

BELGIUM

● Little to no enforcement

1.8% of global exports

Investigations and cases

In the period 2016-2019, there were at least five investigations, an unknown number of cases commenced and no known cases concluded with sanctions. The number of investigations is based on media reports.

In 2017, the Brussels public prosecutor's office was reported to be investigating a multi-million dollar deal reached between Belgian company **Semlex** and the Democratic Republic of Congo to produce biometric passports; this followed a Reuters investigative report about the contract.¹ Belgian police reportedly searched the company's headquarters in 2018,² but the authorities have made no further comment on the investigation since then. The Organized Crime and Corruption Reporting Project (OCCRP) ran a story in 2019 about investigations in Kyrgyzstan concerning alleged irregularities in a multi-million dollar procurement of biometric passports won by a Lithuanian company that, according to OCCRP, has a Belgian company behind it.³ OCCRP released a further report in 2020 alleging Semlex bribery in Madagascar to win a lucrative contract to produce passports.⁴ In May 2020, Congolese citizens and international campaign groups filed a petition to be recognised as *partie civile* (civil party) to the ongoing

investigation in Belgium.⁵ No other ongoing cases in Belgium involving foreign bribery are cited here, because they are not public or are unknown to the authors.

In other jurisdictions, an Argentinian company, 50 per cent owned by the Belgian dredging company **Jan De Nul**, was cited in the media in connection with the major *cuadros* (bribe books) scandal, referring to alleged bribes paid by construction companies to members of the Argentine government in exchange for advantageous contracts during the Kirchner era.⁶

Recent developments

There have been no significant developments in Belgium since the *Exporting Corruption Report 2018*.

Transparency of enforcement information

Belgium does not publish statistics on the number of opened foreign bribery investigations, cases commenced or cases concluded, nor does it publish any data on requests for mutual legal assistance made and received. A November 2015 general prosecutor's circular requires recording of data for economic, financial and corruption offences, but does not require their publication.

There is an official database for court decisions⁷ (*jurisprudence*), though this does not include out-of-court criminal settlements. However, each court can autonomously decide whether to publish its rulings and as such, the database mostly contains rulings of the Supreme Court (*Cour de cassation*). There are several other databases that can be used to find court decisions, but as is the case in numerous

¹ <https://www.reuters.com/investigates/special-report/africa-passports-karaziwan/>; https://www.rtbef.be/info/societe/detail_passe-droits-et-marche-tronques-la-societe-semlex-dans-le-collimateur-de-la-justice?id=9794251

² <https://www.reuters.com/article/us-africa-passports-semlex/police-search-offices-of-belgian-company-supplying-passports-to-africa-idUSKBN1F61Z6>

³ <https://www.occrp.org/en/investigations/multimillion-passport-deal-under-investigation-in-kyrgyzstan>

⁴ <https://www.occrp.org/en/biometric-bribery-semlex/belgian-passport-maker-paid-bribes-to-win-madagascar-contract>

⁵ <https://www.reuters.com/article/us-congo-passports-belgium/congolese-citizens-bring-civil-action-in-belgium-against-passport-maker-idUSKBN22P2ZB>; <https://www.fidh.org/en/region/Africa/democratic-republic-of-congo/congo-s-passportgate-fidh-ldh-unis-and-51-victims-initiate>. The International Federation for Human Rights (FIDH), the League for Human Rights (Belgium – *Ligue des droits humains*) and UNIS (Pan-African Anti-Corruption Network) filed a civil party petition on 8 May 2020 in the criminal investigation into the Semlex case. Fifty-one Congolese victims have also filed as civil parties as part of the "Congo is not for sale" campaign.

