



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Belgium

Review by Mexico and the Netherlands of the implementation by Belgium of articles 15 - 42 of Chapter III. “Criminalization and law enforcement” and articles 44 - 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Belgium of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Belgium, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Mexico and the Netherlands, by means of telephone conferences and email exchanges and involving the following experts:

Belgium:

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Mexico:

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6. A country visit, agreed to by Belgium, was conducted in Brussels from 1 to 3 June

2016. During the on-site visit, meetings were held with the Ministry of Justice, the Federal Prosecutors Office, the General Prosecutors Offices of Ghent and Liège, the Court of First Instance of Mechelen, the Central Organ for Seizure and Confiscation, the Central Service against Corruption at the Federal Police, the Financial Intelligence Processing Unit, the Ministry of Budget, the Belgian Integrity Centre, Transparency International Belgium, ICC Belgium, the University of Ghent, Price Waterhouse Cooper and the Federation of Belgian Enterprises.

III. Executive Summary

Belgium

1. Introduction: Overview of the legal and institutional framework of Belgium in the context of implementation of the United Nations Convention against Corruption

Belgium signed the Convention on 10 December 2003. Following the federal Parliament's ratification, the law for its approval was signed by the King on 8 May 2007, allowing its entry into force on 28 November 2008. Subsequent to the approval of the community-level parliaments, Belgium deposited its instrument of ratification with the Secretary-General on 25 September 2008.

Belgium is a federal parliamentary democracy under a constitutional monarchy and a federal state, composed of three communities and three regions. The communities and regions have the same standing as the federal authority and their legislation has equal force in law. While regions and communities to a large extent have devolved powers from the federal system, a certain number of laws, such as the Criminal Code (CC), the previous title of the Criminal Procedure Code (PT CPC), the Criminal Procedure Code (CPC) and the Anti-Money Laundering Law, are adopted at the federal level, but are applicable throughout Belgium. These laws, together with the Law on the Protection of Witnesses under Threat, the Law on Extradition and the Law on Mutual Legal Assistance form the anti-corruption legal framework in Belgium.

The authorities with relevant anti-corruption mandates include the Central Office for the Repression of Corruption (OCRC) within the Federal Police, the Financial Information Processing Unit (CFI-CTIF), the Central Body for Seizures and Confiscations (COSC), the Federal Prosecutor's Office and the Federal Public Service of Justice.

Belgium is a member of the European Union, the OECD, the Council of Europe's GRECO and FATF, among other international organizations.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials are criminalized (CC articles 246 and 247). The term "public official" is interpreted broadly and covers all persons who exercise public duties, including candidates for public functions who induce others to believe that they are in charge of these duties. Bribery committed by police officers, prosecutors, judges, arbitrators and jury members is considered an aggravating circumstance (CC arts. 248 and 249).

All the Convention's elements of active and passive bribery are present in the national definition. The definition explicitly covers third-party benefits. The "undue advantage" has a wide scope (CC art. 246) and includes any advantage, e.g. sexual favours, preferential treatment and symbolic and honorific advantages.

While there are no established rules in relation to gifts given to public officials, case law indicates that the threshold for what is deemed unacceptable could include gifts of nominal value. CC articles 246 and 247 cover both “wrongful” acts, i.e. acts outside of the official duties as well as “fair” acts, i.e. lawful actions that would have been carried out even in the absence of bribery. Active and passive bribery are seen as autonomous offences.

CC article 250, read in conjunction with articles 246-249, covers active and passive bribery of foreign public officials and officials of public international organizations.

Bribery in the private sector is criminalized (CC arts. 504bis and 504ter) and applies to, among others, the commercial sector, non-profit organizations, and volunteering and sports organizations. However, article 504bis limits the scope of application through the requirement that bribery be committed “without the knowledge and without the authorization, as the case may be, of the administrative board or the general meeting, the principal or the employer”.

Trading in influence is partially criminalized (CC art. 247, para. 4), as only the use of influence by public officials is covered and does not extend to the private sector or the private sphere. The offence does not require the influence to produce the intended results.

Money-laundering, concealment (arts. 23 and 24)

Both money-laundering and concealment are criminalized (CC arts. 505 and 505bis, read with arts. 42 and 43bis on confiscation). Money-laundering is at times referred to as extended concealment. The CFI-CTIF was established as an administrative body through Law of 11 January 1993 on Preventing Use of the Financial System for Purposes of Money-Laundering and Terrorist Financing. Participation in and attempted money-laundering are covered by the general provisions of the CC (arts. 66 and 67). Any criminal offence according to Belgian legislation can constitute a predicate offence. Predicate offences committed abroad are subject to dual criminality. Nevertheless, Belgium always considers the underlying conduct in such cases. Despite the extensive reach of article 505 CC, in certain circumstances fiscal fraud is not criminalized and does not constitute a predicate crime.

Self-laundering is criminalized.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The CC provides for the crimes of embezzlement, misappropriation and other diversion of property by public officials in articles 240-245. Belgium relies on a wide definition of property, which includes, among others, funds, documents, titles and acts, and real estate assets. In addition to articles 240-245, article 491 is a general provision on embezzlement of goods. There is no specific provision on embezzlement of property in the private sector, but the conduct could fall within the scope of article 461 on theft and article 492bis on abuse of corporate assets.

Abuse of functions or “concession” is criminalized (CC art. 243). Provisions on confiscation, the abuse of power, taking interest and the abuse of trust by public officials are also relevant (CC arts. 42, 151, 245 and 491). Illicit enrichment is not codified in a stand-alone provision in Belgian law; however, CC articles 43quater and 246-251 cover property derived from a criminal act and criminalize unjustified enrichment. The Court of Audit (Court des Competes) receives parliamentarians’ asset declarations as well as those for high-ranking public officials (e.g. Ministers, etc.). Their family members have no disclosure obligation.

Obstruction of justice (art. 25)

Obstruction of justice is criminalized through the CC provisions on false testimony and perjury (arts. 215-226), threats (arts. 327-330bis) and assaults on public officials (arts. 278, 279, 279bis and 280). Particularly relevant are articles 223 and 224 which criminalize bribery of witnesses, experts and interpreters, rendering the bribers liable to the same punishment as the person who provides the false testimony.

Liability of legal persons (art. 26)

Criminal liability of legal persons is established (CC art. 5). Article 5 provides for the possibility of the simultaneous prosecution of both the natural and the legal person involved. Sanctions include fines, confiscation, dissolution, closure of establishments, prohibition to exercise certain activities, or publication and dissemination of the judgment (CC arts. 7bis, 35-37bis and 41bis). However, article 5 stipulates that “only the person who committed the most serious offence may be sentenced”, which renders the legal text uncertain and seemingly discretionary.

The correctional sanctions foreseen in the Criminal Code are converted into pecuniary sanctions through a schedule. Governmental, regional, communal and provincial bodies are not considered legal persons under article 5. Legal persons also have a civil liability.

Participation and attempt (art. 27)

Participation in corruption offences is covered by the general provisions of the CC (arts. 66 and 67). In the absence of explicit incrimination, attempt is not punishable in Belgian law. Belgium has not criminalized attempt legislatively in the context of corruption offences. However, in the application of the law, Belgium showed it is able to prosecute also attempted acts of corruption. Furthermore, attempt is criminalized in the case of money-laundering (CC art. 505). Preparation of corruption offences is not punishable.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Corruption offences are punishable by imprisonment, fines and confiscation (CC art. 42), as prescribed under the relevant provisions of the CC. Pecuniary fines are regularly updated through a schedule allowing for their multiplication by factors depending on the severity of the crime (the Law of 5 March 1952 on Surcharges on Criminal Fines with subsequent updates).

Article 88 of the Belgian Constitution establishes the King’s absolute immunity during his reign and which does not extend to his family. Members of the federal, regional and community parliaments cannot be prosecuted without the consent of their respective Parliament (arts. 58, 59 and 120 of the Constitution). Following a legislative measure in 2014, a Federal Commission of Ethics and Integrity has been established with an oversight function for the bi-cameral Federal Parliament. It is in the process of drafting internal regulations, a Code of Conduct and a Code of Ethics for parliamentarians. Public officials do not enjoy any immunities, other than as described above. The court of appeal has jurisdiction over cases against ministers, judges, and members of community and regional governments (Constitution arts. 103 and 125).

With regard to the discretionary legal powers of the prosecution authorities, the prosecutor applies the principle of opportunity for criminal proceedings. Any decision to halt or refrain from prosecution is subject to review by superiors and

must be motivated as well as be in the interest of the public according to the criminal policy guidelines (CPC art. 28quater).

Release on bail (CC arts. 113-26) is possible at any stage of the criminal action and can be requested by the defendant; it is based on the considerations of the prosecutor (CC art. 114). Early release and conditional release are regulated by articles 24-28 and 47 of the 2006 Law on the External Legal Status of Persons Convicted to a Prison Sentence and the Rights Accorded to Victims in the Frame of the Modalities of Sentences. Due consideration shall be given to the gravity of the offence prior to any such release, including the attitude of the sentenced person with respect to the victims and efforts to compensate the civil party after conviction (CC art. 47).

The 1937 Royal Decree on the Statute of the Agents of the State sets out the disciplinary sanctions that may be imposed on public officials. These include, among others, relocation, temporary suspension, demotion and removal (arts. 77-81bis). The Decree requires that disciplinary proceedings be suspended if criminal proceedings are initiated (art. 81, para. 3) and that they only continue once the results of the criminal proceedings are communicated to the relevant minister (art. 81, para. 5). The CC includes additional sanctions, such as the prohibition to serve in public functions, including state owned enterprises, and to be elected (arts. 31-34).

Belgium does not provide for any specific immunities or incentives for persons who cooperate with law enforcement in corruption cases. However, based on the judges' discretion and appreciation of any mitigating circumstances (such as cooperation) the CC foresees the reduction or modification of the criminal penalties (arts. 79-85). There is also a general provision in the CPC on the possibility of out-of-court settlements between the defendant and the prosecutor (CPC art. 216bis), where criminal liability need not be accepted, but civil liability shall be imposed. The latter includes indemnification of victims and the returning of any proceeds of crime. Such an agreement must be validated, but cannot be amended, by a judge. On 2 June 2016, the Belgian Constitutional Court in its decision No. 83/2016, found the limited involvement and role of the judge in this proceeding unconstitutional (Constitution arts. 10, 11 and 151). Steps are taken to amend the law.

Protection of witnesses and reporting persons (arts. 32 and 33)

The 2002 Law on the Protection of Witnesses under Threat establishes various measures for physical protection, identity protection, relocation and safe integration of witnesses and their families, as well as victims and experts. The Witness Protection Commission is in charge of granting protection measures. Witnesses can be granted anonymity during the criminal proceedings (CPC art. 75bis) and can be allowed to give evidence through videoconference or closed-circuit television (CPC art. 112). In addition, numerous rights are accorded to victims at various stages of the criminal proceedings (see e.g. CPC arts. 63 and 67).

Belgium has entered into agreements with several States for the reciprocal relocation of witnesses.

Under article 29 of CPC, all public officials must report to the Prosecutor any crime they have become aware of. In addition, public officials must also inform their superiors (art. 7 of the 1937 Decree on the Statute of the Agents of the State), but they can opt for a confidential reporting. In 2013, Belgium has adopted the Law on the Reporting of Suspected Violations of Integrity in Federal Administrative Authorities, which gives the federal staff the possibility to confidentially report violations of integrity, including corruption to the Integrity

Centre as a division of the federal Ombudsman. Federal staff that make use of this procedure are relieved from the obligation to report to the prosecutor. In order to improve the accessibility of this procedure, each federal service is required to establish one or more “Persons of Confidentiality” per language group. The law includes automatic protection from sanctions or retaliation for the whistle-blower, the persons involved in the investigation of the reported wrongdoing and their counsellor. Abusive reports are sanctioned.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The direct confiscation of proceeds of crime as well as confiscation of property of a corresponding value to that of the proceeds of crime (“value confiscation”) are foreseen through CC articles 42 and 43bis/ter. These provisions also cover the confiscation of instrumentalities, as well as objects of crime and proceeds of crime that are transformed, converted into or intermingled with other property. All confiscation must be based on a prior conviction and is deemed a penalty. The Law of 11 February 2014 on the facilitated execution of pecuniary penalties and recovery of trial costs establishes asset tracing for the purposes of confiscation pre- and post-sentencing (e.g. in order to pay for any outstanding confiscations, penal fines and trial costs).

CPC articles 35, 35bis and 35ter regulate the seizure procedures. The Central Office for Seizure and Confiscations (COSC) has been established within the judiciary as a principal public institution responsible for the execution of confiscation orders and the management of seized assets. However, there is no reliable centralized database of confiscated assets, and consequently no statistics and data on confiscation in general are available yet. The Belgian Ministry of Justice is currently developing a computerized accounting system (NAVISION).

Once a person is convicted of a corruption offence, the division of the burden of proof is used for extended confiscation (CC art. 43quater). Confiscation from a third party is legally possible but shall not prejudice the rights of bona fide third parties. Articles 44 and 43bis of CC and articles 1382 and 1383 of the Civil Code safeguard the rights of bona fide third parties to claim restitution and damages.

The prosecutor can request the production of bank and financial records directly from any financial institution (CPC art. 46quater) as well as initiate tracing of assets. The Belgian National Bank has established a register of all bank account holders’ names. However, at present only COSC and fiscal authorities can consult the list and thereby know from which financial institutions they must request information (1992 Tax Code art. 322, para. 3) and the register is only updated annually. New legislation has been enacted (Law of 1 July 2016). Under the new legislation the Belgian CFI-CTIF, prosecutors, (investigating) judges and notaries also have access to the central register of bank accounts.

Statute of limitations; criminal record (arts. 29 and 41)

The length of the statute of limitations for corruption offences varies between five and ten years starting from the day when the offence was committed (CPC arts. 20-29). The statute of limitations can be interrupted (art. 22) or suspended (art. 24), which in turn can lead to considerably protracted investigations and prosecutions. Such delays have also resulted in more lenient sentencing by the judges.

With regard to consideration of previous convictions for the purpose of using such information in criminal proceedings, Belgium participates in the European Criminal Records Information System (ECRIS). ECRIS allows for the information exchange on convictions within the European Union. Belgium stated that due to the transnational nature of corruption, the Prosecution would always seek to present any previous conviction also in jurisdictions outside the European Union as part of the case.

Jurisdiction (art. 42)

Acts committed within Belgium or on board Belgian vessels or aircrafts fall within Belgian jurisdiction. The active and passive personality principles and the principle of State protection are established (PT CPC arts. 7, 10quater, 11, 12 and CC arts. 3 and 4). In order to exercise extraterritorial jurisdiction based on active and passive personality principle, the dual criminality requirement needs to be fulfilled.

With regard to jurisdiction over preparatory acts to money-laundering, Belgium applies the doctrine of ubiquity which allows for an offence to be considered in Belgium if a part or consequences of the offence take place in Belgium (CC art. 3).

Belgium consults with other States when it becomes aware of a relevant foreign investigation or proceeding, in particular in the context of Eurojust and the European Judicial Network on Criminal Matters.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Royal Decree No. 22 of 24 October 1934 as well as the Laws on Public Procurement (15 June 2006) and Awarding of Public Contracts (15 July 2011) contain a wide range of applicable measures where corruption offences have been involved. These range from interdiction to hold certain professional functions, to prohibition to seek public contracts.

A person who suffered damage as a result of crime can claim damages within criminal proceedings (CPC art. 3) or in separate civil proceedings (Civil Code arts. 1382-1387). The plea-bargaining procedure (CPC art. 216bis) requires that victims be restituted whatever assets they may have lost and be duly compensated.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The Central Office for the Repression of Corruption (OCRC) is the principal investigative anti-corruption agency and is located within the federal police. The OCRC is empowered to coordinate national operations, support police services, and carry out research and monitoring functions. Special training is provided to OCRC investigators.

The Federal Prosecutor's Office is responsible for dealing with crimes exceeding the competence of local prosecutors, including money-laundering, organized crime, as well as federal and international corruption. The College of Prosecutors General has established a specialized network of prosecutors with anti-corruption expertise.

Exceptions exist for the officials of tax authorities who cannot report a crime to the Prosecutor without prior notification to their regional director. The regional director collects and assesses the reports and, as a public official, is still obliged to report crimes to the Prosecutor.

The Financial Information Processing Unit (CFI-CTIF), established by the Royal Decree from 11 June 1993, is an independent administrative FIU in charge of analysing suspicious financial transactions for money-laundering and terrorist financing. CFI-CTIF guides the national anti-money laundering and anti-terrorist financing plans.

Financial institutions, insurance companies, real estate agencies, investment companies, notaries, lawyers, auditors and judicial officers must report suspicious financial transactions to the CFI-CTIF (art. 2 of the 1993 Law on the Prevention of the Use of the Financial System for the Purposes of Money-Laundering and Terrorist Financing).

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- In seizure matters, Belgium allows the suspect to reclaim the seized asset in exchange for money. This approach lifts the burden of managing and maintaining the seized property from national authorities (art. 31).
- The broad range of protection measures available under the 2002 Law on the Protection of Witnesses under Threat (art. 32).

2.3. Challenges in implementation

The following actions are recommended to further strengthen the existing anti-corruption framework:

- Establish clear rules on public officials receiving gifts and consider introducing a system through which public officials record any gifts received (art. 15).
- Consider extending the scope of the offence of trading in influence (CC art. 247, para. 4) to also include the private sector and the private sphere (art. 18).
- Consider including the element of third party benefits in the definition of abuse of functions (CC art. 243) (art. 19).
- Continue strengthening legislative and other measures concerning illicit enrichment in line with the Convention, including broadening the obligation to disclose and declare assets to also include family members of public officials (art. 20).
- Remove from CC article 504 bis the requirement that bribery be committed “without the knowledge and without the authorization, as the case may be, of the administrative board or the general meeting, the principal or the employer” (art. 21).
- For the sake of legal clarity, ensure that the definition of embezzlement of property in the private sector is enhanced in line with the Convention (art. 22).
- Amend CC article 505 to ensure that fiscal fraud is not excluded from the scope of predicate crimes and cannot be used to avoid prosecution for money-laundering and its predicate offences (art. 23, para. 2(a)).
- Consider removing from CC article 5 “only the person who committed the most serious offence may be sentenced” in order to enhance legal clarity (art. 26, para. 1).
- Ensure that the application and practice regarding the statute of limitation does not pose an impediment to the expedience and efficiency in the administration of justice and, to this end, continue to monitor its application (art. 29).
- Ensure adequate transparency, predictability and proportionality in entering into plea bargains and out-of-court settlements (art. 30, para. 1).
- Continued vigilance is required to ensure that the far-reaching immunities of parliamentarians do not present an obstacle to the prosecution of corruption cases (art. 30, para. 2).
- Consider enhancing the current COSC-managed central database of seized and confiscated property and assets, and ensure it is updated regularly (art. 31, para. 3).
- Consider taking measures to provide protection for “any person” who reports to the competent authorities, and not only civil servants (art. 33).

•While welcoming the recent legal amendment to broaden access to the Belgian National Bank's register of all bank account holders' names, which took place after the country visit, Belgium is encouraged to ensure that the register be kept up to date (art. 40).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Belgium regulates extradition through the 1874 Law on Extradition (LoE), article 6 of the 1833 Law on Extradition and case law of the Belgian Supreme Court. Belgium makes extradition conditional on the existence of a treaty (LoE art. 1). However, the treaty requirement is applied in a broad sense and the Convention can serve as a legal basis for extradition in the absence of applicable treaties or where bilateral treaties have become inadequate in terms of extraditable offences.

Belgium is a party to the Council of Europe (CoE) European Convention on Extradition (1957) and its first two supplementary protocols (1975 and 1978). At the European Union (EU) level, the Council Framework Decision on the European Arrest Warrant is applicable. Belgium has also concluded bilateral extradition treaties with 41 States, although some are obsolete which limits the scope and legal basis notably outside of EU.

The LoE relies on the principle of reciprocity. The minimum penalty requirement for extradition is twelve months and captures most offences under the Convention. While Belgium applies the dual criminality principle without exceptions (LoE art. 1§2), it focuses on the underlying conduct of the offence and not its qualification.

Extradition for accessory offences is possible (LoE art. 1, para. 3). The Convention offences are not considered political offences (art. 6 of the 1833 LoE).

The Global Ministerial Circular on Extradition (2005) provides for simplified proceedings in cases where the person, whose extradition is sought, gives their consent. The planned ratification of the third Protocol to the CoE Convention will allow for further expediting of extradition proceedings.

Provisional arrest of a person sought can be ordered on a case by case basis (LoE arts. 3 and 5) and an INTERPOL Red Notice can serve as a sufficient basis for provisional arrests. In exceptional cases it is possible to order the release on bail or to take other alternative measures, such as passport confiscation or regular police monitoring.

Belgium does not extradite its nationals (LoE art. 1). In cases involving its nationals, the requesting State Party is informed and simultaneously invited to denounce the acts and transmit all usable elements (the case file) with the purpose to initiate domestic prosecution against them in Belgium, in line with the principle *aut dedere, aut judicare*. The only exception is the scheme of European arrest warrants (EAWs), which allows for the extradition of Belgian nationals to other EU member States as long as the prescribed conditions are met.

Enforcement of foreign sentences in cases where extradition is refused is possible under the Convention on the International Validity of Criminal Judgments (1970), the Protocol to the 1983 CoE Convention of Transference of Sentenced Persons (1997) and the Convention implementing the Agreement of Schengen.

