 9 of the new Act.

If the commissions are secret, so that the recipient remains incognito, declaring this sort of commission does not indicate whether the person concerned is exercising a public function or not. As a result, the existing text could not continue to exist without being potentially in contradiction with the non-deductibility rule introduced by Article 53, 24° (ITC).

Article 10 adds to Article 205, § 2, clause 1, 2°, (ITC), the expenses referred to in the new Article 53, 24° (ITC).

Article 11, for its part, amends the provision in Article 207, clause 2 (ITC), by stipulating that the financial or other advantages referred to in Article 219 (ITC), may no longer be exempted from tax by other deductions.

Article 219, clauses 1 and 2, (ITC) makes expenditure not justified by the documents referred to in Article 57, (ITC), as well as concealed profits, liable to a separate contribution which is set at 300% of these elements, with that percentage having to be increased by the supplementary crisis contribution, in pursuance of Article 463*bis*, § 1, 1° (ITC).

Article 12 adds to the list the financial and other advantages referred to in the new Article 53, 24°, (ITC).

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<sup>32</sup>

See Annex 12.

Article 13 adds the advantages referred to in the new Article 53, 24° (ITC) to the elements listed in Article 223, clause 1 of the ITC, which are liable to tax on legal persons.

In 1° of Article 14, the title “clause 1” is inserted in Article 225, clause 2, 4° and 5° (ITC), as a result of the addition of a clause 2 in Article 223 (ITC), by Article 178, 2° of the Act of 27 December 2005 containing various provisions, with effect from 1 January 2006. 2° of the said projected Article adds to the elements taxed at the rate scheduled in Article 215, clause 1 (ITC), the advantages referred to in the new Article 53, 24° (ITC).

Article 463*bis*, § 2, 1° (ITC), stipulating that the flat rates of tax and the 20% minimum scheduled in Article 58 were to be raised by a further 3 centimes, has been revoked by this Article.

## PART II. ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

### **Text of issue for follow-up:**

6. The Working Group will follow up on the issues listed below, in light of evolving practice, in order to check:
  - a. whether the current definition of bribery under Article 246 of the Criminal Code specifically covers the giving of an advantage (Convention, Article 1).

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

Whereas the OECD Convention demands that not only the offer and promise, but also the giving of an advantage be made a criminal offence, Belgian criminal law does not at present criminalise the act of “offering, promising or giving an advantage of any kind.” The current definition of bribery, as set out in Article 246, did not therefore appear to cover the giving of an advantage. This is why the examining team invited the Belgian authorities and the Working Group to follow up and come back to this question once the case law exists.

However, both the Belgian Government and the judicial authorities responsible for applying the legislation are of the opinion that the definition of bribery does indeed apply systematically to the “giving” of an advantage.

If just offering an advantage is punishable, it seems logical that so too would be the immediate giving of an advantage, without there even having been a promise. That said, this has not so far been confirmed by any case law.

Although the Working Group only made this an item to be “followed up” in its report, and did not therefore make any recommendation with regard to modifying the relevant legislation, the Belgian Government is of the opinion that the above-mentioned interpretation of the law needs to be confirmed in law. The expression “giving of an advantage” has therefore been expressly

incorporated in Article 246 as part of the offending behaviour. The Belgian Government wishes to emphasize that it should not be deduced from this that the giving of an advantage was not previously covered by the definition. From its point of view, this always was the case and this interpretation is now incorporated in the legal text.

Articles 3 and 4 of the Act of 11 May 2007 modifying the anti-bribery legislation (*M.B.* 8 June 2007)<sup>33</sup> have had conferred on them the scope of an interpretative law.

Article 3, modifying the anti-bribery legislation, interprets Article 246, § 2 of the Criminal Code as meaning that active bribery also includes: giving, whether directly or through intermediaries, an advantage of any kind to a person exercising a public function, either for that person or for a third party, so that the person acts in one of the ways specified in Article 247.

Article 4, modifying the anti-bribery legislation, interprets Article 504bis, § 2 of the same Code as meaning that active private bribery also includes: giving, whether directly or through intermediaries, to a person with the position of administrator or manager of a legal entity, agent or employee of a legal or natural person, an advantage of any kind, either for that person or for a third party, so that the person performs or refrains from performing a part either of his function or facilitated by his function, without the knowledge and without the authorisation, as the case may be, of the board of directors or the general meeting, of the principal or the employer.

