

## SURVEY OF ANTI-CORRUPTION MEASURES IN THE PUBLIC SECTOR IN OECD COUNTRIES: BELGIUM

### 1. What anti-corruption mechanisms exist for the public sector in your country?

#### a) *Legislation proscribing corrupt activities and establishing sanctions*

Comprehensive legislation in the Penal Code (Articles 246 to 253) governs active, passive and attempted active corruption.

An anti-corruption bill, tabled in the Chamber of Representatives, defines the concept of corruption, extends proscription to attempted passive corruption and to foreign and international public officials, and prescribes heavier sentences (new version of Articles 246-252 of the Penal Code).

The new Article 314 (1 May 1997) of the Penal Code punishes anyone interfering with or impeding the freedom of the public procurement bidding process by gifts, promises or any other fraudulent means.

#### b) *Other anti-corruption regulations or orders*

The Law of 7 April 1995 has extended the measures preventing money laundering to cover offences relating to the corruption of public officials.

Financial institutions must now inform the *Cellule de traitement des informations financières (CTIF)*, the financial information processing unit, of any suspicious operations. If their suspicions are confirmed, the *CTIF* reports the facts to the *Procureur du Roi* (crown prosecutor).

Under the ordinary and special laws of 2 May 1995, there is a legal obligation on all civil servants, ministers (at Federal and regional levels) and their political staff, and all parliamentarians to declare their assets and financial interests. These laws are currently under review.

#### c) *Oversight by the legislature or parliament (directly or through scrutiny committees)*

- Parliamentary control is possible, via scrutiny committees, and a Senate Commission of Enquiry on Organised Crime is currently completing its enquiry.
- There is still no scrutiny committee specifically on corruption, but it could be established.

#### d) *Investigation systems or bodies with powers to investigate corrupt activity*

All police departments have the authority to investigate cases of corruption.

On 1 January 1998 the former *Comité supérieur de contrôle* (higher committee for control) became a special anti-corruption branch of the *Commissariat général de la Police judiciaire* (general criminal police), to be known as the *Office central pour la répression de la corruption*. A prosecuting counsel from the Brussels Court of Appeal is to define the mandate and investigation arrangements. That counsel is to some extent answerable to the Ministry of Justice.

Therefore the *Commissariat général* of the *police judiciaire* contains not only the OCRC, but also the National Brigade (BNB) specialised in serious crimes, and the *Office central de la lutte contre la délinquance économique et financière organisée* (OCDEFO) combating organised economic and financial crime.

**e) *Supreme financial audit authority***

The *Cellule de traitement des informations financières (CTIF)* is an independent body with a legal personality and derives its budgetary resources from controlled financial institutions. Under the joint control of the Ministers of Justice and Finance, it is an autonomous administrative body with judicial authority, run by a magistrate appointed by royal order.

The CTIF records statements relating to suspicions of money laundering. After consideration, cases of money laundering are forwarded to the judicial authorities.

The OCDEFO (*Office central de lutte contre la délinquance économique et financière organisée*), a central office combating organised economic and financial crime, reports to the *Service général d'appui policier* (general police support service) and, as from 1 January 1998, to the special branch of the *Commissariat général de la police judiciaire*. Its duties include police enquiries, documentation and analysis and its specialist areas are money laundering, serious fraud, stock-exchange fraud and financial fraud. It also has a department specialising in CTIF investigations. The Office works under the supervision of a national magistrate and heads of police departments.

**f) *Ombudsman***

There are ombudsmen (*médiateurs*) in various government departments. They do not focus particularly on corruption issues since corruption, as a criminal activity, is prosecuted and sanctioned by the judicial authority.

We are not aware that a corruption case has ever been initiated by an ombudsman, nor that ombudsmen have any impact when it comes to combating corruption.

**g) *Bodies to enforce sanctions and prosecute corrupt activity, e.g. specialised prosecutors, investigators, courts, tribunals, etc.***

With the exception of comments under sub-paragraph d) on investigators. One or more magistrates are to specialise in “white-collar” crime including corruption, one of them being the future magistrate in charge of the special branches of the *Commissariat général de la police judiciaire*.

***h) Human resources management procedures intended to prevent corruption***

No.

***i) Financial management controls intended to prevent or deter corrupt practices***

Yes, see the answer to *Question 1 (b)*.

Procedures are developed with the CITF and the OCDEFO, but are part of broader procedures to combat money laundering.

***j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity***

- Reform of the Law on public procurement with a view to improving competition and rendering decision-making more transparent.
- Law on political party funding and transparent accounting with the establishment of a parliamentary commission to audit electoral expenditure and political party accounts.

***k) Transparency mechanisms e.g. independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity***

- Law on the need to give reasons for all administrative decisions (29 July 1991).
- Law on public access to the administration (11 April 1994), providing for the consultation of administrative documents, subject to certain conditions and restrictions.

***l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)***

The Flemish Parliament approved on 22 October 1997 a code of conduct for the Flemish representatives in relation to service to the public. It is their intention that all Flemish politicians, whether at federal, local, European or any other level, subscribe to this code.

***m) Other measures intended to control, detect or deter corruption.***

No.

**2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?**

- Greater specialisation and professionalisation for those involved in combating corruption on the ground (investigators and magistrates).

- Phasing-in of a more appropriate set of legal measures to combat corruption in the modern world.

Given the pressure generated by public opinion (media, Parliament) and recent scandals, political decisions are to be taken. Greater control is to be exercised over electoral campaign funding and political party accounts.

**3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?**

No evaluation exists as yet.

Recorded statistics do not make a distinction between corruption and related offences which, in criminal terms are more serious, such as fraud or forgery.

**4. What if any new actions against corruption in the public sector is your country currently considering?**

The establishment of an *Office central spécialisé*. See also the responses to *Questions 2* and *5*.

**5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?**

The federal government's current programme includes a paragraph on combating corruption, the aims being:

- to make passive corruption a criminal offence;
- to remove the right to hold certain public posts, duties or offices;
- directly or indirectly to prevent any enterprise convicted of corruption from taking part in public procurement and to withdraw approval from entrepreneurs convicted of corruption.

Preparations for implementing this *ad hoc* programme are now under way and an in-depth study of government policy in this area is to be conducted by an independent expert.