Fair treatment of the persons whose extradition is sought is ensured through the general provisions of CPC. The reasons for refusal of extradition include

discrimination on the grounds of race, religion, nationality or political opinions (LoE art. 2bis; ECHR arts. 3, 6, 8n and 14), but the grounds of ethnic origin and gender are not explicitly mentioned. The extradition is not refused on the ground that the offence involves fiscal matters (European Extradition Convention 1957 and its Second Protocol of 1978). In practice, Belgium has refused extradition because the prosecution of the requested person would be time-barred according to Belgian law.

Transfer of sentenced persons is possible under the Law on the Transfer between States of Sentenced Persons (1990), the CoE Convention on the Transfer of Sentenced Persons (1983), the EU Council Framework Decision on the Application of the Principle of Mutual Recognition to Judgments in Criminal Matters (2008) and a bilateral treaty concluded with Morocco on the transfer of sentenced persons. Dual criminality and the person's consent are required for the transfer.

Transfer of criminal proceedings is conditional on the existence of a treaty. The European Convention on Mutual Legal Assistance in Criminal Matters (1959, ECMLA) and bilateral agreements with Algeria and Thailand are relevant in this regard.

Mutual legal assistance (art. 46)

Mutual legal assistance (MLA) is provided on the basis of the Law on MLA (2004, LMLA), the European Convention on MLA in criminal matters (1959, ECMLA) and several bilateral MLA treaties. MLA can also be granted on the sole basis of reciprocity (LMLA art. 4, para. 1). In addition, the Convention can serve and has been already used as a legal basis for MLA. Belgian authorities render MLA on the basis of dual criminality. The only exception exists for EU, CoE and several States that Belgium has bilateral MLA treaties with, where Belgium may provide non-coercive MLA in the absence of dual criminality.

Article 3 of LMLA states that MLA is to be provided in the "broadest terms possible", and can encompass all the purposes listed in the Convention's subparagraph 3 a-i of article 46 and to provide MLA with regard to offences involving legal persons.

The Federal Public Service of Justice is the central authority for MLA and extradition requests.

Spontaneous transmission of information is regulated and is subject to confidentiality (LMLA art. 2/7 and the second Protocol to ECMLA). Such transmissions occur as a matter of routine on a daily basis.

Bank secrecy is not a ground for refusing MLA requests (CPC art. 46quater). While the LMLA does not include the lack of dual criminality among the grounds for refusal of MLA (article 4, §2), several bilateral MLA treaties include it among mandatory or optional grounds for refusal. Dual criminality remains a fundamental principle in Belgian international cooperation and in the context of MLA as well as extradition, it is the underlying conduct and not the classification of the offence or the coercive measure requested that is considered.

Transfer of detainees for the purpose of providing MLA is possible under the ECMLA and several bilateral treaties. The safe conduct of witnesses and experts, while not foreseen expressly in Belgian law, is safeguarded in several of its bilateral treaties (e.g. ECMLA art. 12). In addition, Belgium would provide assurances of safe conduct in the absence of a treaty.

Article 7 of the LMLA, the Ministerial Guideline 15/99 on Good Practices in MLA in Criminal Matters with other EU members and several bilateral treaties set out the requirements concerning the format, content and languages of MLA

requests. Belgium has notified the Secretary-General that the acceptable languages for MLA requests are English, French and Dutch.

Outgoing MLA requests are generally executed in accordance with the domestic law of the requested State, and incoming requests in line with the instructions from the requesting State, unless it is contrary to Belgian law (LMLA arts. 3 and 6, bilateral treaties). Hearing of witnesses via videoconference is possible (CPC arts. 112 and 112bis; ECMLA art. 9 and bilateral treaties). Belgium respects the rules of specialty and confidentiality in the transmission of information (LMLA art. 2, para. 4; ECMLA arts. 25 and 26 and bilateral treaties).

Belgium provides a requesting State with reasons for refusing a MLA request (LMLA art. 6, para. 4; ECMLA art. 19 and bilateral treaties). However, Belgium would always consult a requesting State before refusing the MLA request (ECMLA art. 7).

Belgium is able to provide copies of government records and documents (LMLA art. 1, para. 1).

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The federal police, under the guidance of the Federal prosecutor, is responsible for the facilitation of law enforcement cooperation. Belgium cooperates through organizations and networks such as the EU Task Force of Chiefs of Police, the European Police College, Frontex, Europol, Eurojust, the European Anti-Fraud Office, the European Crime Prevention Network, CARIN and INTERPOL. Belgium maintains a network of liaison law enforcement officials abroad and, likewise, numerous foreign liaison officers are posted in Belgium. Belgium has also entered into several bilateral law enforcement cooperation agreements, but frequently relies on ad hoc and case-by-case arrangements.

Belgium has further established several different platforms for joint trainings for Belgian law enforcement and its foreign counterparts including exchange programmes. Furthermore, Belgium has established training programmes and other integrity initiatives for law enforcement with, inter alia, the Universities of Ghent and Leuven in Belgium and Strasbourg in France.

The Federal Computer Crime Unit and the Regional Computer Crime Unit support national authorities in the identification and prosecution of offences committed through the use of modern technology. Further measures are foreseen in the Belgian Strategy on Cybercrime.

Belgium has already established joint investigative teams on a number of occasions (LMLA arts. 8-10 and ECMLA art. 20), including one with France in a corruption case. When a joint investigation team includes officials from other EU member States, the federal prosecutor needs to notify Eurojust and Europol of the establishment of such a team.

The investigating judges can order the use of special investigative techniques, namely wiretapping, recording of communications, surveillance and controlled delivery within the Belgian territory (CPC art. 90ter and ECMLA art. 18). The Criminal Procedure Code article 90ter also permits a foreign authority to carry out special investigative measures on Belgian territory, subject to the prior authorization by a competent Belgian judicial authority.

3.2. Successes and good practices

The following successes and good practices in implementing chapter IV of the Convention are highlighted:

- Belgium systematically transmits information relating to criminal matters to other States, even when there has been no prior request (art. 46, para. 4).

- Significant efforts have been undertaken to strengthen cross-border law enforcement cooperation, such as through the organization of joint anti-corruption training workshops and exchange programmes (art. 48).
- Belgium can allow foreign authorities to use special investigative techniques on Belgian territory (art. 50).

3.3. Challenges in implementation

The following actions are recommended to further strengthen the existing anti-corruption framework:

- Consider taking further steps to ensure that all United Nations Convention against Corruption offences are extraditable in light of the dual criminality requirement and applicable punishment for certain corruption offences by imprisonment of less than 12 months (art. 44).
- Enhance the scope of article 2bis of the 1874 LoE to include gender and ethnic origin among the grounds for refusal of extradition (art. 44, para. 15).
- Consider adopting such measures as may be necessary to enable the provision of a wider scope of assistance pursuant to article 46 in the absence of dual criminality (art. 46, para. 9(c)).
- Continue broadening Belgium’s treaty-basis to further enhance the Convention’s scope of application in the areas of both extradition and law enforcement cooperation, for instance by ratifying the third and fourth Protocol to the European Convention on Extradition (art. 44, para. 18, and art. 48).

IV. Implementation of the Convention

A. Ratification of the Convention

7. The United Nations Convention against Corruption was signed on 10 December 2003. The law that approves the Convention was ratified by the parliament and signed by King Albert II on 8 May 2007. The law was published in the Belgian Official Journal on 18 November 2008, and came into force on 28 November 2008.
8. Belgium delivered its instrument of ratification to the Secretary-General of the United Nations on 25 September 2008.
9. According to the Belgian legal system, the Convention is a “mixed” treaty, which means that all the competent assembly members (federal and regional) have to ratify it. Belgium referred to the following provisions of the Constitution as relevant:

Constitution

Article 167

§ 1. The King directs international relations, without prejudice to the jurisdiction of the communities and regions for regulating international cooperation, including the conclusion of treaties, with regard to matters that fall under their jurisdictions by or

under the constitution.

§ 2. The King concludes the treaties, except for those with regard to matters referred to in § 3. These treaties may only take effect after having received the consent of the House of Representatives.

§ 3. The community and regional governments referred to in article 121 conclude, each regarding that which concerns it, treaties on matters that fall under the jurisdiction of their Parliament.

§ 4. A law adopted by the majority as described by article 4, last paragraph, establishes the forms for the conclusion of treaties referred to in § 3 and treaties not exclusively involving matters that fall under the jurisdiction of the communities or regions by or under the Constitution.

§ 5. The King may divulge the treaties concluded before May 18, 1993, with regard to matters referred to in § 3, by mutual agreement with the concerned community and regional Governments.

The king shall divulge these treaties if the concerned community and regional Governments ask him to do so. A law adopted by the majority, as described by article 4, last paragraph, regulates the procedure in case of disagreement between the concerned community and regional Governments.

Article 75

The right of initiative belongs to each branch of the federal legislative power. Nevertheless, the right of initiative of the Senate is limited to matters referred to in article 77.

For matters referred to in article 78, the bills submitted to the Houses under the initiative of the King, are delivered to the House of Representatives and then immediately passed to the Senate.

Article 127, § 1

The Parliaments of the French and Flemish communities, each regarding that which concerns it, regulate by decree:

1° cultural matters;

2° education, with the exception of:

- a) the establishment of the start and end of compulsory education;
- b) the minimum requirements to award a diploma;
- c) pension plans;

3° cooperation between communities, as well as international cooperation, including the conclusion of treaties, for matters referred to in 1° and 2°.

A law adopted by the majority, as described in article 4, last paragraph, establishes the cultural matters referred to in 1°, the manners of cooperation referred to in 3°, as well as the forms for the conclusion of treaties, referred to in 3°.

Article 128, § 1

The Parliaments of the French and Flemish communities regulate by decree, each regarding that which concerns it, the person-related matters, as well as, in these matters, the cooperation between the communities and international cooperation, including the conclusion of treaties. A law adopted by the majority as described in article 4, last paragraph, establishes these person-related matters, as well as the manners of cooperation and the forms for the conclusion of treaties.

Article 130, § 1

The Parliament of the German-speaking community regulate by decree:

1° cultural matters;

2° person-related matters;

3° education within the limits established by article 127, § 1, first paragraph, 2°;

4° cooperation between communities, as well as international cooperation, including the conclusion of treaties, for matters referred to in 1°, 2° and 3°.

5° the usage of languages for education in the establishments created, sponsored or recognized by the public authorities.

10. The legal instruments ratifying the Convention by the competent assemblies include:

- French Community Commission – Brussels-Capital Region: Decree approving the United Nations Convention against Corruption, carried out in New York on the 31 of October, 2003 (June 12, 2008)
- German-speaking Community: Decree approving the United Nations Convention against Corruption, carried out in New York on the 31 of October, 2003 (February 25, 2008)
- Walloon Region: Decree approving the United Nations Convention against Corruption, carried out in New York on the 31 of October, 2003 (February 21, 2008)
- French Community: Decree approving the United Nations Convention against Corruption, carried out in New York on the 31 of October, 2003 (February 1st, 2008)
- Flemish Authority: Decree approving the United Nations Convention against Corruption, carried out in New York on the 31 of October, 2003 (November 23, 2007)
- Brussels Capital Region: MAY 3, 2007. – Ruling approving the United Nations Convention against Corruption, carried out in New York on the 31 of October, 2003 (May 3, 2007, and April 19, 2007)

B. Legal system of Belgium

General framework

11. In 1831, the constituent body established a democratic State ruled by law and based on a flexible separation of powers, in the form of a parliamentary monarchy and a decentralized unitary State (State, provinces, communes). This configuration has been transformed by the establishment of a federal State composed of communities and regions.
12. The division of powers is based essentially on devolution of the responsibilities, both *ratione materiae* and *ratione loci*, exercised by the federal authority, the communities and the regions. The communities and regions are not subordinate entities, like the provinces and communes, but have the same standing as the federal authority. In terms of their responsibilities, they have the same power as the federal authority, since their legislation, in the form of decrees and ordinances, has equal force in law.
13. The 1994 Constitution stipulates that Belgium comprises:
 - (a) Three communities: the French Community, the Flemish Community and the German-speaking Community;
 - (b) Three regions: the Walloon Region, the Flemish Region and the Brussels-Capital Region;

- (c) Four language regions: the French-speaking region, the Dutch-speaking region, the bilingual Brussels-Capital region and the German-speaking region. Every commune in the country belongs to one of these language regions.
14. The communities and regions are federate entities with their own political bodies. The language regions are simply political divisions of Belgian territory. The federal authority not only has powers to act in matters for which it has formal responsibility under the Constitution and the law; it also exercises powers that are not expressly assigned to the communities and regions.
 15. The institutional agreement of 11 October 2011, signed by eight political parties, provides for sweeping State reform, with a more effective federal State and more autonomous regional entities. Federal authority for employment, health and personal care services, family benefits and justice are devolved to the communities and the regions. A thorough review will also be conducted of the funding system for the communities and the regions, with more financial responsibility being given to the federate entities and a fair level of funding for the Brussels institutions

Federal legislative power

16. This power is exercised collectively by the King, the House of Representatives and the Senate. The members of the two chambers represent the nation, not just the people who elected them. As required by the Constitution, the elected members of each chamber are divided into a French-language group and a Dutch-language group in the manner prescribed by law. The two chambers convene automatically each year and must remain in session for at least 40 days. The King announces the closure of the session. He may adjourn or dissolve the chambers under the conditions established by the Constitution. Any parliamentarian appointed as a minister by the King vacates his seat and resumes his term of office only when his ministerial functions have ended.
17. The power to initiate legislation is vested in each branch of the federal legislature: bills (submitted by the executive) and proposals for legislation (submitted by parliament) are brought before the upper or lower house. Except in the case of the budget and laws requiring a special majority, a so-called “alarm bell” mechanism operates to prevent the adoption of any bill or proposed legislation containing provisions that might seriously affect relations between the language groups. In such cases, parliamentary discussion is suspended for 30 days pending a reasoned opinion from the Council of Ministers.
18. The House of Representatives has 150 members elected by direct universal suffrage. To be eligible, candidates must be Belgian, enjoy civil and political rights, be at least 21 years of age and be resident in Belgium. The term of office of a deputy is four years; such office cannot be held concurrently with that of regional or community councilor or minister. The House of Representatives has sole political oversight of federal government policy (investiture and motions of no confidence). Likewise, it has exclusive responsibility in budgetary matters since it alone passes the Financial Accounts Act and approves the budget. The House also has exclusive responsibility in matters of naturalization, the criminal and civil liability of ministers, and the size of the armed forces.
19. In 2014, the Senate was once more restructured with the Sixth Reform of the State. As of

the legislative elections on 25 May 2014, the Senate is comprised of 50 senators of federate entities and 10 co-opted senators. The directly elected senators no longer exist. The senators of the federate entities are designated by and within the parliaments of the federate entities. In the Senate, the elected representatives from the parliaments of the federate entities participate in the federal decision-making process or take a side on the matter. The parliaments of the federate entities appoint a total of 50 of their members to the Senate. The results of the regional and community elections determine the distribution of the seats. These senators are who establish the dialogue between the federate entities and the federal authority. The senators participate in the federal decision-making process, with the purpose of defending the interests of the federate entities.

20. The Senate is, on the same level as the House, fully competent, according to the Constitution and legislation on matters with regard to the organization and operation of federal institutions and federate entities. The senate may also redact information reports, particularly with regard to (federal) matters that have consequences for the jurisdictions of the Communities and Regions. Always within the federal logic, the Senate intervenes in the eventual conflicts of interests between the different parliamentary assemblies of the country. The senators shall participate in international parliamentary organizations. As the other parliamentary assemblies, the Senate ensures that the European Union does not take any initiative on matters that would be better handled on another level. This constitutes proof of subsidiarity. In addition, the Senate participates in a series of appointments within the high courts (Constitutional Court, Council of State, and High Council of Justice).

Federal executive power

21. Federal executive power, as regulated by the Constitution, rests with the King. In fact, the executive branch is a structure with two heads, since it includes the King and ministers. The Constitution confers on the King a number of powers whose scope has evolved over time, even though the actual text of the Constitution has not changed.
22. The person of the King is inviolable:
 - At the civil level: no action may be brought against him except in matters relating to his estate, in which case he is represented by the administrator of the civil list;
 - At the criminal level: no prosecution may be brought against him;
 - At the political level: only the minister who countersigns or endorses the royal enactment bears responsibility. These privileges apply only to the King himself, not to members of his family.
23. The King ascends the throne only after taking an oath before the two chambers in joint session. The King appoints and dismisses ministers, such offices being reserved exclusively for Belgians.
24. The Council of Ministers has a maximum of 15 members, with as many French-speaking as Dutch-speaking ministers (principle of parity), with the possible exception of the Prime Minister. Ministers are accountable to the House of Representatives. No minister can be prosecuted or investigated for any opinions expressed in the exercise of his or her duties. Ministers can only be tried by the Court of Appeal for offences committed in the exercise of their duties, or for offences that were not committed in the exercise of their

duties but for which they are tried while in office. The law determines how to proceed against them, at both the prosecution and the trial stage.

25. The King appoints or dismisses federal secretaries of State, who, as assistants to ministers, are members of the Federal Government but not of the Council of Ministers. The King confers ranks in the Armed Forces and makes appointments to positions in the general administration and foreign service, except in cases prescribed by law. The King issues the necessary regulations and decrees for the implementation of laws. He approves and promulgates the laws. The King appoints judges and executes decisions and judgments, and may grant pardons. He also has the right to mint coinage in execution of the law and to confer honorary titles of nobility and award military honours in keeping with the requirements of the law.

The communities

26. Each of the community and regional entities has a parliament and a government. Jurisdiction in the Flemish Region is exercised by the organs of the Flemish Community. The Flemish Region and Community therefore share a single set of institutions. This is not the case with the French Community, the German-speaking Community, the Walloon Region or the Brussels-Capital Region.

(a) Parliaments

27. The Flemish parliament has 124 members, of whom 118 are directly elected in the Flemish Region and 6 are members of the Dutch-language group in the parliament of the Brussels-Capital Region.
28. The parliament of the French Community has 94 members, of whom 75 are members of the parliament of the Walloon Region and 19 are elected by the French-language group of the parliament of the Brussels-Capital Region.
29. The parliament of the German-speaking Community consists of 25 directly elected representatives.
30. The mandate of a member of parliament is theoretically incompatible with that of a deputy or senator, except for community senators who represent their community in the Federal Senate. The ban on holding two offices simultaneously concerns only federal parliamentary duties and regional or community parliamentary duties. It is still constitutionally possible to be both a member of a regional council and a member of a community council.
31. Three parliaments (the Flemish parliament and the parliaments of the French Community and the Walloon Region) have limited “constitutive autonomy”, which means they can adopt, by qualified majority, decrees dealing with issues relating to elections and to the composition and operation of the parliament and government. Members of community and regional parliaments are elected for a period of five years. All of them are replaced after five years; the parliaments cannot be dissolved before the end of the parliamentary term.

(b) Governments

32. The members of community and regional governments are elected by their parliaments, but are not necessarily members of parliament. They are sworn in by the speaker of the parliament that elected them. Their political and judicial responsibilities are based on those of their federal counterparts.

(c) Community powers

33. Community powers cover the following matters:

Cultural matters. The constituent body did not make a detailed list of the subjects that come under the heading of “cultural matters”. Lawmakers, in a law adopted by qualified majority, identified 17 items in this area such as language protection, the arts, cultural heritage, support for the press, youth policy, leisure activities and intellectual, ethical, artistic and social pursuits.

Education. Responsibility for virtually all education, from nursery schools to universities, has been transferred to the communities, which are responsible for organizing the education system and for recognizing and subsidizing education provided by other authorities. In this area, federal jurisdiction is limited to establishing when compulsory schooling is to start and to finish, the minimum requirements for awarding qualifications, and the pension scheme.

Use of languages. Article 30 of the Constitution provides that the language used is a matter of choice; language use can be regulated only by law, and then only for official documents and for judicial matters. The French and Flemish communities are empowered to regulate the use of languages in three areas: administrative matters; education in establishments set up and subsidized by public authorities; and employer/employee relations, as well as companies’ legal instruments and documents as required by law. Community jurisdiction over the use of languages is exercised over a smaller area than other community powers. The federal parliament has jurisdiction for the bilingual Brussels-Capital Region, the German-speaking region, services that operate beyond the language region in which they are based, the federal and international institutions designated by law whose activities cover more than one community, and communes with a special language regime. Communities also exercise international functions within their jurisdiction. Belgium is divided into four language regions:

- (a) The Dutch-speaking region, comprising the five Flemish provinces;
- (b) The French-speaking region, comprising the five Walloon provinces except for the nine communes of the German-speaking region that belong to the province of Liège;
- (c) The bilingual Brussels-Capital Region, comprising the 19 communes in the district of the same name;
- (d) The special regime for the German-speaking Community.

The Constitution confers on the German community the same powers as the two other communities, but they are determined by a simple-majority law. It can also exercise certain powers drawn from the Walloon Region, on the basis of agreements reached between the governments of the two entities. To avoid a proliferation of public bodies, the constituent body gave the legislature the discretion to entrust to the German-speaking Community certain tasks which are usually the responsibility of other administrative authorities. The parliament of the German-speaking Community comprises 25 members elected by universal suffrage. Its government, which includes four members elected by the Council, has its own administration. The legislature has granted special status, in the form of “linguistic facilities”, to communes with relatively large linguistic minorities

bordering on the language regions and around Brussels.

“Person-related matters”. This term covers matters which, by their very nature, are closely related to the individual’s personal and social development. Under a special law, such matters are divided into two categories:

- (a) Health policy, which covers policy on medical care, health education and preventive medicine;
- (b) Social assistance, which covers family policy, welfare, reception and integration of immigrants, policies on disabled persons, senior citizens and young people, and prisoners’ welfare.