⁶ https://www.rtbef.be/info/economie/detail_-entreprise-belge-jan-de-nul-citee-dans-un-enorme-scandale-de-corruption-en-argentine?id=10000515

⁷ <https://www.tribunaux-rechtbanken.be/fr/ik-zoek/jurisprudence>; <http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=fr>

jurisdictions, these are accessible only to those with a paid subscription.⁸

Beneficial ownership transparency

There is a central register of ultimate beneficial ownership (UBO) information on companies and trusts. The beneficial ownership information of companies is accessible to law enforcement agencies and is also open to the public, with some limitations on content (e.g. address and date of birth might not be listed).⁹ The information on trusts is only accessible to law enforcement agencies and persons with a legitimate interest. The central register was introduced after transposition of the 4th EU Anti-Money Laundering Directive of 2015 into Belgian law in 2017¹⁰ and into a regulation in 2018.¹¹ Information on the new legislation on UBOs was set out by the Federal Public Service – Finance¹² and the register can be accessed through the service's website.¹³ UBOs must be registered for trusts or other similar legal entities or arrangements.¹⁴ This is done in the same register as the one used for companies. Companies and trusts have been required to comply since 2019.

Inadequacies in legal framework

The statute of limitations framework does not allow adequate time to conduct foreign bribery investigations and prosecutions. The statute of limitations generally applicable to corruption cases is five years, although with suspension and interruption rules, the limitation period can be extended in practice to a maximum of 10 years (although exceptions may apply). Belgium currently

has no legislation for the protection of whistleblowers in the private sector, though like all EU Member States it will be required to transpose the EU Directive on Whistleblower Protection by the end of 2021. The dual criminality requirement for foreign bribery remains.¹⁵

Inadequacies in enforcement system

In 2019, the Council of Europe's Group of States against Corruption (GRECO) report on Belgium found that the Belgian Federal Police is in crisis – in particular, the departments tasked with combatting corruption.¹⁶ It lacks resources, is suffering an exodus of personnel towards the better resourced local police forces and has an ageing workforce. According to the unions, there is a shortfall of about 2,500 staff members in a total workforce of 12,000.¹⁷

According to GRECO, the specialised anti-corruption unit, the Central Anti-Corruption Office, saw staff numbers fall from 120 in the 2000s to 66 in 2018, with only 39 of these 66 posts being filled. As a result, the office is reported to have become “purely reactive”, conducting inquiries solely in response to complaints or press articles, and has neglected the proactive elements of anti-corruption police work.¹⁸

There is no evidence of Belgium implementing previous OECD WGB recommendations to make public the settlements concluded in foreign bribery cases.

Recommendations

- Publish statistics on the number of opened foreign bribery investigations, cases commenced and cases

⁸ Including Jura, <https://jura.kluwer.be/beforelogin.aspx?lang=fr>, and Strada Lex, https://www.stradalex.com/Stradalex/fr/publichome/html/display/homepage?redirect_counter=1.

⁹ https://finances.belgium.be/sites/default/files/20190719_FAQ_UBO_FR_%20OCC%202.pdf, paragraph 2.7, p.25.

¹⁰ https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2017091806

¹¹ *Arrêté royal du 30 juillet 2018 relatif aux modalités de fonctionnement du registre UBO* (the “Anti-Money Laundering Order”) http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi

¹² https://finances.belgium.be/sites/default/files/20190719_FAQ_UBO_FR_%20OCC%202.pdf

¹³ <https://finances.belgium.be/fr/E-services/ubo-register/acces#q1>

¹⁴ https://finances.belgium.be/sites/default/files/20190719_FAQ_UBO_FR_%20OCC%202.pdf, paragraph 2.1.3, p.7,

¹⁵ Article 10 quater, paragraph 2 of the Preliminary Title of the Belgian Code of Criminal Procedure (*Titre préliminaire du Code d'instruction criminelle*)

¹⁶ GRECO Evaluation Report on Belgium, 5th Evaluation Round, December 2019, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680998a40>

¹⁷ <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680998a40>, p.31

¹⁸ <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680998a40>, p.31

concluded • Introduce legislation that protects whistleblowers in the private sector and implements the EU Directive on Whistleblower Protection in a manner consistent with international best practice • Extend the limitation period for foreign bribery to allow adequate time for investigations and prosecutions • Remove the requirement of dual criminality for prosecution of bribery of foreign officials and trading in influence • Publish criminal settlements in foreign bribery cases, as part of a reform to increase transparency of settlements • Increase funding and resources for public bodies tasked with combatting corruption (especially the Federal Police), enabling them to adopt a proactive rather than reactive approach.