**Text of issue for follow-up:**

6. The Working Group will follow up on the issues listed below, in light of evolving practice, in order to check:
  - b. whether the treatment of the offence of bribery of a foreign public official confirms that the notion of the exercise of the official functions of a public official is broadly conceived (Convention, Article 1).

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

See the reply to recommendation 178 k).

**Text of issue for follow-up:**

6. The Working Group will follow up on the issues listed below, in light of evolving practice, in order to check:

<sup>33</sup>

See Annex 12.

c. whether the human and material resources allotted to the federal police and their attribution allow for effective prosecution of complex cases of foreign bribery (Revised Recommendation, Section I).

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

During the course of 2007, the staff of the Central Office for the Prevention of Bribery (OCRC) will increase from 51 to 64.

All members of staff have experience and/or good training in the field of financial and economic criminality.

There is no section dealing exclusively with foreign bribery cases, the latter being shared between the different sections according to the qualifications and availability of the investigators. Since they are international in nature, these cases are mainly dealt with by the OCRC, the assistance of a district judicial department (decentralised, federal) being exceptional.

Cases of bribery of foreign public officials occur too haphazardly to warrant the existence of a full-time team of investigators.

Also, both the federal police and the Brussels public prosecutor's department have an increased workload simply because of the presence of the European institutions, and particularly OLAF.

## ANNEXES (\*)

- Annex 1. Council of Ministers of 30/06/06
- Annex 2. Opinion of the Privacy Commission, 29 November 2006
- Annex 3. Council of Ministers of 08/03/07
- Annex 4. Decree of 7 July 1998 setting up the Flemish Mediation Office
- Annex 5. VOKA Brochure “Internationaler ondernemen, kansen voor Vlaanderen”
- Annex 6. ONDD application form
- Annex 7. ONDD “enhanced due diligence” procedure
- Annex 8. Draft circular to be sent to all tax department officials reminding them of the general ban, under criminal law, on giving an advantage of any kind to a foreign public official
- Annex 9. Summary records of the inter-departmental group on the “Review of Belgium by the OECD – implementation of the recommendations”
- Annex 10. Act of 31 January 2007 on legal training and setting up the Judicial Training Institute (M.B., 02/02/2007)
- Annex 11. Federal Police training programmes
- Annex 12. Act of 11 May 2007 modifying the anti-bribery legislation (M.B. 8 June 2007)
- Annex 13. Bill amending the Act of 4 May 1999 introducing the criminal responsibility of legal persons
- Annex 14. Act of 9 December 2004 on international mutual legal assistance in criminal matters, amending Article 90<sup>ter</sup> of the Code of Criminal Procedure (M.B., 24/12/2004)
- Annex 15. Act of 15 June 2006 on government procurement and certain public works, public supply and public service contracts (M.B., 15/02/2007)
- Annex 16. Col 9/2007 of the College of Principal Crown Prosecutors: Bribery – Act of 11 May 2007 modifying the anti-bribery legislation

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(\*) The Annexes are available in French only upon request to the Secretariat [Mrs. Axelle Barrey, Anti-Corruption Division, E-mail: axelle.barrey@org].

**Services/authorities involved in drafting this follow-up report:**

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- Federal Department of Justice (*SPF Justice*):
  - Criminal Policy Department;
  - Criminal Legislation Department
  
- Federal Department of Finance (*SPF Finances*)
  
- Federal Department of the Budget and Management Control (*SPF Budget et Contrôle de la Gestion*)
  - Surveillance and Integrity Department
  - Office of Administrative Ethics and Professional Conduct

Justice: Judiciary:

- Assistant Magistrate and Main Co-ordinator of the Network of Experts
- Federal prosecuting authorities

Federal Police:

- Directorate for Combating Economic and Financial Crime (DGJ-DJF)
- Central Office for the Prevention of Bribery – Federal Police Directorate for Combating Economic and Financial Crime: (DGJ/DJF/OCRC)

Strategy Unit of the Minister for the Civil Service

Strategy Unit of the Minister for Employment

Strategy Unit of the Minister of Justice

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