34. There are exceptions to these community powers: the federal authorities are responsible for health and disability insurance and some aspects of civil law, criminal law and the organization of youth courts, as well as for the implementation of the right of every person to social assistance, mainly through public welfare centres. The Communities also exercise, within their jurisdiction, certain responsibilities for scientific research, development cooperation and the supervision of subordinate entities (provinces and communes).

The regions

35. Belgium has three regions, which are distinct from the three communities: the Flemish Region, the Walloon Region and the Brussels-Capital Region. Their powers and areas of jurisdiction are the same for the first two, but the Brussels-Capital Region has its own mechanisms, mainly because of the cohabitation of French and Dutch speakers within its territory and its status as the capital.

36. In Flanders, regional powers are exercised by the parliament and government of the Flemish Community. The Walloon Region and the Brussels-Capital Region have their own parliaments and governments.

37. Regional powers cover the following (with some exceptions that are dealt with at the federal level):

- (a) Land-use planning and the protection of monuments and places of interest;
- (b) Most environmental and water policy matters;
- (c) Rural development and nature conservation;
- (d) Housing and inspections of accommodation that poses a risk to hygiene and public health;
- (e) Various matters related to agriculture and fisheries;
- (f) Economic matters such as economic policy, regional aspects of credit policy, sales and export policy and natural resources. On this point, it should be noted that, in exercising their powers, the regions must respect the economic union and monetary unity over which the federal State presides, as determined by the law and international treaties (within the framework of the European Union). The federal authorities have exclusive jurisdiction in the following areas: monetary policy, financial policy and savings protection, prices and incomes policy, competition and trade law, commercial law and company law, entry requirements for the professions, industrial and intellectual property, quotas and licences, labour law and social security law;
- (g) Energy policy;
- (h) Important prerogatives with regard to local communities (financing,

- organization and supervision);
- (i) Employment (placement of workers, development of back-to-work programmes, application of the rules regarding foreigners);
- (j) Public works and transport (roads, waterways, ports, dykes, public transport); equipping and operating public airports (with the exception of Brussels National Airport);
- (k) Scientific research within their jurisdiction (as in the case of the communities), including research under international and supranational agreements and instruments and research in the field of development cooperation;
- (l) International affairs that come under their remit.

38. At the moment, the communities and regions only have the powers attributed to them by a special law. Besides their fiscal powers, they do nevertheless have additional powers which allow them to:

- Adopt measures concerning the infrastructure needed to exercise their powers;
- Establish decentralized services, institutions and enterprises or acquire an interest in them;
- Adopt decrees establishing as offences breaches of their provisions and, within certain limits, the penalties for such breaches;
- Carry out public expropriations.

(a) Special status of the Brussels-Capital Region

39. The Brussels-Capital Region, which is comprised of 19 communes and which is the country's federal capital, exercises the same powers as the other two regions and has a parliament and a government (five members). As it straddles two communities, the Brussels-Capital Region does not enjoy constitutive autonomy. This means that the parliament cannot alter its own composition, its operating principles, or the status of its members.

40. The organization of the parliament is based on the principle of two language groups exercising their own powers and sharing responsibilities in the various parliamentary bodies. The parliament has 89 members (72 from the French-language group and 17 from the Dutch-language group). Excluding the speaker, the two groups are equally represented in the government; two ministers are French-speaking and two Dutch-speaking. There are also three secretaries of state - at least one of whom is from the Dutch-language group - who are not members of the government.

41. Community powers in the bilingual Brussels-Capital Region are exercised by the French Community Commission, the Flemish Community Commission and the Joint Community Commission. Community matters related to only the French or the Flemish community are called "uni-communitarian" and are dealt with by the French or Flemish community commission under the supervision of their respective communities.

42. Person-related matters which cannot be linked exclusively to one community (matières bi-personnalisables) are managed by the Joint Community Commission, which is also responsible for community matters of common interest. Cultural matters which are not related to a specific community constitute the "bicultural sector" and are managed by the federal authorities (major infrastructure for arts-related activities).

(b) Cooperation within the Belgian federal system and conflict resolution

43. The Constitution has established the principle of “federal loyalty”, which requires that neither the federation nor the federate entities should, in the exercise of their powers, upset the structural balance of the whole. An intricate network of mechanisms and procedures has been set up to preserve this balance, on which good relations between the many institutional entities in Belgium depend.
44. Three mechanisms have been set up to prevent, and if necessary resolve, conflicts of interest between the various entities. Such conflicts arise from political differences (when an initiative by one entity affects the interests of one or more other entities), not from violations of a rule of law:
- (a) Consultation Committee: this is made up of 12 members, 6 representing the Federal Government and 6 representing the community and regional governments. Its powers are established by law, and it takes decisions by consensus;
 - (b) Inter-ministerial conferences: there are 15 of these. They offer a flexible structure for consultation and dialogue, as well as a forum conducive to the negotiation of cooperation agreements;
 - (c) Cooperation agreements: State entities are authorized, and in some cases required, to conclude such agreements, which can relate to the establishment and joint management of common services and institutions, the joint exercise of powers or the development of joint initiatives. In the area of international relations, for example, agreements have been concluded between the competent entities on Belgium’s representation in international organizations and on the procedures for signing international treaties.
45. The Constitutional Court is empowered to settle conflicts of jurisdiction. The Court, which is made up of 12 members (6 French-speaking and 6 Dutch-speaking, half of whom have judicial, and the other half parliamentary, backgrounds), hands down judgments when a legislative body violates the rules on the separation of powers or the articles of the Constitution relating to the principle of non-discrimination or the protection of philosophical and ideological minorities.
46. Matters can be referred to the Constitutional Court by the various governments and by speakers of parliament at the request of two thirds of their members. An appeal can also be lodged by any private individual who can prove a personal interest within six months of the official publication of the contested provision.

Organization of the courts

47. Under the Constitution, the organization of the Belgian courts and tribunals is the responsibility of the federal authorities.
48. The role of the judge in a court (a magistrat du siège, called a juge in a tribunal and a conseiller in a court) is to rule on litigation. The Judicial Code determines if professional judges sit alone or in threes. Lay judges sit in labour courts, commercial courts, sentence enforcement courts, labour appeal courts and assize courts. The public prosecution service upholds the law and the interests of society and prosecutes offenders in the courts.

49. Cases concerning civil rights are heard exclusively by a tribunal. Cases concerning political rights are heard by a tribunal unless otherwise provided for by law. Jurisdiction may only be established by law. As a rule, court hearings are public. Every judgment is reasoned and handed down in a public hearing.

(a) Status of judges

50. Judges are appointed by the King. The Constitution stipulates that the nomination of judges and the appointment of chief prosecutors must be preceded by a reasoned submission to the High Council of Justice. The High Council of Justice is a unique independent body with a threefold mission:

- To exercise external control over the functioning of the judicial system, including the processing of complaints;
- To submit opinions to political leaders with a view to improving the functioning of the judiciary;
- To play a decisive, and objective, role in appointments within the judiciary.

51. The Judicial Code requires judges to be appointed to one or more courts of first instance, one or more labour courts, one or more prosecutor's offices, or one or more labour prosecutor's offices. Additional judges may be appointed for an appeal court or labour appeal court. There are three entry points to a career as a judge:

- (a) Competitive examination for admission to the judicial training course: this is open to lawyers with at least one year's experience. The course gives direct access to the bench and the prosecution service, and lasts for 3 years; the course that gives direct access to the prosecution service alone lasts for 18 months;
- (b) Professional aptitude test: this is aimed at experienced lawyers and offers direct access to the bench provided that the candidate has the requisite experience as set out in the Judicial Code (10 years' experience at the bar for those wishing to become a judge and 5 years' for those wishing to become a prosecutor);
- (c) Oral test: this can be taken by lawyers whose career in law spans at least 20 years, or 15 years if they have also performed a job requiring an in-depth knowledge of law for at least another 5 years.

52. These examinations are organized by the High Council of Justice. The Belgian Constitution guarantees the independence of court judges in the exercise of their duties. The prosecution service investigates and prosecutes individual cases independently, without prejudice to the right of the minister concerned to order prosecutions and issue binding directives on criminal policy, including investigation and prosecution policy. The Constitution also states that the salaries and pensionable age of members of the judiciary are to be determined by law. Judges may only be removed or suspended by decision of a court. Depending on which jurisdiction they come under, judges may be dismissed by appeal courts, labour appeal courts or the Court of Cassation. A judge may only be moved if he or she receives a new appointment and consents to the move.

(b) Judges and courts

53. The courts of justice form a hierarchy. The Court of Cassation is at the top; it does not

examine the merits of cases but ensures that the law is correctly applied. Below this, there are the trial courts, which deal with points of fact and law. A distinction is made between courts of first instance, which are the first to hear a case, and courts of second instance or appeal courts, which hear cases that have already been tried.

(c) Hierarchy of courts in Belgium

54. Courts of first instance, labour courts, commercial courts, magistrate's courts and police courts are all lower courts. Appeal courts and labour appeal courts are courts of second instance.
55. Courts of first instance are divided into civil, criminal and family divisions. The courts of first instance in Antwerp, Brussels, Ghent, Mons and Liège have divisions known as sentence enforcement courts. As well as a president and vice-president(s), a court of first instance has one or more youth court judges, investigating judges and judges hearing attachment proceedings. Sentence enforcement magistrates - one specializing in custodial matters and the other in social reintegration - are appointed to sit alongside judges in sentence enforcement courts.
56. The civil and commercial courts hear appeals against judgments handed down by magistrate's courts or police courts, as the case may be. The criminal court hears appeals against judgments handed down by the police court.
57. Belgium is divided into five large judicial circumscriptions: Antwerp, Brussels, Ghent, Mons and Liège. Each has an appeal court and a labour appeal court. The circumscriptions are divided into 12 judicial districts.
58. Lay judges appointed for five years (the period applicable to the professional category to which they belong) sit in labour appeal courts (as judges and social advisers, or conseillers sociaux) and commercial courts (where they are called juges consulaires), alongside professional judges.
59. Each of the 10 provinces and the administrative district of the Brussels-Capital Region have an assize court. An assize court is constituted each time an accused person is referred to it. It consists of three professional judges (a president and two associate judges) and a jury made up of 12 jurors and 1 or more alternates drawn at random from the general public.
60. The Court of Cassation, as the guarantor of the courts' and tribunals' compliance with the law, has three divisions: one for criminal matters, one for labour law-related cases and one for civil and commercial matters.

(d) Public prosecution service

61. The public prosecution service is staffed by judges from a prosecutor's office dealing with criminal law (parquet) or labour law (auditorat), who exercise the prosecutorial function within the jurisdiction of the court or tribunal for which they work. Each court of first instance has a prosecutor's office (parquet) comprising a crown prosecutor, senior public prosecutors and deputy public prosecutors. Deputy public prosecutors may specialize in tax or commercial affairs or be assigned to posts at youth courts, or (in

Antwerp, Brussels, Ghent, Mons and Liège) specialize in sentence enforcement.

62. The prosecutor's office attached to an appeal court (parquet général) is headed by a prosecutor-general whose job is to apply directives on criminal policy within the court's jurisdiction and to supervise the judges working for the office or for the prosecutor's office attached to labour appeal courts. The prosecutor-general is assisted by a senior advocate-general, advocates-general and deputies.
63. The prosecutor's office attached to an ordinary labour court (auditorat du travail) comprises a labour prosecutor, senior deputies and deputies. The prosecutor's office attached to a labour appeal court (auditorat général) is headed by the prosecutor-general of the ordinary appeal court, assisted by a senior advocate-general, advocates-general and deputies.
64. Cases in assize courts are prosecuted by the prosecutor-general of the appeal court, who may delegate this function to another prosecutor. Cases before the Court of Cassation are brought by the Court's prosecutor-general with assistance from a senior advocate-general and advocates-general; the prosecutor-general does not bring a prosecution in such cases but rather advises the Court.
65. The federal prosecutor's office (parquet fédéral) comprises a federal prosecutor and federal judges. The federal prosecutor performs, in the cases determined by law, all the functions of the prosecution service in criminal matters brought before appeal courts, assize courts, courts of first instance and police courts.

International agreements

66. Belgium is a member of the European Union, the OECD, the Council of Europe's GRECO and FATF, among other international organizations.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

67. Belgium indicated that it has implemented the provision under review through articles 246 and 247 of the Criminal Code (CC). Belgium also referred to CC articles 248 and 249 that list the aggravating circumstances applicable to bribery.

Criminal Code

Article 246

§1. The act, by a person who exercises public duties, of soliciting, accepting or receiving, directly or through third parties, of an offer, a promise or an advantage of any nature, for the person himself or for another person, in order to adopt any of the behaviors contemplated in article 247, constitutes passive bribery.

§ 2. The act of proposing an offer, a promise or an advantage of any nature, directly or through third parties, to a person who exercises public duties, for the person himself or for another person, in order that the person may adopt any of the behaviors contemplated in article 247, constitutes active bribery.

§3. Any person who runs as candidate to exercise said duties, who induces someone to believe that he will exercise said duties or who, using false capacities, induces someone to believe that he exercises said duties, shall be equivalent to a person who exercises public duties under this article.

Article 247

§ 1. When the purpose of the bribery is to make a person who exercises public duties perform a rightful act, but not subject to salary, related to his duties, the penalty shall be a prison term of six months to one year, and a fine of 100 to 10,000 Euros, or one of the two penalties.

When, in the case contemplated in the preceding paragraph, the solicitation contemplated in article 246 § 1, is followed by the proposal contemplated in article 246, § 2, and also when the proposal contemplated in article 246, § 2 is accepted, the penalty shall be a prison term of six months to two years, and a fine of 100 to 25,000 Euros, or one of the two penalties.

§ 2. When the purpose of the bribery is to make the person who exercises public duties perform a wrongful act in the exercise of his duties, or also abstaining from performing an act related to his duties, the penalty shall be a prison term of six months to two years, and a fine of 100 to 25,000 Euros.

When, in the case contemplated in the preceding paragraph, the solicitation contemplated in article 246 § 1, is followed by the proposal contemplated in article 246, § 2, and also when the proposal contemplated in article 246, § 2 is accepted, the penalty shall be a prison term of six months to three years, and a fine of 100 to 50,000 Euros.

When the person who receives the bribe has performed the wrongful act, or abstained from performing an act within his duties, the person shall be punished with a prison term of six months to five years and a fine of 100 to 75,000 Euros.

§ 3. When the purpose of the bribery is to make a person who exercises public duties perform a crime or an offence in the exercise of his duties, the penalty shall be a prison term of six months to three years, and a fine of 100 to 50,000 Euros. When, in the case contemplated in the preceding paragraph, the solicitation contemplated in article 246 § 1, is followed by the proposal contemplated in article 246, § 2, and also when the proposal contemplated in article 246, § 2 is accepted, the penalty shall be a prison term of two to five years, and a fine of 500 to 100,000 Euros.

...

Article 248

When the acts contemplated in articles 246 and 247, §§ 1 to 3, involve a police officer, a person invested as a judicial police officer or a member of the prosecution, the maximum penalty shall be twice the maximum penalty contemplated in article 247 for the acts.

Article 249

§1. When the bribery contemplated in article 246 involves an arbitrator and it is aimed at an act related to his jurisdictional duties, the penalty shall be a prison term of one to three years, and a fine of 100 to 50,000 Euros.

When, in the case contemplated in the preceding paragraph, the solicitation contemplated in article 246 § 1, is followed by the proposal contemplated in article 246, § 2, and also when the proposal contemplated in article 246, § 2 is accepted, the penalty shall be a prison term of two to five years, and a fine of 500 to 10,000 Euros.

§ 2. When the bribery contemplated in article 246 involves an associate judge or a jury, and it is aimed at an act related to his jurisdictional duties, the penalty shall be a prison term of two to five years, and a fine of 500 to 100,000 Euros.

When, in the case contemplated in the preceding paragraph, the solicitation

contemplated in article 246 § 1, is followed by the proposal contemplated in article 246, § 2, and also when the proposal contemplated in article 246, § 2 is accepted, the penalty shall be a prison term of five to ten years and a fine of 500 Euros to 100,000 Euros.

§ 3. When the bribery contemplated in article 246 involves a judge and it is aimed at an act related to his jurisdictional duties, the penalty shall be a prison term of five to ten years, and a fine of 500 to 100,000 Euros.

When, in the case contemplated in the preceding paragraph, the solicitation contemplated in article 246 § 1, is followed by the proposal contemplated in article 246, § 2, and also when the proposal contemplated in article 246, § 2 is accepted, the penalty shall be a prison term of ten to fifteen years, and a fine of 500 Euros to 100,000 Euros.

68. Active and passive bribery of public officials are offences under articles 246 and 247 of the Criminal Code. These provisions must be read jointly. Article 246 includes the basic definitions of the offences (paragraph 1 for passive bribery and paragraph 2 for active bribery), while article 247 lists the various types of situations and acts of public officials in relation to which bribery is an offence. Article 247 distinguishes cases of unilateral active or passive bribery from ones where the bribe is agreed to or accepted by the other party. The latter are punished more severely.
69. Articles 246 and 247 are of general application. In addition, articles 248 and 249 include specific aggravating circumstances applicable to offenders who are members of the police and prosecution service, judges, arbitrators and jurors
70. With regard to the definition of public officials, according to the Belgian authorities, the scope of articles 246 and 247 of the Criminal Code is very broad. It refers to persons performing public duties, which is interpreted very widely. It is not the status of the person that counts but the public nature of the duties performed. In specifying offences, the Criminal Code does not distinguish between categories of persons, other than to make the corruption of certain categories such as judicial police officials, police officers (who do not all perform judicial police functions), judges and members of the prosecution service aggravating circumstances.
71. According to the parliamentary proceedings on the Act of 10 February 1999, which altered the arrangements governing offences, the notion of public duties or public service (fonction publique) in Belgium covers all categories of persons, irrespective of status, performing public duties, whether these be federal, regional, municipal, community or provincial established civil servants and other public officials, elected members, professional officers, other persons exercising permanent or temporary public authority and persons, including private individuals, carrying out a public service function. Private individuals performing public duties are directly covered. Ministers, junior ministers, members of ministers' private offices and members of the armed forces perform public duties, as does a (foreign) president of the republic, who may thus be deemed to be a public official. Moreover, Article 246 paragraph 3 states that any person who is a candidate for a post involving the performance of public duties, causes persons to believe that he will perform such duties or fraudulently causes persons to believe that he performs such duties shall be treated as performing public duties.
72. Referring to its case law, Belgium indicated that a manager of a postal office (Brussels,

17/06/1994, R.D.P., 1996, 1014) and a mayor (Brussels, 23/01/1981, Pas. 1981, II, 36) were also treated as persons performing public functions. Belgium further explained that in order to fall under the definition of persons exercising public duties, a person did not need to be considered a public official formally. For example, an intern who worked at the city hall and let himself be bribed to perform certain acts was also considered a public official. In addition, it is not necessary that the public official has a “high-level position”. Belgium referred to one case, in which the person who was bribed was in charge of “pushing a button” in the customs office to denote if a certain container was already verified or not. Although one could say that this person was not making the decisions, the fact that it was his job to mark a container “red” or “green” had a large impact. By falsely determining a container as “green” or controlled, the person facilitated smuggling. .

73. With regard to active bribery and its elements of “promising, offering or giving”, article 246 paragraph 2 uses the terms “*proposing an offer, a promise or an advantage*”. The Act of 11 May 2007 amending the anti-corruption legislation (MB. 8 June 2007) includes interpretative provisions. Section 2 states that Article 246, paragraph 2, of the Criminal Code must be understood to mean that active bribery also includes granting to a person performing public duties, directly or through the intermediation of other persons, promises or advantages of any kind, in exchange for committing the conduct referred to in Article 247.
74. With regard to the element of “*offering*”, Belgium clarified that it is covered by the definition in article 246. It also referred to an interpretative note in the explicative report (DOC 51 2677/001) to the law of 2007 that changed the Criminal Code for corruption, which states that: “*If a proposition is already punishable, it is logical that the giving of an advantage, without the promise, is also punishable.*” Belgium also made a reference to several bribery cases involving the element of “offering”:
- (Active bribery) Person in the car is pulled over by the police, because he was speeding. When he got out of the car, he said several times “Can’t we make a deal?”. This was considered an offer.
 - (Active bribery) Case in Gent from 09/04/2009: Person is calling on his cell phone while driving his car. When the police approaches him, he asks how much a fine is. When they say: 100 Euros, he asks if 50 euro is not enough and insists that the policeman would take the money and drop the case (which he did not). The court considered this an offer and the defendant was sentenced to the fine of 825 Euros.
 - (Passive bribery) An inspector of the economic inspection went in a store and said to the owner that there were clearly infractions to law on false goods (which was not true), but if the owner gave him 500 Euros, he would drop the case.
75. Belgium also noted that the offence of bribery is established even if the offer/promise is not accepted, such as when a mail with a proposition of bribe did not arrive due to some technical problems at the receiver’s end.
76. Regarding the issue of members of armed forces being considered as performing public duties, Belgium explained that all militaries in active status are deemed to exercise public functions. Only the military who is temporarily removed from his job (for disciplinary or personal reasons) and is illegally absent or serves a prison sentence (art. 189 of the Law of 28 February 2007) does not exercise a public function.

77. Article 246 uses the expression “*advantage of any nature*”. Belgium explained that this notion is to be interpreted broadly and it may, for example, involve the promise of sexual relations. What matters is not the nature or the value of the advantage (petty bribery is also punishable, i.e.: Antwerp, 30/09/1988, R.W. 1988-89, 509), but the link between what is given and the intended purpose, i.e. to make the person who exercises public duties adopt a certain behavior. Material and immaterial advantages are covered and can include, for example, advantages involving preferential treatment (obtaining or maintaining a position or other advantage) and symbolic or honorific advantages (titles, distinctions). As for advantages of non-pecuniary nature, Belgium noted that a bottle of wine, different meals (from high-level restaurants to tea-rooms) or tickets for a concert of The Rolling Stones were all considered by Belgian courts an undue advantage in bribery cases.

78. Article 246 covers both direct and indirect bribery (“*directly or through third parties*”). The third party may be an accomplice or a co-perpetrator, but it also may be a person unrelated to the offence and acting in good faith.

79. Third-party benefits are also covered (“*for himself or herself or another person*”). The advantage does not necessarily need to benefit the bribe taker, it may eventually benefit a third party; personal enrichment is not a component of the offence. “*For another person*”, as mentioned in article 246, includes natural persons and legal persons, as the Criminal Code always refers to “person” in general. Concrete cases regarding third-party benefits in corruption include:

- A man was bribed with, inter alia, vouchers for a women’s clothes shop and his wife used the vouchers.
- Corruption case in a big town: certain contractors were selected to do all the public works (in the first place because they received confidential information of the city hall regarding which other contractors were applying (including also the price they were offering). As favour in return, the contractors also renovated the club house of the public official involved.

80. With regard to the nature of the acts of bribery, article 247 (which complements the offence provided for in article 246) refers to the following ones:

(a) the performance, by a person who exercises public functions of a rightful act related to his duties, but not subject to salary. The act is “rightful” if the person holding the public function would have accomplished the task in the same way even in the absence of bribery. What invalidates the act is the fact that it is remunerated by the briber when this is forbidden by law.

Example:

- A person grants a permit in case where the file is completely in order and, therefore, it would have been granted anyway.

(b) the performance, by a person who exercises public duties, of a wrongful act in the exercise of his duties, or abstaining himself from performing an act related to his duties. The act is “wrongful” when the act lies within the competences of the public servant, but it is compromised, because the person did not follow the rules properly. This hypothesis covers all forms of favouritism. It also expressly includes the

negative behaviour of anyone who restrains themselves from doing what he or she knows should be done (“abstaining from performing an act that falls under his or her duties”).

Examples:

- It is within the person’s competence to grant a permit but because the person was bribed, the file gets a preferential treatment although the usual waiting time is two months.
- Transmission to a third party of internal documents of the authority, such as sending detailed figures of the proposal of bidding company X to company Y (Brussels 17/06/1994, R.D.P. 1996, 1014).
- Undertaking steps to cause the award of a job to a specific contractor who provides advantages of any kind to the officials involved (Brussels 31/03/1995).
- An official giving preference to a person’s files from whom he had received presents or gifts for the issuance of a work permit (Brussels 21/12/1972, Pas. 1973, II, 69).
- Being responsible for the monitoring of cleaning operations in the premises of the authorities entrusted to a private company, failing to intervene after the verification of serious breaches in the performance of the activities (Brussels, 17/06/1994, R.D.P. 1996, 1014).

(c) the performance, by a person who exercises public functions of a crime or an offence in the exercise of his duties.

Examples:

- A prison guardian who receives an amount of money to allow a prisoner to escape (art. 332 CP).
- A regional secretary of State accepts the offer of a think-tank to take over expense accounts and to perform a pre-electoral opinion survey in exchange for the official to sign, on behalf of the authority, a contract for an environmental survey prepared by this same think-tank, knowing that the price of this service was falsified (Cass. 05/04/1996, R.D.P. 1996, 634).

(d) the use, by a person who exercises public duties, of the real or supposed influence he has by virtue of his duties, in order to obtain an act from an authority or a public administration, or the omission of said act (trading in influence).

81. Case law interprets broadly the notion of the “*act related to the duties*”. It is not necessary that the person actually has any decision-making power, it is sufficient that the person only participates in the decision-making process or in its preparation. The act related to the duties may also simply consist of “following a proceeding or intervening before higher authorities”. By “rightful act”, the legislator means any act related to the duties. It is an act that the person would have accomplished anyway, even in the absence of any proposal. “Wrongful act” is the act that is not related to the public official duties and which is induced by the proposal without necessarily constituting an offence.
82. Regarding corruption committed in order to commit another offence (crime or misdemeanor), if it is completed, or if there is a start of commission of the offence, there will be an offence, both for the receiver of the bribe, as perpetrator of the offence, and for the provider of the bribe, as co perpetrator of the offence.

83. The notion of intent does not appear in the incriminations but, under Belgian law, bribery is necessarily intentional. However, no specific intent is required. It is sufficient that the act is committed while being aware and willing to commit it (general intent).

84. Belgium has provided statistical data. Please refer to Annex 1.

(b) Observations on the implementation of the article

85. Belgium is in compliance with the provision under review. Active bribery is criminalized (CC articles 246 and 247) and the term “public official” is interpreted broadly. All the Convention’s elements are present in the national definition. Bribery committed by police officers, prosecutors, judges, arbitrators and jury members is considered an aggravating circumstance (CC articles 248 and 249).

86. During the country visit, the question of gifts to public officials was discussed. Belgium clarified that there was neither a gift registry nor clear guidelines on gift declarations in place. Therefore, Belgium was recommended to establish clear rules on public officials receiving gifts and consider introducing a system through which public officials record any gifts received.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

87. Belgium indicated that it has implemented the provision under review and referred to the CC provisions and examples of implementation cited under subparagraph 15(a).

88. Belgium further explained that while in the past it had required a proof of the existence of a “bribery pact” (i.e. agreement between the person giving and the person accepting the bribe), since 1999 the offences of active or passive bribery may exist even in the absence of bribery pact. However, the existence of the ‘bribery pact’, i.e. when the proposal is followed by acceptance, is considered an aggravating circumstance under article 247. This legislative change of 1999 has influenced the practice of the courts that have come to accept that it is possible to prosecute the person giving the bribe and the person accepting the bribe separately, and that in “attempted bribery” cases, it is not necessary to prove the existence of an exchange of wills that, logically, has not yet taken place.

89. As an example of passive bribery, Belgium referred to a case in which an official

demanded that a mechanic give free maintenance to his car in exchange for a service within the scope of his duties.

90. Belgium clarified that following the third evaluation round of GRECO, a notion “to receive” was explicitly included in article 246 (Law of 05/02/16, published 19/02/16).
91. Belgium has provided statistical data. Please refer to Annex 1.

(b) Observations on the implementation of the article

92. Belgium is in compliance with the provision under review. Passive bribery of public officials is criminalized (CC articles 246 and 247). All the Convention’s elements are present in the national definition. Bribery committed by police officers, prosecutors, judges, arbitrators and jury members is considered an aggravating circumstance (CC articles 248 and 249).

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

93. Belgium indicated that it has implemented the provision under review.
94. Bribery of foreign public officials is criminalized under article 250 (to be read in conjunction with articles 246 to 249, cited above) of the Criminal Code.

Criminal Code

Article 250

When the bribery envisaged in articles 246-249 concerns a person who exercises public duties in a foreign State or in a public international organization, the minimum fine is multiplied by three and the maximum fine is multiplied by five.

95. Article 250 is concerned with persons performing public duties in a foreign country. Since the Act of 11 May 2007, the functional definition applied to Belgian public officials is also applied to their foreign counterparts. The key element is the duties performed rather than the person's status, in accordance with how this has been interpreted by the courts. The elements of the offence are assessed in the same way as for bribery of national public officials (persons performing public duties) and the penalties are the ones specified in articles 246-249 of the Criminal Code.

96. Belgium has provided the following examples of cases and jurisprudence.

a. EU cereal subsidies case: This file was submitted by OLAF to the Belgium authorities and it involves the bribery of a European Dutch official by companies and non-Belgian citizens to communicate information covered by professional secrecy, related to the pricing of cereals in the European market. The total amount of the kickbacks (travels, luxury gifts, real estate and cash transfers) in this case is estimated by the court ruling at EUR 850,000, and the total amount of the advantages for the companies concerned is around EUR 22 million. In this case Belgium has exercised its territorial competence in the fight against the bribery of foreign public officials (the European official was based in Brussels). Investigations were started by OCRC in 2003 and a conviction was pronounced by the First Instance Court of Brussels on 27 June 2012. On 6 May 2013, the Appeals Court of Brussels confirmed in appeal the first conviction of two foreign companies for the bribery of a foreign public official, particularly a European official. Regarding the eight non-Belgian natural persons prosecuted for transnational corruption in this case, four were acquitted; one received a simple suspension of the sentence; and three received conditional prison sentences between 12 and 18 months and fines ranging between EUR 2,500 and 7,500.

Further to the question of the reviewing experts as to why the imposed sanctions (EUR 2,500 and 7,500) were so low in comparison to the profits earned (EUR 22 million), Belgium explained that the fines were multiplied by six to have their definite value. There was also a confiscation of goods of the bribed public official (including his house) for a total value of EUR 400,000 and the court also imposed prison sentences. With regard to the question of the reviewing experts on the discrepancy between the 22 million sought and the 400,000 confiscated, Belgium clarified that the 22 million mentioned was the advantage for all the companies together as a result of bribery. This was not the amount of money that the bribed official got (that was about 850,000). The 400,000 was what could be traced in his personal belongings.

b. EU real estate operations case: Following a complaint from a competitor, this file was submitted by OLAF in 2004 to the Federal Prosecution, which investigated with support from OCRC. The case involves alleged acts of corruption, scam, fraud and the formation of a criminal organization by Belgian residents and residents from other countries. These persons had during a six-year period paid millions of Euros in advantages to lease and secure buildings to accommodate EU delegations. During the investigation, many operations took place in different countries. In 2007, the suspects were placed under arrest. This case received a ruling from the correctional court of Brussels on 16 May 2014. Most of the protagonists were convicted. They appealed, but the final decision of the Court of Appeal in Brussels (June 2015) confirmed the sentences.

97. With respect to international corruption statistics, Belgium explained that it could not provide specific figures. Belgium has no means to distinguish "transnational" and "internal" corruption in the files that are under investigation or closed, given that corruption files handled by the police and judicial authorities are registered with the same number, and that it does not have a "transnational" category. This situation was solved on 1 January 2016 when the initiative was taken to create a new code on "transnational corruption". The code allows for an automatic search in the database of the Prosecutors Offices. This was made possible through the Guidelines n°12/2015 of the

College of Prosecutors General.

98. Belgium has provided statistical data. Please refer to Annex 1.

(b) Observations on the implementation of the article

99. The reviewers inquired about the definition of ‘public functions’ and whether it covered only functions within Belgium or also public functions abroad. Belgium explained that both examples provided concerned European officials bribed by non-Belgians. Although the European Union has its headquarters in Brussels, this is still considered a foreign bribery. There were no Belgian public officials involved in the two cases described above, only foreigners employed by an international organization.

100. Belgium is in compliance with the provision under review. Active bribery of foreign public officials and officials of public international organizations is covered through CC article 250, read in conjunction with articles 246-249.

101. Belgium informed that following the 3rd phase evaluation of OECD, Belgium increased penalties for foreign bribery. (Law of 05/02/16, published 19/02/16).

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

102. Belgium indicated that it has implemented the provision under review through article 250 of the Criminal Code. Article 250 states that when the bribery contemplated in articles 246 to 249 involves a person who exercises public duties in a foreign State or in an international public organization, the penalties are higher. The minimum fines are multiplied by three and the maximum fines are multiplied by five.

103. Belgium referred to the information provided under article 16 paragraph 1.

(b) Observations on the implementation of the article

104. Article 250, to be read in conjunction with articles 246 and 247, covers both passive and active bribery of foreign public officials and officials of public international organizations. Following the 3rd phase evaluation of OECD, Belgium increased penalties for foreign bribery (Law of 05/02/16, published 19/02/16).

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

105. Belgium indicated that it has implemented the provision under review.

106. The Criminal Code contains various offences which are in accordance with the offences of Article 17 of the Convention, namely articles 240, 241, 242, 243 and 245 (misappropriation, concussion, taking of interest offences committed by persons who exercise public duties, etc.). A reference was also made to CC articles 461 on theft and 491 on embezzlement of goods.

Criminal Code

Article 240

Any person who exercises public duties who diverts public or private funds, documents serving as invoices, documents, titles, acts, or real estate assets in his hands by virtue of his functions, will be punished with a prison term of five to ten years and a fine of 500 to 100,000 Euros.

Article 241

Any person who exercises public duties who with bad intentions or fraudulently destroys or eliminates acts or titles, of which he is the depositary in that capacity, which had been communicated to him or to which he had access by virtue of his duties, will be punished with a prison term of five to ten years and a fine of 500 to 100,000 Euros.

Article 242

When the acts of a judicial proceeding, or other papers, files, digital or magnetic supports, or acts or effects contained in public files, registries or deposits, or which are submitted to a public depositary in this capacity are removed or destroyed, the depositary who is guilty of negligence will be punished with a prison term of one to six months and a fine of 100 to 10,000 Euros, or one of these two penalties.

Article 243

Any person who exercises public duties, who is convicted of concussion, as a result of having ordered to be paid, of having demanded or received anything they knew not to be due, or in excess of any due amount for any fees, taxes, contributions, funds, or for salaries or compensation, shall be punished with a prison term of six months to one year, and a fine of 100 to 50,000 Euros, or one of these two penalties, and may be additionally sentenced to the interdiction of the right to exercise public duties, to serve in public employments or to hold public office, in accordance with article 33.

The penalty shall be a prison term of five to ten years, and a fine of 500 to 100,000 Euros if the concussion was committed with violence or threats.

Article 245

Any person who exercises public duties who, directly or through third parties or simulations, takes, or receives any interest in the acts, awards, submissions, undertakings, in which the person was, at the time of the act, in whole or in part, charged with the administration or inspection, or who, being in charge of ordering the payment or the settlement of an affair, takes any interest whatsoever in it shall be punished with a prison term of one to five years and a fine of 100 to 50,000 Euros, or one of these two penalties, and may be additionally sentenced to the interdiction of the right to exercise public duties, to serve in public employments or to hold public office, in accordance with article 33.

The preceding provision shall not apply to those who, under the circumstances, were not able to favor their private interests due to their position, and who acted openly.

Article 491

Whoever illegally embezzles or dissipates, thus harming others, public funds, merchandise, bank notes, receipts or any other written document containing or executing an obligation or receipt which were given under the condition of returning it or using it for a specific purpose, will risk an imprisonment sentence ranging from one month to five years and a fine of between twenty-six and five hundred Euros.

107. Belgium has provided the following examples of implementation.

a. Misappropriation (File 2010/1624 - Cited in the report of the Committee P 2012)

A police officer, who was accused of misappropriation of a firearm and for the possession without license as a private citizen of a weapon subject to authorization, argued in his defense that he had no intention of keeping the weapon and thus obtaining an illegal advantage. However, the court ruled that: "The fact that, misappropriating the weapon in question, the defendant expected to avoid disciplinary procedures as a result of having concealed the weapon for many years in his locker, and for the fact that he did not obtain a purely patrimonial advantage does not affect the punishable nature of the misappropriation at all. The misappropriation by a person who exercises public duties is an automatic offence that is fully realized since the moment the misappropriation is committed, even if the purpose sought is not attained. In consequence, the defendant is guilty of possessing a weapon subject to authorization without having the license, this in the period after the moment when he concealed the weapon in question in his personal locker with a fraudulent intention. After the misappropriation, the defendant effectively did not act as a public official, but as a private citizen". The court sentenced the main inspector for these reasons to six months in prison and a fine of EUR 500, with partial suspension for 3 years.

b. In the report of the Committee P 2011, four suspensions of the sentence (2 cases involving 2 persons each) were granted to police officers who had disposed of the drug (in a bin/in the sewers) instead of following the procedure provided for such discoveries.

c. Taking of interest (File 2009-155295 - Cited in the report of the Committee P 2012).

A police commissioner has entered, as a passive partner in a company, into contracts for

the installation of road signs while he was, at the same time, as a police officer, in charge of providing advice to the signaling works. Prosecuted for taking of interest, the local police commissioner argued before the appeals court that: "no violation of the provisions of article 245 of the Criminal Code can be claimed against him for the sole and only reason that he informed the head of his corps of his intention to found a company with the specific activities known before proceeding to create said company". The appeals court considered that: "it is evident that the aforementioned information cannot be considered equivalent to the concept of "acting openly" as contemplated in paragraph two of article 245 of the Criminal Code. By acting openly, paragraph two contemplates an action that may involve acts committed concretely, which constitute, if applicable, the offence of taking of interest. In short, the defendant cannot seriously argue that the fact that he informed the head of his corps of the creation of said company represented for him a guarantee that, in the future, he would not have to be held to account for any violation of the provisions of article 245 of the Criminal Code that he would have eventually commit as part of the activities of this same company". The appeals judge ordered the suspension of the sentence for 3 years for the taking of interest.

d. There was a big case, involving the "Régie des bâtiments" (the federal office for the state-owned buildings), where the most important person was sentenced to 18 months in prison and a fine of EUR 200,000. This was a case of systematic fraud, bribery and embezzlement. At the end of the 90s to the mid-2000s in the Regie des batiments in the region of Brussels, corruption was applied systematically, even to that extent that it was considered 'normal'. In exchange for awarding public works, public officials received cash or the constructors involved worked for free or at a significant discount in the private homes of these officials. To pay for this, the constructors raised their wages for the federal state. In this case, 14 public officials, 35 contractors and 24 companies were convicted. They received relatively light sentences because the investigation had lasted so long. Some officials and contractors appealed. The Court of Appeal though, punished them heavier. A Director-General and a former curator who were sentenced in first instance to two years imprisonment with suspension, got three years with suspension in appeal. The court also ordered confiscation for EUR 100,000. Three other officials, who also appealed, were given suspended sentences of 18 months and 2 years. A contractor was sentenced to two years with suspension, while an engineering company was fined EUR 110,000.

e. As for cases for concussion, in one case, policemen let fines "disappear" and were sentenced to 180 hours of community service. Belgium explained that it does not consider this case to be of a "minimal infraction", because policemen have to be incorruptible, especially provided that giving fines is their daily job. In another case, a postman stole visa cards out of the mail and used them. He was sentenced to 12 months in prison, EUR 600 fine and confiscation of 22,000 Euros.

108. The acquisition of public assets, funds or titles in favor of third parties of other entities would fall under the scope of article 240. While articles 240 and 241 require intention, article 242 also punishes the negligent public official.

109. On the question of why article 253 allows for "suspension of public exercise" and other articles not, Belgium clarified that if the penalty is above 5 years of imprisonment, suspension of public exercise is always a possible additional penalty. If the penalty is lower, suspension is not automatically considered and the article in the Penal Code has to

explicitly foresee this possibility (with a reference to article 33 PC). For the chapter on corruption, article 252 foresees the possibility of suspension for all the acts, that is why it is not mentioned in every article separately.

110. Belgium has provided statistical data. Please refer to Annex 1.

(b) Observations on the implementation of the article

111. Belgium is in compliance with the provision under review. The CC provides for the crimes of embezzlement, misappropriation and other diversion of property by public officials in articles 240-245. Belgium relies on a wide definition of property, which includes, among others, funds, documents, titles and acts, and real estate assets. In addition to articles 240-245, article 491 is a general provision on embezzlement of goods.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

112. Belgium indicated that it has implemented this provision of the Convention and cited the following articles of the Criminal Code as relevant:

Criminal Code

Article 247 paragraph 4

When the purpose of the corruption by the person who exercises public duties is to use the real or supposed influence he has by virtue of his duties, in order to obtain an act from an authority or a public administration, or the omission of said act, the penalty shall be a prison term of six months to one year and a fine of 100 to 10,000 Euros.

When, in the case contemplated in the preceding paragraph, the solicitation contemplated in article 246 § 1, is followed by the proposal contemplated in article 246, § 2, and also when the proposal contemplated in article 246, § 2 is accepted, the penalty shall be a prison term of six months to two years, and a fine of 100 Euros to 25,000 Euros.

If the person has effectively used the influence he has by virtue of his duties, the person shall be punished with a prison term of six months to three years, and a fine of 100 to

50,000 Euros.

Article 246

§1. The act, by a person who exercises public duties, of soliciting, accepting or receiving, directly or through third parties, of an offer, a promise or an advantage of any nature, for the person himself or for another person, in order to adopt any of the behaviors contemplated in article 247, constitutes passive bribery.

§ 2. The act of proposing an offer, a promise or an advantage of any nature, directly or through third parties, to a person who exercises public duties, for the person himself or for another person, in order that the person may adopt any of the behaviors contemplated in article 247, constitutes active bribery.

113. Belgium explained that CC article 247 paragraph 4, in conjunction with article 246, makes public sector trading in influence an offence, as a form of public sector bribery. This allows extending the notion of corruption beyond the normal activities of persons performing public duties. However, Belgian law is not concerned with private trading in influence in which a private individual is proposed or solicits an advantage from another private individual in exchange for exercising influence over someone performing public duties.
114. The elements of the offence are the same as for traditional public sector bribery, other than two aspects, namely the action or conduct sought and the purpose. In contrast to bribery, the purpose is indirect, because trading in influence is a trilateral relationship. The aim is to induce a public department or authority to act, or refrain from acting. By definition, the official who carries out the action or fails to act is not part of the bribery process, otherwise he or she could be prosecuted as a joint perpetrator of passive bribery.
115. The offence in article 247 paragraph 4 is concerned with the use of influence, namely the use by persons performing public duties of their real or supposed influence arising from their position. Trading in influence is concerned with cases that go beyond ones covered by the offence of bribery, that is ones in which the influence is clearly related to the performance of his duties by the person concerned. The term used is "use" and not "abuse" of influence. Once the influence is used in exchange for the promise or granting of an advantage, this becomes an offence and the very use of the influence is punishable.
116. The fact whether the influence is exerted or the supposed influence leads to the intended result is partly taken into account in the penalties that can be imposed, since the level of the sanction varies according to whether or not the influence has been applied.
117. Belgium referred to a concrete case in which a public official had used his influence over other public officials. Subsequently a public contract was awarded to a consultant, in exchange for holidays abroad for this public official and his family. The public official was convicted of trading in influence.
118. As an example of implementation, an official who used his influence over agents responsible for awarding contracts to consultants in exchange for holidays abroad for himself and his family committed trading in influence.
119. Belgium explained that no specific statistics on trading on influence are available and

that the figures are included in the figures related to bribery.

(b) Observations on the implementation of the article

120. Trading in influence is criminalized only partially, as only the use of influence by public officials is covered and does not extend to the private sector or the private sphere. Therefore, Belgium is recommended to consider extending the scope of the offence of trading in influence (CC article 247 paragraph 4) to also include the private sector and the private sphere.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

121. Belgium indicated that it has implemented the provision under review and referred to CC article 247 paragraph 4 as relevant. Belgium also referred to its previous responses under subparagraph 18 (a).

122. CC Articles 246 paragraph 1 and 247 paragraph 4 sanction the person who exercises public duties and who solicits or accepts an offer, a promise or an advantage in order to use the real or supposed influence he has by virtue of his duties, in order to obtain an act from an authority or a public administration. These provisions do not require the person to actually use the real or supposed influence that the person has by virtue of his duties.

123. An example of case was provided. In Cass. 22/04/2014 (F-20140422-3), while the acts are not specified in the judgment, the legal reasoning for the conviction was supported by the way in which the money was delivered to the requesting party (namely at the restaurant, in a sealed envelope) and by the fact that the delivery and the acceptance of the money did not take place within a friendly relationship, but rather within a framework of 'protection' and 'complaisance' in which the defendants were supposed to be benefitted by the requesting party (in his capacity as communal secretary).

(b) Observations on the implementation of the article

124. Similarly to the active form of trading in influence, the passive trading in influence is criminalized only partially, as only the use of influence by public officials is covered and does not extend to the private sector or the private sphere. Therefore, Belgium is recommended to consider extending the scope of the offence of trading in influence (CC

article 27 paragraph 4) to also include the private sector and the private sphere.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

125. Belgium indicated that it has implemented the provision under review and cited the following CC articles as relevant:

Criminal Code

Article 243 (Concussion)

Any person who exercises public duties, who is convicted of concussion, as a result of having ordered to be paid, of having demanded or received anything they knew not to be due, or in excess of any due amount for any fees, taxes, contributions, funds, or for salaries or compensation, shall be punished with a prison term of six months to one year, and a fine of 100 to 50,000 Euros, or one of these two penalties, and may be additionally sentenced to the interdiction of the right to exercise public duties, to serve in public employments or to hold public office, in accordance with article 33.

The penalty shall be a prison term of five to ten years, and a fine of 500 to 100,000 Euros if the concussion was committed with violence or threats.

Article 151 (“Abuse of power”)

Any other arbitrary act infringing the freedoms and rights guaranteed by the Constitution, ordered or executed by a civil servant or a public official, by a depositary or law enforcement officials or public force, will risk a prison sentence ranging from fifteen days to one year.

Article 491 (“Abuse of trust”)

Whoever illegally embezzles or dissipates, thus harming others, public funds, merchandise, bank notes, receipts, or any other written document containing or executing an obligation or receipt which were given under the condition of returning it or using it for a specific purpose, will risk an imprisonment sentence ranging from one month to five years and a fine of between twenty-six and five hundred Euros.

Article 242

When the acts of a judicial proceeding, or other papers, files, digital or magnetic supports, or acts or effects contained in public files, registries or deposits, or which are submitted to a public depositary in this capacity are removed or destroyed, the depositary who is guilty of negligence will be punished with a prison term of one to six months and a fine of 100 to 10,000 Euros, or one of these two penalties.

Article 245

Any person who exercises public duties who, directly or through third parties or simulations, takes, or receives any interest in the acts, awards, submissions, undertakings, in which the person was, at the time of the act, in whole or in part, charged with the administration or inspection, or who, being in charge of ordering the payment or the settlement of an affair, takes any interest whatsoever in it shall be punished with a prison term of one to five years and a fine of 100 to 50,000 Euros, or one of these two penalties, and may be additionally sentenced to the interdiction of the right to exercise public duties, to serve in public employments or to hold public office, in accordance with article 33.

The preceding provision shall not apply to those who, under the circumstances, were not able to favor their private interests due to their position, and who acted openly.

126. Belgium has provided the following examples of cases.

- a. Cass. 07/10/2008 (Judgment No. P.08.0738.N). The offence of concussion involves presenting sums as due under the law, it is not required that the sums are presented as due to the Treasury. Case in which a bailiff asked to be paid for acts that he was not supposed to do. The court considered that a bailiff should not be granted a salary when he goes to the registry of the court to check on certain documents and when this is not necessary according to the law.
- b. b. Case in which tax officials ordered the payment of a tax which they knew was not due, e.g. because it had already been barred.
- c. c. Case in which a mayor could not receive some additional remunerations himself due to a cumulative system. Therefore, he paid to one of his employees who was later obliged to give the amount back to the mayor.

127. Belgium has provided statistical data. Please refer to Annex 1.

(b) Observations on the implementation of the article

128. Belgium clarified that although the term “concussion” does not have a legislated definition, it concerns “consciously and with abuse of his or her function collect or receive any money or other values that are not due, by an official”. Therefore, according to Belgium, article 243 has the exact same scope as article 19 of the Convention. Provisions on the abuse of power and the abuse of trust by public officials were also cited as relevant (CC articles 151 and 491).

129. Belgium is in partial compliance with the provision under review. Abuse of functions or “concussion” is criminalized (CC article 243). Provisions on confiscation, the abuse of power, taking interest and the abuse of trust by public officials are also relevant (CC articles 42,151, 245 and 491). However, the element of third party benefits for the offence of abuse of functions is not explicitly covered by Belgian legislation and Belgium has not provided any case law to demonstrate the practical implementation of this element. Therefore, Belgium is recommended to consider including the element of third party benefits in the definition of abuse of functions (CC article 243).

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party

shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

130. Belgium indicated that it has not implemented this provision of the Convention.

131. Belgium explained that there is no intention to explicitly sanction illicit enrichment in the way of the Convention at this stage. However, Belgium noted that:

- The payment of the smallest sum or the smallest advantage is punishable when a behavior contemplated by the law (particularly the performance of a fair act that is not subject to salary) is expected in return.
- Belgian legal system includes a similar provision of unjustified enrichment. Article 43quater of the Criminal Code establishes reversal of the burden of proof for confiscation, if there has been a conviction for an offence (including corruption, articles 246 to 251 CC). That is not an actual sanction for illicit enrichment, but a punishment after the conviction, if there is evidence that the property is derived from a criminal act of which the person is declared guilty or of other identical acts. It requires the convicted person to prove that the property is not the proceeds of crime.
- With regard to declaration of assets, income, liabilities and interests, the law of 2 May 1995 imposed an obligation in principle for the members of both chambers of the federal parliament (and of the community and regional parliaments) to declare their mandates and their assets. A law of 26 June 2004 introduced the necessary implementing measures: procedures for presenting and lodging declarations of mandates and assets, review procedures, etc. The apparatus as a whole finally came into force on 1 January 2005.

The declaratory obligations are now as follows:

- a) declaration of assets (Article 3 of the 1995 law): Chamber members and senators taking up or relinquishing office (or any other new mandate held concurrently) must lodge by 1 April of the following year a statement of their assets indicating the position at 31 December of the year in question. The statement comprises “all credits (such as bank accounts, shares and bonds), all real estate and all moveable property of value (e.g. antiques and works of art)”; it is specified that this also concerns assets held in joint, community or undivided ownership;
- b) declaration of mandates, managerial functions or professions (Article 2 of the law of 1995): Chamber members and senators routinely declare each year by 1 April all functions performed during the previous year both in the public sector and on behalf of any natural or legal person, and any body or de facto association established in Belgium or abroad. The declaration specifies, for each function, whether or not it is remunerated (the concept of remuneration is understood with reference to regular income but also attendance allowances or fees in the case of responsibilities in certain types of corporations or public entities).

The declaratory information is made public as follows:

- a) the declaration of assets, submitted to the Court of Audit (Cour des Comptes) and lodged directly in a sealed envelope by those concerned, is not public. The Court of Audit safeguards the strict confidentiality of the documents, which it has to keep in sealed envelopes until their return (5 years from the end of the last mandate or office held) or destruction in the event of death (1 month after the date of death). All

depositories or holders of the declaration are sworn to professional secrecy (in accordance with Article 458 of the Criminal Code). Only an investigating judge may consult this declaration in the context of a criminal investigation;

b) the declaration of mandates, managerial functions or professions is also transmitted to the Court of Audit which ensures its publication in the *Moniteur belge* each year not later than 15 August, at the same time as the lists of office holders who have not sent in their list of mandates and/or declaration of assets in due time. A bill is in hand to arrange for the lists to be transmitted in electronic format so as to facilitate the work for the CC and avoid risks of data input errors.

More details on who has to declare and how the procedures work can be found at:

<https://www.ccrek.be/Docs/Site/Mandat/FR/VMAss.pdf>

132. Belgium has not provided examples of cases and jurisprudence.

(b) Observations on the implementation of the article

133. Illicit enrichment is not codified as a stand-alone provision in Belgian law; however, CC articles 43quater and 246-251 cover property derived from a criminal act and criminalize unjustified enrichment. The Court of Audit (Court des Comptes) receives parliamentarians' asset declarations as well as those for high-ranking public officials (e.g. Ministers, etc.). Their family members have no disclosure obligation.

134. Belgium is in partial compliance with the provision under review and is recommended to continue strengthening legislative and other measures concerning illicit enrichment in line with the Convention, including broadening the obligation to disclose and declare assets to also include family members of public officials. One of the reviewing States opined that Belgium should be proactive in the criminalization of illicit enrichment, and this might not be possible until it implements a way of promoting that every public official disclose publicly their tax return and asset declaration.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

135. Belgium indicated that it has implemented the provision under review and cited the following national legislation as relevant:

Criminal Code

Article 504bis §2

...

The act of proposing an offer, a promise or an advantage of any nature, directly or through third parties, to a person who has the capacity of an administrator or a manager of a legal person, of principal or official of a legal or natural person, for the person himself or for another person, to perform or to abstain from performing an act related to his duties or facilitated by his duties, without the knowledge and without the authorization, as the case may be, of the administrative board or the general meeting, the principal or the employer, constitutes active private corruption.

[NOTE: Article 4 of the Act of 11 May 2007 specifies that article 504bis, § 2 of the Criminal Code, inserted by the Law of 10 February 1999, should be interpreted in such a way that it also constitutes an active bribery offence in the private sector to grant directly or through the intermediation of other persons, promises or advantages of any nature to the director or manager of a legal person, or the representative or employee of a legal person or an individual, for himself or others, in exchange for performing or refraining from performing actions in connection with his duties, unbeknown to and without the authorization of, as appropriate, his board of directors or annual general meeting, his principal or his employer.]

Article 504ter Criminal Code

§ 1er. For private corruption, the penalty shall be a prison term of six months to two years, and a fine of 100 to 10,000 Euros, or only one of those penalties.

§ 2. When, the solicitation contemplated in article 504bis § 1, is followed by the proposal contemplated in article 504bis, § 2, and also when the proposal contemplated in article 504bis, § 2 is accepted, the penalty shall be a prison term of six months to three years, and a fine of 100 Euros to 50,000 Euros, or one of those penalties.

136. Bribery in the private sector is an offence under 504bis of the Criminal Code. The first paragraph concerns passive bribery and the second active bribery. Article 504ter, paragraph 1 lists the penalties applicable and paragraph 2 concerns cases of bribes offered and accepted (as in the case of bribery of public officials), which are liable to slightly higher penalties.
137. Article 504bis refers to the director or manager of a legal person, or the representative or employee of a legal person or an individual. The law does not define the notion of private sector. However, it has a broad scope. It is not confined to employment relationships but also covers persons who are self-employed or who are contracted to perform a particular operation. Nor is it confined to undertakings' sectors of activities or the business sector, since it also covers, for example, non-profit organizations. Finally, it extends beyond work-related activities to include voluntary work and the world of sport.
138. Article 504bis refers to “*offering ... promises or advantages of any nature*”, which are the same words as appear in the offence of bribing a public official. In 1999, Parliament deliberately adopted a definition of the forms of behaviour covered that was similar to the one used in connection with public sector bribery. In the debates in Parliament, the then justice minister had spoken of his wish to maintain this parallel approach²⁰. In addition, Article 4 of the Act of 11 May 2007 specifies that article 504bis, § 2 of the Criminal Code, inserted by the Law of 10 February 1999, should be interpreted in such a way that it also constitutes an active bribery offence in the private sector to grant directly

or through the intermediation of other persons, promises or advantages of any nature to the director or manager of a legal person, or the representative or employee of a legal person or an individual, for himself or others, in exchange for performing or refraining from performing actions in connection with his duties, unbeknown to and without the authorisation of, as appropriate, his board of directors or annual general meeting, his principal or his employer.

139. Belgian law also uses the terms already seen in connection with the offence of bribing a public official, namely: directly or through the intermediation of other persons; for himself or others; and for performing or refraining from performing actions in connection with his duties. As previously noted, the offence of bribery is deemed to be intentional, under the general principles of criminal law.

140. Belgian law makes no reference to the context of the business activity and as noted above the offence of bribery in the private sector is not confined to the commercial sphere. Moreover, the offence does not expressly stipulate that there should be a breach of duties but Article 504bis of the Criminal Code requires the action in question to be part of, or facilitated by, an individual's official duties and to be taken unbeknown to and without the authorisation of, as appropriate, the board of directors or general meeting, the manager or the employer. This wording is based on pre-2005 French law. Belgian law's choice of this approach has led to the reservation regarding the offence of private sector bribery. The authorisation referred to may take any form. It may derive from previous mandate or terms of reference that can be explicit or implicit. It is for the prosecution service to establish that the action that is the subject of proceedings has been carried out without authorisation.

141. Belgium has not provided examples of cases.

142. Belgium has provided statistical data. Please refer to Annex 1

(b) Observations on the implementation of the article

143. Belgium explained that given that corruption can take many forms and is severely penalized, in 2008 the Federal Public Service Justice produced a brochure aimed at raising awareness of businesses active on the international market for goods and services on the consequences of corruption.

144. On 9 December 2016, Belgium launched a new "Anti-corruption guide for Belgian companies overseas". It is a guide for conforming to the rules on combating bribery of foreign public officials in international business transactions.

145. Belgium is in partial compliance with the provision under review. Bribery in the private sector is criminalized (CC articles 504bis and 504ter) and applies to, among others, the commercial sector, non-profit organizations, and volunteering and sport organizations. However, while the term 'private sector' is interpreted broadly, article 504bis limits the scope of application through the requirement that bribery be committed "*without the knowledge and without the authorization, as the case may be, of the administrative board or the general meeting, the principal or the employer.*" Given the restrictive effect of this requirement, Belgium is recommended to remove this requirement from CC article 504bis.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

146. Belgium indicated that it has implemented the provision under review and cited the following national legislation as relevant (in addition to those cited under article 21(a)):

Criminal Code

Article 504bis, §1

The act, by a person who has the capacity of an administrator or a manager of a legal person, of principal or official of a legal or natural person, of soliciting or accepting, directly or through third parties, an offer, promise, or an advantage of any nature, for the person himself or for another person, to perform or to abstain from performing an act related to his duties or facilitated by his duties, without the knowledge and without the authorization, as the case may be, of the administrative board or the general meeting, the principal or the employer, constitutes passive private corruption.

...

Article 504ter

§ 1. For private corruption, the penalty shall be a prison term of six months to two years, and a fine of 100 to 10,000 Euros, or only one of those penalties.

§ 2. When, the solicitation contemplated in article 504bis § 1, is followed by the proposal contemplated in article 504bis, § 2, and also when the proposal contemplated in article 504bis, § 2 is accepted, the penalty shall be a prison term of six months to three years, and a fine of 100 Euros to 50,000 Euros, or one of those penalties.

147. Belgium has provided the following case example: The former coach of the SK Lierse football club, P.P., was sentenced to two years of prison with conditional suspension by the 69th chamber of the Correctional Court of Brussels. He had later been sentenced in absentia to the same penalty and had objected to the ruling. He had recognized being guilty of corruption for having participated in the match-fixing case in Belgium in 2004 and 2005. The judge upheld the sentence pronounced in absentia. However, the judge specified in the new ruling that the penalty should be subject to conditional suspension. In addition, the former football coach was imposed a fine of EUR 11,000 and a confiscation of around EUR 50,000, a sum related to the commissions received by P.P. to fix the matches of the SK Lierse, according to the judge. He considered that P.P. was

guilty of active corruption for fixing football matches.

148. Belgium has provided statistical data. Please refer to Annex 1.

(b) Observations on the implementation of the article

149. As mentioned under subparagraph (a), Belgium is in partial compliance with the provision under review. Bribery in the private sector is criminalized (CC articles 504bis and 504ter) and applies to, among others, the commercial sector, non-profit organizations, and volunteering and sport organizations. However, while the term ‘private sector’ is interpreted broadly, article 504bis limits the scope of application through the requirement that bribery be committed “*without the knowledge and without the authorization, as the case may be, of the administrative board or the general meeting, the principal or the employer.*” Given the restrictive effect of this requirement, Belgium is recommended to remove this requirement from CC article 504bis.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

150. Belgium indicated that it has implemented the provision under review.

151. There is no explicit provision on embezzlement of property in the private sector, but the conduct could fall within the scope of article 461 on theft and article 492bis on abuse of corporate assets. Belgium also referred to the general article on embezzlement of goods.

Criminal Code

Article 461 (theft)

Anyone who embezzles property that does not belong to him is guilty of theft. The act of embezzling third-party property for momentary use is considered as equivalent to theft.

Article 491 of the Criminal Code (embezzlement of goods)

Whoever illegally embezzles or dissipates, thus harming others, public funds, merchandise, bank notes, receipts or any other written document containing or executing an obligation or receipt which were given under the condition of returning it or using it for a specific purpose, will risk an imprisonment sentence ranging from one month to five years and a fine of between twenty-six and five hundred Euros.

Article 492bis of the Criminal Code (abuse of corporate assets)

De jure or de facto directors of commercial or civil companies and of non-profit organisations may be sentenced to one month to five years imprisonment and a fine of one hundred to five hundred thousand Euros who have fraudulent intentions with a personal interest, and who have directly or indirectly, used the assets or the credit of the legal person in a way that would significantly harm the company's or the organization's patrimonial interest and that of the creditors or associates.

152. Belgium provided the following case example: the criminal court of Verviers has confiscated a total amount of almost EUR 400,000 at the expense of a former financial and administrative director of company X, allegedly embezzled money from the company for almost ten years. The woman bought products for herself which she invoiced to the company, stole money from the cash register, went to dinner at the expense of the company and made false invoices. She was sentenced to eighteen months in prison with suspension.

153. Belgium has provided statistical data. Please refer to Annex 1.

(b) Observations on the implementation of the article

154. Embezzlement in private sector is not explicitly criminalized but the conduct constituting the offence may fall within the scope of CC articles 461 on theft and 492bis on abuse of corporate assets. However, for the sake of legal clarity and in order to be in full compliance with the provision under review, Belgium is recommended to ensure that the definition of embezzlement of property in the private sector be enhanced in line with the Convention.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) Summary of information relevant to reviewing the implementation of the article

155. Belgium indicated that it has implemented the provision under review.

156. Belgium referred to CC article 505 and the Anti-Money Laundering Law as relevant.

Criminal Code

Article 505

Will be punished with a prison term of fifteen days to five years and a fine of twenty-six to one hundred thousand Euros, or one of those penalties:

1 those who have concealed, in whole or in part, any property that has been removed, diverted or obtained by way of a crime or an offence;

2 those who purchase, receive in exchange or without cost, hold, guard or manage the property contemplated in article 42, no. 3 if they knew, or should have known, the origin of the property at the start of the operations;

3 those who convert or transfer the property contemplated in article 42, no. 3 in order to conceal or disguise its illicit origin, or to assist any person involved in the commission of the original offence related to the assets to evade the legal consequences of his actions;

4 those who have concealed or disguised the nature, source, location, disposition, movement or the ownership of the property contemplated in article 42, no. 3 if they knew, or should have known, the origin of the property at the start of the operations;

The offences contemplated in paragraph 1, no. 3 and 4, exist even if the perpetrator is also the perpetrator, co-perpetrator or accomplice of the original offence related to the property contemplated in article 42, 3°. The offences contemplated in paragraph 1, 1 and 2, exist even if the perpetrator is also the perpetrator, co-perpetrator or accomplice of the original offence related to the property contemplated in article 42, 3, when the offence is committed abroad and cannot be prosecuted in Belgium.

Except for the perpetrator, co-perpetrator or accomplice of the original offence related to the property contemplated in article 42, 3, the offences contemplated in paragraph 1, 2, and 4, are exclusively related, in fiscal terms, to the acts committed within the framework of a serious fiscal fraud, organized or otherwise.

The bodies and the persons contemplated in articles 2, 2bis and 2ter of the law from January 11, 1993 on the use of the financial system for the laundering of money or the financing or terrorism may invoke the preceding paragraph to the extent that, in relation to the acts contemplated therein, they comply with the obligation provided for in article 28 of the law from January 11, 1993 that regulates the modalities of the communication of information to the Financial Information Unit.

The property contemplated in paragraph 1, no. 1 of this article constitutes the object of the offence covered by this provision, in the sense of article 42, no. 1, and shall be confiscated, even if the property is not owned by the convict, provided that this penalty does not affect the rights of third parties over the property that may be subject to confiscation.

The property contemplated in paragraph 1, no. 3 and 4 constitutes the object of the offence covered by this provision, in the sense of article 42, no. 1, and shall be confiscated from each, the perpetrator, co-perpetrator or accomplice of the offences, even if the property is not owned by the convict, provided that this penalty does not affect the rights of third parties over the property that may be subject to confiscation. If the property cannot be found in the patrimony of the convict, the judge shall proceed to make an appraisal, and the confiscation will involve an equivalent sum of money. In this case, the judge may reduce the sum in order to avoid subjecting the convict to an unreasonably heavy penalty.

The property contemplated in paragraph 1, no. 2 of this article constitutes the object of the offence covered by this provision, in the sense of article 42, no. 1, and shall be confiscated from each, the perpetrator, co-perpetrator or accomplice of the offences, even if the property is not owned by the convict, provided that this penalty does not affect the rights of third parties over the property that may be subject to confiscation.

If the property cannot be found in the patrimony of the convict, the judge shall proceed to make an appraisal, and the confiscation will involve a sum of money that shall be proportional to the participation of the convict in the offence.

Attempt, with regard to the offences contemplated in no. 2. 3 and 4 of this article shall be punished with a prison term of eight days to three years and a fine of twenty-six to five hundred thousand Euros, or one of those penalties.

The persons punished under these provisions may additionally be sentenced to interdiction, in accordance with article 33.

157. The Law of 11 January 1993 on Preventing Use of the Financial System for Purposes of Money-Laundering and Terrorist Financing (AML Law) implements the Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money-laundering and terrorist financing, as well as Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis. The AML Law supplements the repressive approach to money-laundering in CC article 505 with a series of preventive measures carrying administrative sanctions and imposing on the specified institutions and individuals a duty to cooperate to detect suspicious transactions and facts and report them to an authority created for this purpose, the Financial Intelligence Processing Unit (CTIF-CFI).

AML Law

Article 5 § 1 (gives the definition for money laundering):

- the conversion or transfer of money or assets for the purpose of concealing or disguising their illicit origin or assisting any person who is involved in the offence from which this money or these assets derive to evade the legal consequences of his actions;
- the concealment or disguise of the nature, source, location, disposal, movement or ownership of money or assets known to be of illicit origin;
- the acquisition, possession or use of money or assets known to be of illicit origin;
- participation in, association to commit, attempts to commit and aiding, abetting facilitating and counselling the commission of any of the acts referred to in the foregoing three items.

158. With regard to the term "serious tax fraud" used in CC article 505 paragraph 4, the reviewing experts asked in which cases Belgium would consider a serious tax fraud to be committed. Belgium explained that the seriousness of the fiscal fraud is derived from: (1) the formulation and / or the use of false documents; and (2) the substantial amount of the transaction and the unusual character of this amount, in view of the activities and the equity of the suspect (Explicative notes on the Programme Law of 27 April 2007). Belgium also referred to the royal decree of 3 June 2007 which lists the criteria to determine the seriousness of the fiscal fraud:

Royal Decree of 3 June 2007 implementing Article 28 of the Act of 11 January 1993 regarding the prevention of using the financial system for money laundering and terrorism financing:

Article 2:

- 1) The use of incorporated or repurchased shell companies with their headquarters in a tax haven or an offshore territory or at the private address of one of the intermediaries, or performing an operation unrelated to the company purpose, or with a vague or inconsistent purpose;
- 2) The use of companies which, shortly before being intervened, have performed suspicious financial transactions, various statutory changes such as the appointment of a new director, the amendment of the company's name, the extension or the amendment of the company's purpose or have moved the location of the headquarters.
- 3) The use of third parties (straw men) that intervene on behalf of companies involved in financial operations;
- 4) The execution of atypical financial operations to exercise the usual company activities or suspiciously participating in highly competitive sectors or sectors which are sensitive to VAT fraud such as the hardware, car, mobile phone, oil products, textile, hi-fi, video and electronic sectors.
- 5) A sudden rise in revenue in a short period of time, giving rise to newly opened bank accounts and which, so far, have been relatively or completely inactive, due to an exponential increase of the number and volume of operations;
- 6) Remarkable anomalies in invoices provided as documentary proof of the financial operations, such as the absence of VAT number, financial account, invoice number, address or dates or whenever any of this information cannot be provided;
- 7) The use of payable-through accounts and the succession of multiple transactions, eventually including withdrawals cash, including rather limited amounts (debiting of commissions), the total amount of which is significant, while the account balances are often close to zero.
- 8) The use of intermediary accounts or accounts where the holders have non-financial professions as payable-through accounts, hindering the identification of the real beneficiaries and the links between the origin and the destination of the funds. This use may also be characterized by the use of complex corporate structures and legal and financial arrangements leading to a lack of transparency of the management and administrative mechanisms.
- 9) The international dimension of the financial operations making it difficult to understand the economic and financial justifications of the financial operations, which are usually the outright transfer of funds coming from abroad and leaving the country again;
- 10) The refusal of the client or his or her inability to deliver the supporting documents proving the source of the funds or the given payment reasons.
- 11) Settling insolvency by the quick sale of assets to natural or legal persons or under conditions which are not in line with the market conditions.
- 12) The use of back to back loans which aim to transfer funds in a foreign country in order to apply for a loan through a banking institution in said country by offering said funds as guarantee in order to then repatriate the loan funds to the country of origin, thereby completing the process given that, in fact, the company is lending funds to itself.
- 13) Paying commissions to foreign companies without commercial activities, as well as the payment or the transfer of amounts from said companies into Belgium.

159. Belgium explained that in its first version (Act of 17 July 1990), the laundering offence was a concealment extended to include assets derived from any criminal offence (Art. 505, para. 1, 2). Since its amendment through the Act of 7 April 1995, the money-laundering offence provided for in CC article 505 paragraphs 1, and 2 to 4 became a

separate offence from concealment. According to the jurisprudence of the Court of Cassation, the possession of stolen goods does not require the physical possession of items obtained through a crime or an offence. Unless they are deprived of any market value, "things removed, misappropriated or obtained by means of a crime or misdemeanour" referred to in CC article 505, paragraph 1, 1), they are necessarily "pecuniary benefits directly derived from the offence" or "goods and assets which have been substituted for them" under Article 42, 3) (the concept of "pecuniary benefit" may include more than just "things removed, misappropriated or obtained by means of a crime or offence"). Therefore, all acts of concealment ("ordinary") under article 505, paragraph 1, 1) are also an offence under article 505, paragraph 1, 2) ("extension" concealment). However, there is no place for competition between the two offences that are covered by different provisions. In a prosecution, the judge makes a choice between the two offences. For example, giving instructions for the destruction of stolen items or financing the purchase of a car with the loot from a holdup (even if the funds have never physically been in the hands of the person convicted for concealment) will be considered a concealment offence.

160. Belgium provided the following examples to better explain the concept (examples taken from case law):

- Section 505, para. 1, 2): the sale, exchange, donation, acceptance of an estate, the possession or management of assets for own account or for others, opening an account, deposit operations, withdrawal or transfer of sums in accounts, performing currency exchange operations, the purchase of securities, the acquisition of raw materials such as gold or silver.
- Section 505, para. 1, 3): currency exchange, the sale of stolen goods, the transfer of pecuniary benefits to a third party without compensation, temporarily offering benefits to a third party, the reintroduction of illegal funds in the legal economy through the purchase of real estate or movable property (luxury cars, designer clothes, expensive trips, etc.), securities, assets or shares in companies and operations aiming to circulate illicit funds (credit transfers, international transfers, cheques).
- Section 505, paragraph 1, 4): making falsifications and using them, the use of shell companies and straw men (See Brussels (15th c.), 25 February 2014: incorporation of a company and opening a bank account through straw men that have nothing to do with the running of the company), the use of nominees and companies or financial institutions in tax havens or offshore territories (Brussels, 17 September 2014: invoicing Belgian clients with no VAT, even though the company, established in the British Virgin Islands, was trading from Belgium and should have therefore had a representative subject to VAT).

(b) Observations on the implementation of the article

161. Belgium is in compliance with the provision under review. Money-laundering, including all its elements under article 23 (a)(i) of the Convention, is criminalized (CC article 505).

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

162. Belgium indicated that it has implemented the provision under review and cited CC article 505 as relevant:

Criminal Code

Article 505

Will be punished with a prison term of fifteen days to five years and a fine twenty-six to one hundred thousand Euros, or one of those penalties:

...

4 those who have concealed or disguised the nature, source, location, disposition, movement or the ownership of the property contemplated in article 42, no. 3 if they knew, or should have known, the origin of the property at the start of the operations;

...

163. Belgium also referred to the information provided above under article 23 a) i).

164. Belgium has provided the following statistical data:

• **Convictions:**

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|--|------|------|------|------|------|------|------|------|
| 505, al. 1, 2° Illicit use of proceeds of crime | 120 | 115 | 154 | 138 | 70 | 186 | 316 | 382 |
| 505, al. 3° Conversion or transfer | 130 | 92 | 97 | 82 | 33 | 126 | 211 | 277 |
| 505, al. 1, 4° Concealment of the origin | 52 | 28 | 41 | 48 | 20 | 54 | 86 | 123 |

165. Belgium also added that it follows the FATF recommendations. In February 2015, the FATF published a report which analyzed in depth how the FATF recommendations can help the fight against corruption in different countries. The Egmont Group, an international network of Financial Intelligence Units (FIUs), chaired by Belgium (CTIF, Belgian Financial Intelligence Processing Unit) studies the recent trends in money-laundering in connection with corruption and offers, along with the FATF, guidance and advice to financial institutions, States and FIUs for the detection of suspicious

transactions by politically-exposed persons. In 2014, the Egmont Group met in a Plenary Assembly in Lima (Peru). Training sessions were organized for the participants on the major challenges currently faced by the FIUs regarding the fight against money laundering such as: the role of the FIUs in fighting corruption and the seized asset recovery. The Belgian preventive measures against money laundering include measures adapted to fight laundering of proceeds of corruption by politically-exposed persons and Act of 11 January 1993 (the AML Law) and which takes into account the increased risk of laundering among PEPs.

166. With regard to the effectiveness and dissuasiveness of the minimum prison sentence (15 days) and fine (EUR 26), Belgium explained that fines must be increased a few percentage points (Act of 5 March 1952), bringing the fine up to EUR 600,000. Moreover, the proceeds of the crime are seized (Articles 43 et seq. of the Criminal Code) and the crime is added as a separate sentence. This greatly strengthens the deterrent effect of sanctions. A five-year prison sentence is a strong sentence. Furthermore, Article 506 of the Criminal Code must be taken into account, which includes prison sentences of 20 to 30 years for cases where the offenders of concealment or laundering have knowledge of the underlying offences and which are condemned by law to either life imprisonment or a 20 to 30-year prison sentence. For the rest, it is impossible to determine whether the sanctions are effective, proportionate and dissuasive, since most people are convicted for several offences, and among them laundering. Thus, sentences sometimes exceed the statutory maximum for money laundering (5 years) due to the accumulation of offences. Conversely, some people are sentenced to a small fine (EUR 200-2,000) and no imprisonment. Based on the judgments found in the CTIF records, it can be seen that prison sentences (for laundering alone or joined with other offences) are usually less than one year (45%) and 69% are below 2 years. When deciding the sentence, courts take into account in particular the criminal record of the convicted person and the degree of involvement in the offence, but also the efficiency of the procedure (deterrent effect of the sentence). By way of example, the table below is based solely on the CTIF records which resulted in a judgment regarding money laundering or other offences. The court takes into account the offences committed, the person's criminal record, the reasonable length of the procedure, etc. Based on data provided by the Belgian authorities, it is not possible to precisely determine the number and amount of fines imposed regarding money laundering. Finally, a 1999 law provides for the registration of convictions against legal persons in a criminal case for legal persons held at the court registry. This measure is being implemented.

Imprisonments, following an investigation by CTIF

| Number of persons punished | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Total | % |
|-----------------------------------|------|------|------|------|------|------|------|------|------|-------|---------|
| ≤1 year | 158 | 95 | 86 | 63 | 70 | 49 | 82 | 40 | 23 | 666 | 45.15 % |
| 1 to 2 years | 67 | 51 | 38 | 49 | 49 | 31 | 33 | 20 | 17 | 355 | 24.06 % |
| 2 to 3 years | 53 | 17 | 36 | 36 | 21 | 24 | 12 | 13 | 6 | 218 | 14.8 % |
| 3 to 4 years | 28 | 9 | 16 | 14 | 12 | 15 | 10 | 3 | 8 | 115 | 7.80 % |

| | | | | | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|-----------|-----------|--------------|--------------|
| 4 to 5 years | 9 | 2 | 14 | 9 | 22 | 9 | 2 | 4 | 6 | 77 | 5.20 % |
| ≥ 5 years | 19 | 0 | 3 | 6 | 2 | 9 | 2 | 2 | 1 | 44 | 2.99 % |
| Total | 334 | 174 | 193 | 177 | 176 | 137 | 141 | 82 | 61 | 1 475 | 100 % |

Source: CTIF

167. When there is suspicion of money-laundering, financial institutions are required to inform an authority created for this purpose, i.e. the Financial Intelligence Processing Unit (CTIF). Established in 1993, this body is at the heart of the Belgian system of preventive control against money laundering derived from crime and financing of terrorism.
168. The Act of 11 January 1993, regarding the prevention of the use of the financial system for money-laundering or financing of terrorism, established a preventive system to detect financial operations suspicious of covering money laundering or financing of terrorism. Individuals and organizations targeted by said Act have the duty to cooperate with financial institutions to detect suspicious transactions, imposing several obligations on these institutions: identifying clients, keeping data on financial transactions, duty of care, denouncing or reporting on operations suspicious of laundering, limiting cash payments, etc. In order to help financial institutions to better detect suspicious transactions, the law establishes a list of indicators, including: transactions unrelated to the company purpose, or suspiciously participating in highly competitive sectors or sectors which are sensitive to VAT fraud; a sudden rise in revenue in a short period of time, giving rise to newly opened bank accounts and which, so far, have been relatively or completely inactive; anomalies in invoices; the refusal of the client or his or her inability to deliver the supporting documents proving the source of the funds received. These indicators are evaluated every two years in consultation with the Financial Information Processing Unit, the Banking, Finance and Insurance Commission and the Belgian Financial Sector Federation.
169. Individuals and organizations that detect suspicious financial transactions or possess information that could be related to money laundering or terrorist financing must, by law, notify the Financial Intelligence Processing Unit (CTIF), the Belgian FIU, which has a set of prerogatives conferred on by law for analyzing these suspicious financial transactions or information. If necessary, and in the case of there being serious indications of money laundering from serious criminal activities covered by the law (including corruption), the case is automatically sent to the judicial authorities. CTIF currently has sufficient resources for the analysis and transmission of these cases. Indeed, it has access to a lot of information from public records, receives much information spontaneously or following the request of national or international authorities, concludes memorandums of understanding (MOUs) with security from the State, the army intelligence service, etc. In 2014, the CTIF transmitted 1,131 new cases to the judicial authorities for a total amount of EUR 786,050,000. In 2014, the CTIF transmitted 12 money laundering cases related to corruption for a total amount of EUR 8.90 million. In its mutual evaluation report of 2015, the FATF recognized the high quality of the information research work carried out by the CTIF. More statistics about CTIF's work in 2015 can be found here:

http://www.ctif-cfi.be/website/images/FR/annual_report/annexe2.pdf

(b) Observations on the implementation of the article

170. Belgium is in compliance with the provision under review. Money-laundering, including all its elements under article 23 (a)(ii) of the Convention, is criminalized (CC article 505).

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article

171. Belgium indicated that it implemented the provision under review. Belgium made a reference to the information provided under article 23(a) and cited the following national provisions as relevant:

Criminal Code

Article 505

Will be punished with a prison term of fifteen days to five years and a fine of twenty-six to one hundred thousand Euros, or one of those penalties:

...

2 those who purchase, receive in exchange or without cost, hold, guard or manage the property contemplated in article 42, no. 3 if they knew, or should have known, the origin of the property at the start of the operations;

...

AML Law

Article 5 § 1 (gives the definition for money laundering):

- the conversion or transfer of money or assets for the purpose of concealing or disguising their illicit origin or assisting any person who is involved in the offence from which this money or these assets derive to evade the legal consequences of his actions;

- the concealment or disguise of the nature, source, location, disposal, movement or ownership of money or assets known to be of illicit origin;

- the acquisition, possession or use of money or assets known to be of illicit origin;

- participation in, association to commit, attempts to commit and aiding, abetting facilitating and counselling the commission of any of the acts referred to in the

foregoing three items.

(b) Observations on the implementation of the article

172. Belgium is in compliance with the provision under review. Money-laundering, including all its elements under article 23 (b)(i) of the Convention, is criminalized (CC article 505).

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

173. Belgium indicated that it has implemented the provision under review.

174. Belgium referred to its responses under article 27 of the Convention and noted the relevance of CC articles 66 and 67 (general CC provisions on participation and attempt) in this regard. Belgium clarified that these general provisions also apply to money-laundering.

175. Belgium has not provided examples of cases.

(b) Observations on the implementation of the article

176. Belgium is in compliance with the provision under review. The general CC provisions on participation and attempt (articles 66 and 67) apply also to participation in and attempted money-laundering.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (a)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(a) Summary of information relevant to reviewing the implementation of the article

177. Belgium indicated that it has implemented the provision under review and referred to CC article 505 as relevant (cited above). Belgium also referred to article 5, §3 of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorist financing (AML Law of 1993).

178. Belgium has not provided examples of cases.

(b) Observations on the implementation of the article

179. Belgium is in partial compliance with the provision under review. In general, any criminal offence according to Belgian legislation can constitute a predicate offence. However, it was discussed during the country visit that in line with the current wording of article 505, fiscal fraud is excluded from predicate offences and this could be a possible way of avoiding prosecution. Belgium explained that article 505 says that “except for the perpetrator, co-perpetrator or accomplice of the original offence related to the property contemplated in article 42 paragraph 3, the offences contemplated in paragraph 1, 2 and 4, are exclusively related, in fiscal terms, to the acts committed within the framework of a serious fiscal fraud, organized or not.” Belgium clarified that this exception therefore applies to third parties who did not commit the fiscal fraud itself and is only applicable for ‘small’ fiscal fraud. The exception does not apply in the cases of money-laundering that fall under the scope of article 505 paragraph 1 and 3.

180. Despite Belgium’s additional clarifications as well as the extensive reach of CC article 505, the reviewers recommended to amend article 505 to ensure that fiscal fraud is not excluded from the scope of predicate crimes and cannot be used to avoid prosecution for money-laundering and its predicate offences. Under article 505 in its present form, in certain circumstances fiscal fraud is not criminalized and does not constitute a predicate offence.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

181. Belgium indicated that it has implemented this provision of the Convention. Any crime can be the basic crime for money laundering, there are no exclusions.

182. Belgium has not provided examples of cases.

(b) Observations on the implementation of the article

183. Belgium is in compliance with the provision under review. All of the Convention offences are considered as predicate offences for money-laundering.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

184. Belgium indicated that it has implemented the provision under review.

185. The criminalization of money-laundering covers the acts committed in another country that constitute an offence in the said country, provided that they also constitute an offence under Belgian law. It suffices that acts of laundering are performed in Belgian territory, even if the underlying offence is committed abroad. Before the law from April 7, 1995 which modifies article 505 of the Criminal Code, the instantaneous nature of the offence of laundering could constitute an obstacle to prosecute capitals derived from an offence committed abroad in Belgium for laundering. In effect, the offence of laundering was then, most of the time, considered to have been committed abroad. Since the law from April 7, 1995, the legislator has recognized the continuity of the offence when the acts are related to acts that extend in time, such as the possession, safeguard, management, concealment or disguise. Henceforth, if a part of the behavior takes place in Belgium, that is enough for Belgian courts to claim jurisdiction for the whole.

186. Belgium has not provided examples of cases.

(b) Observations on the implementation of the article

187. Belgium is in compliance with the provision under review. Predicate offences committed abroad are subject to dual criminality. Nevertheless, Belgium always considers the underlying conduct in such cases.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any

subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

188. Belgium indicated that it has implemented the aforementioned measures and that the copy of its anti-money laundering law has been furnished to the Secretary-General.

(b) Observations on the implementation of the article

189. Belgium is in compliance with the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

190. Belgium indicated that article 505 CC applies to all the persons involved and therefore self-laundering is criminalized under Belgian law.

191. Belgium has not provided examples of cases.

(b) Observations on the implementation of the article

192. Belgium is in compliance with the provision under review. Self-laundering is criminalized.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

193. Belgium indicated that it has implemented the provision under review and cited the following CC articles as applicable.

Criminal Code

Article 505, §1 No. 1

Will be punished with a prison term of fifteen days to five years and a fine of twenty-six to one hundred thousand Euros, or one of those penalties:

1 those who have concealed, in whole or in part, any property that has been removed, diverted or obtained by way of a crime or an offence;

Art. 505bis Criminal Code

Those who have concealed, in whole or in part, any property that has been removed, diverted or obtained by way of the offence or the crime contemplated in article 433, shall be punished with the penalties provided for in article 505, paragraph 1, for which the minimum penalty shall be, for prison sentences, three months, and for fines, one thousand Euros.

Art. 506 Criminal Code

When the penalty applicable to the perpetrators of the offence is life imprisonment, or imprisonment for twenty to thirty years, (the persons who conceal contemplated in articles 505 and 505bis) shall be punished to a prison term of five to ten years, if it is proven that they, at the time of the concealment, were aware of the circumstances which the law attaches to life imprisonment, or imprisonment for twenty to thirty years.

194. Based on jurisprudence and doctrine, concealment may be defined as the possession or tenancy, for fraudulent purposes, of property that has been obtained by way of a crime or an offence by a third party.
195. Concealment is an independent offence, different from the crime or the offence in which the possession of the concealed objects has its origin. That implies, for example, that the person who concealed may still be prosecuted even when the statute of limitations has already been applied for the perpetrators of the crime or the offence. In the offence of concealment, the property must be obtained by way of a crime or an offence committed by a third party. In other words, the thief may not be the person who concealed the property he or she stole, to the extent that it involves the same property. However, the same defendant may be sentenced for the theft of a part of the property stolen and for the concealment of another part of the property if it involves the theft of different property committed by different persons.
196. Belgium explained that the elements that constitute concealment are:
- the possession or the tenancy of property obtained by way of a crime or an offence committed by a third party;
 - being aware in advance, or simultaneously to the possession, of the illicit origin of the property; and
 - the intent to remove the property from any investigation of the owner (moral element).
- Concealment does not require a previous agreement between the person who concealed and the perpetrator of the crime or the offence as an element of the offence.
197. Belgium has not provided examples of cases.

(b) Observations on the implementation of the article

198. Further to the questions of the reviewing experts, Belgium indicated that “le cour correctional” is the competent court in the offence of concealment. The Criminal Code does not provide for a specific procedure for concealment. Money-laundering is considered a wider type of concealment. There can be no competition between the two offences that are subject to different provisions. In a prosecution, the judge makes a choice between the two offences. The possible consequences of this autonomy are illustrated by a judgment of the Bruges Criminal Court which ruled on the following facts: the defendant was prosecuted under Article 505, paragraphs 1 and 3, for concealing in late 1995 and early 1996 a number of securities stolen by the second defendant in a bank safe, with the intention of using them later. The peculiarity of the case was the fact that the first defendant had already been convicted for the concealment of those same securities, which still had not been found. Nevertheless, the court held that the defendant was guilty of money laundering, among others, because: "The securities must be considered in this case as the pecuniary benefits directly derived from an offence (as set in Article 42, 3rd par. penul. C.) ", and " placing the deposit receipts in the safe should be regarded as their transfer (...) with the aim to disguise their illegal origin (concealment)."

199. Belgium is in compliance with the provision under review. Concealment is criminalized (CC articles 505 and 505 bis, read with articles 42 and 43bis on confiscation).

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

200. Belgium indicated that it has implemented the provision under review and cited the following articles of the Criminal Code as applicable.

A. Offences of false testimony and perjury: Art. 215 to 226 Criminal Code. In particular, the bribery of witnesses, experts, interpreters, etc. is punished in art. 223 Criminal Code.

Criminal Code

Article 215

False testimony in criminal matters, either against or in favor of the defendant, will be punished with a prison term of five to ten years.

Article 216

If the defendant is sentenced, either to a detention of more than ten years, or to a prison term of more than ten years, the false witness who testified against him will be imposed a prison term of ten to fifteen years.

He will be imposed a prison term of twenty to thirty years if the defendant was sentenced to life imprisonment.

Article 217

The penalties of the two preceding articles shall be reduced by one degree, in accordance with article 80, when those who have been called to provide simple information are found guilty of false statements, either against or in favor of the defendant.

Article 218

Anyone guilty of false testimony in correctional matters, either against or in favor of the accused, will be imposed a prison sentence of six months to five years.

Article 219

Anyone guilty of false testimony in police matters, either against or in favor of the accused, will be imposed a prison sentence of three months to one year.

Article 220

False testimony in civil matters will be punished with a prison term of two months to three years.

Article 221

An interpreter or an expert who is found guilty of false testimony, either in criminal matters against or in favor of the defendant, or in correctional or police matters against or in favor of the defendant, or in civil matters, shall be punished as false witnesses in accordance with article 215, 216, 218, 219 and 220.

Experts in criminal matters who are heard without taking the oath shall be punished in accordance with article 217.

Article 221bis

Anyone who, being charged with the verbatim-recording of a civil proceeding, knowingly omits one question, declaration, interpellation or response, who knowingly modifies its content by adding, removing or altering words or phrases, who changes, removes or disappears, in whole or in part, the notes or devices used to collect the recorded words, who uses these notes or devices, who reproduces or discloses their content for purposes that are unrelated to the proceeding, or who knowingly retranscribes in an inaccurate manner the words recorded, shall be punished with a prison term of eight days to three years and a fine of twenty-six Euros to five hundred Euros, or only one of those penalties.

The person will be punished with a fine of twenty-six Euros to five hundred Euros if he has neglected to take the precautions to prevent the disappearance or the altering of the notes or devices that were used to collect the words recorded, or the use of the notes or devices, the reproduction or disclosure of their content, for purposes that are unrelated to the proceeding.

Article 222

In the cases of articles 217, 218, 219, 220, 221 and 221bis, paragraph 1, the person who is found guilty may additionally be sentenced to interdiction, in accordance with article 33.

Article 33

The courts may, in the cases provided by the law, prohibit, in whole or in part, the exercise of the rights mentioned in article 31, paragraph 1 for a period of five to ten years.

Article 31 §1

Any convictions imposing life imprisonment or detention, or prison terms for ten to fifteen years or more, shall impose, for the convict, the permanent interdiction of the right:

- 1 To serve in public functions, employments or offices;
- 2 To be elected;
- 3 To bear any distinction, or nobility titles;
- 4 To be a jury, expert, witness or certifier in acts; to testify other than to provide simple information;
- 5 To be appointed as guardian, auxiliary guardian or custodian, other than of his children; and to serve as judicial advisor, court appointed administrator of the assets of someone allegedly absent, or as a provisional administrator.
- 6 To manufacture, modify, repair, assign, hold, bear, transport, import, export or cause the transportation of weapons or ammunitions, or to serve in the Armed Forces.

Article 223

Anyone found guilty of bribing witnesses, experts, interpreters or the persons contemplated in article 221bis will be punishable with the same penalties as false witnesses, in accordance with the distinctions established by articles 215 to 222.

Article 223bis

Anyone, outside the case of article 221bis, who changes, removes or disappears, in whole or in part, the notes or devices that were used to collect the words recorded during a civil proceeding, or who uses the notes or devices, reproduces or discloses their content for purposes that are unrelated to the proceeding, shall be punished with the penalties of articles 220 and 222.

Article 224

Anyone found guilty of false testimony, of providing false declarations or of any of the acts contemplated in article 221bis and 223bis, and who received money, any reward or promises, shall be additionally punished with a fine of fifty to three thousand Euros.

The same penalty shall apply to the briber, notwithstanding any other penalties.

Article 225

The preceding provisions related to false declarations do not apply to children less than ten years old, or to persons who are heard without taking oath, by virtue of their kinship or link with the defendants or the accused, when said declarations are in favor of the defendants or the accused.

Article 226

Anyone for whom the oath is postponed in civil matters, and who commits perjury, will be punished with a prison term of six months to three years, and a fine of twenty-six Euros to ten thousand Euros; in addition, the person may be sentenced to interdiction, in accordance with article 33.

Anyone who commits perjury in the affixing of seals or in an inventory shall be punished with the same penalties.

B. To offer an undue advantage to obtain a "service" such as: this act may be considered as (public or private) active bribery.

C. Making a verbal or written threat, under orders or conditions, of an attack against persons or property.

Article 327

Anyone who, verbally or in an anonymous or signed writing, acting under orders or under conditions, threatens to attack any person or property, punishable with a criminal penalty, shall be punished with a prison term of six months to five years and a fine of one hundred Euros to five hundred Euros.

Any threat in an anonymous or signed writing, to attack any person or property, that is not accompanied by an order or subject to conditions, shall be punished with a prison term of three months to two years and a fine of fifty Euros to three hundred Euros.

Article 328

Anyone who, verbally or in an anonymous or signed writing, or through any actions, knowingly provides false information regarding the existence of a danger or attack against any person or property, punishable with a criminal penalty, shall be punished with a prison term of three months to two years and a fine of fifty to three hundred Euros.

Article 330

Threatening, verbally or in an anonymous or signed writing, acting under orders or under conditions, to attack any person or property, punishable with a criminal penalty, shall be punished with a prison term of eight days to three months and a fine of twenty-six to one hundred Euros.

Article 330bis

In the cases of articles 327 to 330, the minimum penalties for said articles shall be doubled when the person to whom the threats are addressed, or who is given the false information regarding an attack is a person in a situation of vulnerability related to their age, a pregnancy, illness, disease or a physical or mental disability, and whose condition was evident or known by the perpetrator of the acts.

D. Threat by means of gestures

Article 329

Any threat by means of gestures or emblems, to attack any person or property, punishable with a criminal penalty, shall be punished with a prison term of eight days to three months and a fine of twenty-six to one hundred Euros.

201. Regarding obstruction of justice committed by public officials, Belgium also referred

to the following article of the Criminal Code:

Art. 151

Any other arbitrary act infringing the freedoms and rights guaranteed by the Constitution, ordered or executed by a civil servant or a public official, by a depositary or law enforcement officials or public force, will risk a prison sentence ranging from fifteen days to one year.

202. Belgium also explained that article 66 CC is relevant. “Those who with gifts, promises, threats, abuse of authority incited the crime...” are considered as an accessory. If one uses violence to incite a crime, he or she will be punished at the same level as the one who committed the crime.

203. Belgium has not provided case examples or statistics.

(b) Observations on the implementation of the article

204. Belgium is in compliance with the provision under review. Obstruction of justice is criminalized through CC articles on false testimony and perjury (articles 2015-226), threats (articles 327-330bis) and assaults on public officials (articles 278, 279, 279bis and 280). Particularly relevant are articles 223 and 224 which criminalize bribery of witnesses, experts and interpreters, rendering the bribers liable to the same punishment as the person who provides the false testimony.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

205. Belgium indicated that it has implemented the provision under review. Further to the national provisions cited under article 25 (a) (in particular under points C and D), Belgium referred to the following provisions as applicable:

Criminal Code

Article 278

Anyone who assaults a member of the Legislative Chambers in the exercise of their functions or in connection with said exercise, a Minister, a member of the Constitutional Court, a magistrate or a public force officer on duty in the exercise of their functions or in connection with said exercise, shall be punished with a prison

term of two months to two years and a fine of fifty to five hundred Euros.

If the strikes occurred during a Chamber session, or during a Court hearing, the person who is found guilty shall be punished with a prison term of three months to three years and a fine of two hundred to one thousand Euros.

Article 279

If the strikes cause the spilling of blood, injuries or an illness, the person who is found guilty shall be punished with a prison term of six months to five years and a fine of two hundred to one thousand and five hundred Euros.

Article 279bis

When strikes that were not intended to cause a demise, have however caused it, the person who is found guilty shall be punished with a prison term of seven to ten years. The person who commits these acts of violence with premeditation shall be punished with a prison term of twelve to fifteen years.

Article 280

If the crime or offence is committed against a ministry official or an agent of public authority or of the public force, or against any person in a public capacity, in the exercise of their functions or in connection with said exercise, the penalties shall be as follows:

1 In the cases contemplated in article 398, paragraph one, the penalties shall be a prison term of one month to one year, and a fine of fifty Euros to three hundred Euros;

2 In the cases contemplated in article 398, paragraph 2, the penalties shall be a prison term of two months to two years, and a fine of fifty Euros to three hundred Euros;

3 In the cases contemplated in article 399, paragraph 1, the penalties shall be a prison term of four months to four years, and a fine of one hundred to five hundred Euros;

4 In the cases contemplated in article 399, paragraph 2, the penalties shall be a prison term of one to five years, and a fine of one hundred to five hundred Euros;

5 in the cases contemplated in article 400, paragraph 1, the penalty shall be a prison term of five to ten years; 6 in the cases contemplated in article 400, paragraph 2, the penalty shall be a prison term of ten to fifteen years; 7 in the cases contemplated in article 401, paragraph 1, the penalty shall be a prison term of ten to fifteen years; 8 in the cases contemplated in article 401, paragraph 2, the penalty shall be a prison term of fifteen to twenty years.

(b) Observations on the implementation of the article

206. Belgium is in compliance with the provision under review. Obstruction of justice is criminalized through CC articles on false testimony and perjury (articles 2015-226), threats (articles 327-330bis) and assaults on public officials (articles 278, 279, 279bis and 280).

Article 26 Liability of legal persons

Paragraph 1

1. *Each State Party shall adopt such measures as may be necessary, consistent with its legal*

principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

207. Belgium indicated that it has implemented the provision under review and cited CC article 5 as relevant.

Criminal Code

Article 5

Any legal person shall be criminally liable for any offences that are intrinsically linked with the realization of its purpose or the defense of its interests, or for any offences that are proven with concrete facts to have been committed on their behalf.

When the liability of the legal person is involved exclusively as a result of the intervention of a natural person who has been identified, only the person who committed the most serious offence may be sentenced. If the natural person identified committed the offence knowingly and intentionally, the person may be sentenced simultaneously with the legal person that is liable. The following are considered as legal persons:

1 temporary partnerships or associations *en participation*;

2° the partnerships contemplated in article 2, paragraph 3, of the coordinated laws on commercial partnerships, as well as commercial partnerships in the process of incorporation;

3 civil partnerships that do not assume the form of a commercial partnership.

The following may not be considered as legal persons with criminal liability for the application of this article: The Federal government, the regions, the communities, the provinces, the relief areas, the pre-zones, the greater Brussels, the communes, the pluricomunal areas, the intra-communal territorial bodies, the French community commission, the Flemish community commission, the Communal community commission and the public centers of social assistance.

208. Belgium explained that traditionally legal entities were not criminally liable under Belgian law. In the case of an offence committed by a corporation, only those persons who were responsible for the corporation and who had the duty to prevent the offence could be punished. The situation changed with the adoption of the law of 4 May 1999 (entered into force on 2 July 1999) on the criminal liability of legal entities. Article 5 of the penal Code provides (main article) provides that any legal person is criminally liable for offences which are intrinsically linked to the achievement of its purpose or to the defence of its interests or for offences on whose behalf the facts show they were committed. When a legal person is liable solely because of the intervention of an identified natural person, only the person who committed the more serious crime may be convicted. If the identified natural person committed the crime knowingly and voluntarily, he/she can be convicted at the same time as the legal person that is liable.

209. Belgium added that a legal entity can, be held criminally liable for any offence committed either alone or together with physical persons. The legal person can be held criminally responsible, if

- the offence is linked to the achievement of the purpose of the legal person. This may result from the statutes of the company (it goes without saying that it will be rare that the

statutes provide an illegal social object), or result from the activity of the company.

- the offence is linked to the defence of the interests of the corporation, e.g. an offence of false accounts in order to escape the commercial court screening services.

- the concrete facts show that the offense was committed for the benefit of society, e.g. bribing a public servant in order to land a government contract.

If none of these three conditions is met, the legal person cannot be held criminally responsible. It was stressed in the preparatory works on the law of 1999 that the new act did not introduce a regime of strict liability: "...it seems inappropriate to make the corporation criminally liable for acts committed by individuals related to it (employee, administrator, ...), when these persons only take advantage of the legal and material framework of the legal person to commit offenses in their own interest or on their behalf. It is not a question of establishing strict liability of the corporation for any committed everything in it". (Doc Parl, Senate, Session 1998-1999 No. 1-1217 / 1, 4, *ibid*, No. 1-1217 / 6, 8 °). For example, the truck driver who would take advantage of his trips to transport drugs in the wheels of his truck does not hold the criminal responsibility of the employer.

210. Belgium clarified that liability under article 5 CC is not objective. There must be some imputation of intention or negligence. It must be established that the offence is the result of an intentional decision taken within the legal person, or, through a specific relationship of cause and effect, of negligence by the legal person (e.g. defective internal organisation of the legal person, inadequate safety measures or unreasonable budget restrictions created conditions that made it possible to commit the offence) (internal report of the legal person). The standard of proof required to convict a corporation will depend on the underlying offence. Belgian law requires intent to commit an offence. Negligence may only be used as the basis for a conviction where the relevant provision implicitly or explicitly permits. It is up to the court to decide about the imputation of the intention - the court will take in consideration the attitude of the organs of the legal entity (e.g. reports decisions assembly). But the criminal offence can also be committed by the representatives of the legal entity, and in that case the legal entity must have known the intention of those persons to commit the offence and must have agreed with that. In the case of an unintentional offence, the legal entity must have known the risk and was negligent to prevent the offence.
211. Belgium further noted that there is no need to identify the physical person who committed the offence on behalf of the legal entity in order to prosecute the legal entity. Both the corporate entity and the physical person may be prosecuted at the same time. In the case of a deliberate offence, both the legal entity and the individual may be condemned. In the case of a non-deliberate offence (unintentional offence) only the one that committed the most serious fault may be condemned. The Belgian penal code does not define "the most serious fault", it is up to the court to determine which fault is the most serious. In practice, it is common for both the legal person and the individual to be summoned before the criminal court because most offences will be assumed to have been committed deliberately. (abstract reasoning).
212. Belgium extends the field of application to entities with no legal personality, on the other hand are excluded public authorities (federal state, provinces, communities, local authorities).
213. With regard to the last paragraph of article 5 CC, Belgium noted that all of listed legal

persons, except for CPAS¹, are public legal persons with a political character. On the other hand, other public legal persons, such as public interest bodies(*), may be criminally liable, just like the companies performing a public service mission. It is conceivable that these legal persons could be involved in a corruption-related act.

(*) Listed by the Law from March 16, 1954 related to the control of certain public interest bodies (FYI: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1954031601&table_name=loi)

). There are currently over 80 bodies, including the agency for the security of the food chain, the Belgian National Office for Export Credit, the Belgian Foreign Trade Office, the Banking, Financial and Insurance Commission, etc.

214. Belgium has provided the following examples of cases and jurisprudence.

- CAS 1 - 2008 - two companies were imposed a fine of EUR 5,000 (multiplied by 6), one for passive private bribery and the other for active private bribery. This was a case in Antwerp, where the two companies, among others, have paid money to obtain a contract for electronic advertising on the tramway (value of about EUR 1 million). The judgment was upheld on appeal.

- CAS 2 - 2009 - Namur: Private bribery: The company X offered advantages to 2 persons of another company (company Y) to win public tenders for service and supply contracts (value of about EUR 500,000), in order to increase its turnover for the years of 2005-2006. While it was not explicitly mentioned in the court decision, the two persons of the company Y had put pressure on the company X to award them with a contract. Company X was granted a simple suspension of the sentence for a period of 3 years. There is no explanation for this, but the defense argued the following: their lack of criminal records, the circumstance that they were concretely and economically cornered by the employees of company Y to perform the acts, and also the perspective of not causing an irremediable and disproportionate downgrading of their employer, in a delicate economic context, and the heavy sanctions, particularly fiscal sanctions, that had already been imposed on them. The two employees of company Y were sentenced to a EUR 5,000 fine or 3 months of subsidiary imprisonment.

- CAS 3 - 2010: Active bribery case in Antwerp. Mr. X from NV Y gave money to a police officer (about EUR 3,000), to receive more repair jobs in case of accidents on the road. NV was sentenced to a 2000 euro fine with a 3-year suspension in first instance, given that NV had no prior convictions. On appeal, NV was acquitted, for acts that were not proven. The Court said that the offences did not take place as a result of the decision made in the legal person. In addition, it was not proven that there was negligence on the part of NV in relation to the acts. The Court only sentenced the natural person of NV to a prison term of six months and a fine of EUR 500.

¹ In Belgium, each municipality has a public social action centre (CPAS = centre public d'action sociale) whose mission is to provide individuals and families with assistance.

215. With regard to statistical data, Belgium explained that the offence in breach of article 5 of the Criminal Code is not generally considered as a predicate offence, and thus included here. In addition, since there are no criminal files for legal persons, it is not possible to provide the number or the nature of the convictions, reprieves and suspensions pronounced against legal persons. However, based on the analysis of the relevant jurisprudence for the years 2000-2004, performed by the Criminal Policy Service of the SPF Justice, it can be seen that the main sanctions pronounced against legal persons are fines. Also 38 confiscation sentences, 32 suspensions of sentences and 31 accessory penalties have been lifted. Last, 75 convictions contain performance guarantees.

216. Belgium provided a scheme outlining how criminal sanctions are converted into fines for legal persons:

| Belgium - Criminal sanctions corruption natural and legal persons | | | |
|---|---|--------------------------------|---|
| | Fines in euro (Natural Persons) | Imprisonment (Natural Persons) | Fines in euro (Legal Persons) |
| Article 247,§1 | 100 euro to 10 000 euro <i>(legal disposition)</i> = 800 euro to 80 000 euro <i>(reality because of the multiplication by 8)</i> | 6 months to 1 year | 500 euro x 6 months = 3000 euro = 24 000 euro to 2000 euro x 12m = 24 000 euro > 20 000 euro = 192 000 euro |
| | 100 euro to 25 000 euro = 800 euro to 200 000 euro | 6 months to 2 years | 500 euro x 6 months = 3000 euro = 24 000 euro to 2000 euro x 24 m = 48 000 euro |

| | | | |
|-----------------|--|---------------------|--|
| | | | <p>< 50 000 euro</p> <p>= 400 000 euro</p> <p><i>(fine can not be less than the double of the maximum fine – so the maximum penalty will be 50 000 euro, multiplied by 8)</i></p> |
| Article 247, §2 | <p>100 euro to 25 000 euro</p> <p>=</p> <p>800 euro to 200 000 euro</p> | 6 months to 2 years | <p>500 euro x 6 months</p> <p>= 3000 euro</p> <p>= 24 000 euro</p> <p>to</p> <p>2000 euro x 24 months</p> <p>= 48 000 euro</p> <p>< 50 000 euro</p> <p>= 400 000 euro</p> |
| | <p>100 euro to 50 000 euro</p> <p>=</p> <p>800 euro to 400 000 euro</p> | 6 months to 3 years | <p>500 euro x 6 months</p> <p>= 3000 euro</p> <p>= 24 000 euro</p> <p>to</p> <p>2000 euro x 36 months</p> <p>= 72 000 euro</p> <p>< 100 000 euro</p> <p>= 800 000 euro</p> |
| | <p>100 euro to 75 000 euro</p> <p>=</p> | 6 months to 5 years | <p>500 euro x 6 months</p> <p>= 3000 euro</p> <p>= 24 000 euro</p> |

| | | | |
|-----------------|---|---------------------|---|
| | <p>800 euro to 600 000 euro</p> | | <p>to</p> <p>2000 euro x 60 m</p> <p>= 120 000</p> <p>< 150 000</p> <p>= 1,2 million euro</p> |
| Article 247, §3 | <p>100 euro to 50 000 euro</p> <p>=</p> <p>800 euro to 400 000 euro</p> | 6 months to 3 years | <p>500 euro x 6 months</p> <p>= 3000 euro</p> <p>= 24 000 euro</p> <p>to</p> <p>2000 euro x 36 m</p> <p>= 72 000 euro</p> <p>< 100 000 euro</p> <p>= 800 000 euro</p> |
| | <p>500 euro to 100 000 euro</p> <p>=</p> <p>4 000 euro to 800 000 euro</p> | 2 years to 5 years | <p>500 euro x 24 months</p> <p>= 12 000 euro</p> <p>= 96 000 euro</p> <p>to</p> <p>2000 euro x 60 m</p> <p>= 120 000 euro</p> <p>< 200 000 euro</p> <p>= 1,6 million euro</p> |
| Article 247, §4 | <p>100 to 10 000</p> <p>=</p> <p>800 euro to 80 000 euro</p> | 6 months to 1 year | <p>500 euro x 6 months</p> <p>= 3000 euro</p> <p>= 24 000 euro</p> <p>to</p> |

| | | | |
|--|---|---------------------|---|
| | | | 2000 euro x 12 months = 24 000 euro > 20 000 euro = 192 000 euro |
| | 100 to 25 000 = 800 euro to 200 000 euro | 6 months to 2 years | 500 euro x 6 months = 3000 euro = 24 000 euro to 2000 euro x 24 months = 48 000 euro < 50 000 euro = 400 000 euro |
| | 100 euro to 50 000 euro = 800 euro to 400 000 euro | 6 months to 3 years | 500 euro x 6 months = 3000 euro = 24 000 euro to 2000 euro x 36 m = 72 000 euro < 100 000 euro = 800 000 euro |

(b) Observations on the implementation of the article

217. If the legal person is liable solely because of the intervention of an identified individual, only the person who committed the most serious misconduct can be punished. In the case of a deliberate offence, both the legal entity and the individual may be condemned. In the case of a non-deliberate offence only the one that committed the most serious fault may be condemned. The Belgian Criminal Code does not define “the most serious fault”, it is up to the court to determine which fault is the most serious. In practice, it is common for both the legal person and the individual to be summoned

before the criminal court because most offences will be assumed to have been committed deliberately. The individuals held responsible for the criminal offence can be the representatives of the legal entity or anyone who is believed to have committed or instigated the offence or to have provided assistance to it. If a director for example is in position to prevent the offence, he can be held personally liable for the criminal offence.

218. Belgium explained that it was being in the process of amending its laws to establish a fully functioning register of convictions, convictions and suspensions against legal persons by 2017.

219. Belgium also clarified governmental, regional, communal and provincial bodies are not considered legal persons under article 5.

220. Article 5 stipulates that “only the person who committed the most serious offence may be sentenced”. The reviewing experts noted that this part of the article rendered the legal text uncertain and discretionary. In order to be in full compliance with the provision under review, Belgium is recommended to remove this sentence from article 5 in order to enhance legal clarity.

Article 26 Liability of legal persons

Paragraph 2

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

221. Belgium indicated that it has implemented the provision under review and referred to its responses under paragraph 1 of article 26 as relevant.

222. In addition, Belgium explained that legal persons also have a civil liability. Art. 1384 of the Civil Code states that

“You are not only responsible for the damage you caused by yourself, but also for the damage that is caused by acts of persons that you are responsible for, or objects that you have in custody.

...

The masters and principals, (are responsible for) the damage caused by their servants in the functions to which they have been employed.”

223. In cases of tax fraud, either an administrative procedure or a criminal proceeding will be initiated. In concrete terms, in a case of a fiscal fraud case the regional director of taxes and the prosecutor will decide together on how to approach this specific case. They have monthly consultations on this subject. Following this consultation, according to the “una via” principle, they will choose between an administrative approach or a prosecution. Simple tax fraud cases will be left to the tax administration, while larger tax fraud cases, requiring extensive judicial investigations, will be left to the judiciary. The legal basis for this is the law of 20 September 2012, installing the “una via” principle in

the framework of the prosecution of infractions of the tax law and to increase the amendments of the tax fines.

(b) Observations on the implementation of the article

224. Belgium establishes a criminal liability of legal persons (CC article 5) and legal persons also have a civil liability (Civil Code, article 1384). Belgium is in compliance with the provision under review.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

225. Belgium referred to the following part of article 5 of its Criminal Code as applicable:

Criminal Code

Article 5

When the liability of the legal person is involved exclusively as a result of the intervention of a natural person who has been identified, only the person who committed the most serious offence may be sentenced. If the natural person identified committed the offence knowingly and intentionally, the person may be sentenced simultaneously with the legal person that is liable.

226. Parliamentary works contain indications related to the way in which the existence of the mens rea may be assessed in relation to the legal person: thus, it considers the fact that “the realization of the offence is derived from an intentional decision made in the legal person, or it is the result, by a certain link of causality, of negligence in this legal person”. The legislator holds as an example of negligence “the situation where a poor internal organization of the legal person, insufficient security measures or unreasonable budgetary restrictions have created conditions that allow the commission of the offence”. Parliamentary works add that the judge may be based on “the attitude of the bodies of the legal person, including de facto bodies that may not necessarily be identified as natural persons; (...) the criminal liability of the legal person may also be the consequence of material acts committed by some of its agents or principals.” Belgium also explained that article 363, article 408 paragraph 2 and article 528 of the Companies Code provided that for an infringement of this code or the statutes of the association, there is a reversal of the burden of proof and in respect to the directors of the company, there is a presumption of liability. The director can only escape a liability claim if he can prove that he has not taken part in the offense, and he cannot be blamed for it and at the same time can prove that he has claimed the infringement at the next general meeting after he had knowledge of the facts.

227. The Court of Arbitration, in its decision from 5 May 2004, ruled that the difference in

treatment (in the proceedings against an agent and his employer, depending on whether the employer is a legal person or a natural person: in the former scenario, the natural person may benefit from the exonerating circumstance of article 5, paragraph 2 CC) is reasonably justified; to the extent that a legal person only acts with the intervention of a natural person, the legislator has considered that, in order to avoid a systematic conviction of the natural person and the legal person, it may be best to invite the judge to weigh the faults of each of them.

228. Belgium also explained that according to articles 363, 408 and article 528 of the Companies Code, if there is an infringement of this code or the statutes of the association, there is a reversal of the burden of proof and in respect of the directors of the company there is a presumption of liability. The director can only escape a liability claim if they can prove that they have not taken part in the offense, and they cannot be blamed for it and at the same time can prove that they have claimed the infringement at the next general meeting after they had knowledge of the facts. If the person did not commit any error and had no knowledge of it, he or she cannot be convicted.

229. Belgium referred to cases examples and statistical data provided under paragraphs 1 and 2 of the provision under review.

(b) Observations on the implementation of the article

230. CC article 5 provides for the possibility of the simultaneous prosecution of both the natural and the legal persons involved. Belgium is in compliance with the provision under review.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

231. Belgium indicated that it has implemented the provision under review.

232. For natural persons the criminal sanctions can be either imprisonment or fines and confiscation of goods and profits. Sanctions for legal persons are provided for by article 7bis of the Criminal Code and include fines, dissolution of the legal entity, prohibition to exercise certain activities, closure of one or more of its branches, publication of the judgment and confiscation of goods and profit. Article 41bis of CC provides a system of conversion of the sanctions of imprisonment to a fine through a schedule. The amount of the fine is determined according to a formula based on the number of months of imprisonment imposed (see the scheme provided under paragraph 1 of article 26).

Criminal Code

Art. 7bis

The penalties that apply to the offences committed by legal persons are: on criminal, correctional and police matters:

1° the fine;

2° the special confiscation; the special confiscation of article 42, No. 1, pronounced against public law legal persons, it may only be imposed on assets that may be subject to civil seizure; on criminal and correctional matters:

1° the dissolution; which may not be pronounced against public law legal persons; 2° the prohibition to exercise a relevant activity of its corporate purpose, except for activities pertaining to a public service mission;

3° the closure of one or several of the establishments, except for establishments where activities pertaining to a public service mission are exercised;

4° the publication or dissemination of the decision.

Article 35

The dissolution may be decided by the judge when the legal person has been created intentionally to exercise the punishable activities for which it was convicted, or when there has been an intentional deviation from its purpose in order to exercise said activities.

When the dissolution is decided, the judge shall submit the case to the competent jurisdiction to hear the liquidation of the legal person.

Article 36

The temporary or permanent prohibition to exercise a relevant activity of the corporate purpose of the legal person may be pronounced by the judge in the cases provided for by the law.

Article 37

The temporary or permanent closure of one or several establishments of the legal person may be pronounced by the judge in the cases provided for by the law.

Article 37bis

The publication or dissemination of the decision at the expense of the sentenced person may be pronounced by the judge in the cases provided for by the law.

Article 41bis

§ 1. The fines that apply to the offences committed by legal persons are: on criminal and correctional matters:

- when the law contemplates a life imprisonment penalty for the act: a fine of two hundred and forty thousand Euros to seven hundred and twenty thousand Euros

- when the law contemplates a prison sentence and a fine for the act, or one of the two penalties: a minimum fine of five hundred Euros multiplied by the number of months that correspond to the minimum prison penalty, which may not be inferior to the minimum of the fine contemplated for the act; the maximum increases to two thousand Euros multiplied by the number of months that correspond to the maximum prison penalty, which may not be inferior to twice the fine provide for the act:

- when the law only contemplates a fine for the act: the minimum and maximum shall be those provided by the law for the act;

- on police matters:

- a fine of twenty-five Euros to two hundred and fifty Euros.

§ 2. The provisions of Book 1 apply for the determination of the penalty provided in § 1.

(b) Observations on the implementation of the article

233. Under Belgian law, sanctions for legal persons include fines, confiscation, dissolution, closure of establishments, prohibition to exercise certain activities, or publication and dissemination of the judgment (CC articles 7bis, 35-37bis and 41bis). The correctional sanctions foreseen in the Criminal Code are converted into pecuniary sanctions through a schedule. Belgium is in compliance with the provision under review.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

234. Belgium informed that it has implemented the provision under review and referred to the general provisions of its Criminal Code as applicable:

Criminal Code

Article 66

The following will be punished as perpetrators of a crime or offence:

Those who have executed it, or who have cooperated directly in its execution;

Those who, through any act, have provided such assistance for the execution of the offence that, without their assistance, the crime or offence would not have been committed;

Those who, with gifts, promises, threats, abuse of authority or power, conspiracy or criminal deception, have directly incited the commission of the crime or offence;

Those who, with speeches in meetings or public places, or with any writings, printed materials, images or emblems, which have been posted, distributed or sold, made available for sale or displayed to the public, have directly incited its commission, notwithstanding any penalties reserved by the law against the perpetrators of incitements to commit the crimes or offences, even when the incitements have not achieved their intended effect.

Article 67

The following will be punished as accomplices of a crime or offence: Those who have given instructions for its commission;

Those who obtain the weapons, instrumentalities or any other means that served for the crime or offence, knowing that it would do;

Those who, outside the case provided by §3 of article 66, have knowingly assisted the perpetrator or perpetrators of the crime or offence in the acts that prepared, facilitated

or consummated it.

(b) Observations on the implementation of the article

235. Participation in corruption offences is covered by the general provisions of the CC (articles 66 and 67). Belgium is in compliance with the provision under review.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

236. Belgium indicated that it has implemented the provision under review.

237. In the absence of explicit incrimination, the attempt is not punishable. Belgium has not criminalized attempt legislatively in the context of corruption offences. However, if there is a start of the acts (i.e. demanding money without receiving it, or giving money without it being accepted), the acts are punishable, since they fall under the scope of the offence. Belgium clarified that the law does not explicitly set sanctions for attempts and it is up to the judge to decide who played which role in the crime, and determine the rightful punishment.

Belgium clarified that attempt is criminalized in the case of for money-laundering and referred to article 505 of the Criminal Code as applicable.

Example:

- A person used his cell phone while driving. When the police stopped him, he asked how much the fine was. The police said 100 Euros, to which he responded whether 50 EUR was not enough and insisted that the policeman take the money and drop the case. The police refused. The court considered this action an ‘offer’ (and it would also fall under the scope of ‘attempt’). Penalty: Fine of 825 Euros.

(b) Observations on the implementation of the article

238. In the absence of explicit incrimination, attempt is not punishable in Belgian law. Belgium has not criminalized attempt legislatively in the context of corruption offences. However, in the application of the law, Belgium showed it is able to prosecute also attempted acts of corruption. Furthermore, attempt is criminalized in the case of money-laundering (CC article 505).

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

239. Under Belgian law, the preparatory acts for the commission of a crime are not punishable. The perpetrator of the crime is only punishable upon its execution, i.e. he or she must have started to commit the crime. When the offence is not committed for reasons beyond the will of the perpetrator, he has committed a criminal attempt. Voluntary attempts that are abandoned before the achievement of the crime are not punishable under Belgian law.

Criminal Code

Article 51

There is a punishable attempt when the resolution to commit a crime or an offence has been manifested in external acts that amount to the start of the execution of the crime or offence, which are not suspended or which do not cause their desired effect only because of circumstances that are independent from the will of the perpetrator.

(b) Observations on the implementation of the article

240. Belgium clarified that the “preparation” of an offence is interpreted broadly. For example, if someone wants to place a bomb somewhere in Brussels and the police catches the person while making the bomb, of course this act is punishable because the making of the bomb is inherent of the crime. Belgian chambre is at the moment also discussing legislation making the preparation of terrorist offences punishable.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

241. Belgium indicated that it has implemented the provision under review and referred to articles 20 to 29 of the Preliminary Title of the Code of Criminal Procedure (CPC) as applicable.

Criminal Procedure Code

Article 21

Except for the offences defined in articles 136bis, 136ter and 136quater of the Criminal Code, public action shall prescribe after ten years, five years or six months

of the day in which the offence was committed, depending on whether the offence constitutes a crime, an offence or a misdemeanor.

However, the period shall be fifteen years if the offence is a crime that cannot be subject to *correctionnalisation* under article 2 of the Law from October 4, 1867 based on the mitigating circumstances.

In addition, the period shall be one year for offences that are subject to *contraventionnalisation*.

Article 21ter

If the duration of the criminal proceedings exceeds a reasonable period, the judge may pronounce the sentence with a summary conviction or pronounce a penalty that is inferior to the minimum penalty provided by the law.

If the judge pronounces the summary conviction, the defendant will be ordered to pay the costs, and, if applicable, to pay compensation. Special confiscation is pronounced:

Article 22

The prescription of the public action shall not be interrupted by any investigative acts or proceedings carried out during the period determined in article 21.

Those acts give start to a new period of equal duration, including with respect to persons that are not involved.

Article 23

The day in which the offence was committed, and the day in which the act that interrupts the statute of limitations are counted as part of the periods.

Article 24

The prescription of the public action is suspended when provided by the law, or when there is a legal obstacle to the introduction or to the exercise of public action.

Public action is suspended during the processing of a plea of lack of jurisdiction, of inadmissibility or of nullity submitted before the prosecuting jurisdiction by the defendant, the civil party or by the person liable in damages. If the prosecuting jurisdiction declares there are grounds to the plea, or that the decision related to the plea is attached to the merits of the case, the statute of limitations is not suspended.

The prescription of the public action is suspended each time that, within the proceedings, the investigative judge or the indictments chamber decides that complementary investigative actions need to be started. The same applies each time the chamber of the council, within the proceedings, cannot resolve the matter due to a request submitted under articles 61quinquies and 127, § 3 of the Criminal Procedure Code. The suspension starts on the day of the first hearing before the chamber of the council set to resolve the matter, the day in which the request is rejected or accepted, and finishes on the day before the first hearing where the resolution of the matter is resumed by the investigative jurisdiction, and none of the suspensions may exceed one year.

The prescription of the public action is suspended each time that the prosecuting jurisdiction suspends the inquiry into the case to carry out complementary investigative actions. In this case, the statute of limitations is suspended on the day the investigative jurisdiction decides to submit the case, until the day before the first hearing where the inquiry into the matter is resumed by the prosecuting jurisdiction, and none of the suspensions may exceed one year.

(The other articles are not related to corruption.)

242. Belgium explained that article 21 determines the baseline periods. Belgian law recognizes the principle under which it is possible, for example, if mitigating circumstances exist, to take a crime as an offence (“*correctionnalisation*”) or an offence as a misdemeanor (“*contraventionnalisation*”) in order to pronounce lower penalties.

243. Based on the level of the penalty, corruption acts are generally offences; public action prescribes after five years of the day in which the offence was committed. If there have been investigative actions or proceedings related to the acts, the latest act that occurs during the first 5-year period shall give start to a new 5-year period, for a total of 10 years (Cfr art. 22 et seq. CPC).

244. The active or passive bribery of a judge, or a proposed and accepted bribery of a jury or an associated judge (article 249) constitutes a crime; if the crime is not subject to *correctionnalisation*, the public action prescribes after ten years of the same day. These periods may be suspended, or interrupted by any investigative acts or proceedings carried out during this period. These acts give start to a new period of the same duration. The maximum duration of the statute of limitations is then 10 or 20 years after the acts. If the act is a complex offence, the statute of limitations will only start to run after the commission of the last element of the offence.

245. The duration of the statute of limitations depends on the severity of the offence or the crime regardless of its nature. The statute of limitations may be interrupted (art. 22 CPC) or suspended (art. 24 CPC)

(b) Observations on the implementation of the article

246. The length of the statute of limitations for corruption offences varies between five and ten years starting from the day when the offence was committed (CPC articles 20-29).

247. It was discussed during the country visit that given that the statute of limitations can be interrupted (art. 22) or suspended (art. 24), this in turn can lead in practice to considerably protracted investigations and prosecutions. Such delays have also resulted in more lenient sentencing by judges. Belgium was therefore recommended to ensure that the application and practice regarding the statute of limitation does not pose an impediment to the expedience and efficiency in the administration of justice and, to this end, Belgium was recommended to continue to monitor its application.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

248. Belgium referred to its responses under previous articles of the Convention with

regard to specific sanctions for each offence.

249. Belgium explained that there are three types of punishment under its Criminal Code:
- Criminal punishment: imprisonment of more than 5 years, and, eventually, a fine of at least 26 Euros (x6) (f. ex. murder and rape)
 - Correctional punishment: imprisonment of 8 days up to 5 years, a community service duty of 46 hours up to 300 hours, and/or a fine of at least 26 Euros (x6) (f. ex. theft)
 - Police punishment: imprisonment of 1 day up to 7 days, a community service duty of 20 to 45 hours and/or a fine of maximum 25 Euros (x6) (f. ex. traffic offences)
250. With regard to fines, the law from 5 March 1952 on Surcharges on Criminal Fines (MB 03.04.1952) and the law from 28 December 2011 on Various Provisions on Justice Matters (MB 30.12.2011) increase fines with “surcharges”. That practically means that the amount of criminal and administrative fines provided for by one law must be multiplied by 6.
251. This technique of multiplication (or in French “opdecimes”) aims to keep the amount of a fine up-to-date (to make it correspondent with the actual value of money), without having to change the Criminal Code regularly. If, for example, the CC says that a fine for a crime is 50 euro (as it has been stated in the CC for many years), in reality it is 400 euro because the court will multiply it with 8 at this time. This multiplication is standard for all fines that are given, and not related by, for example, factors depending on the severity of crime. This multiplication has been adapted by the Program Act of December 25, 2016, published in the Belgian Official Gazette of 29 December 2016. From 1 January 2017, fines are increased by the factor 8. For the period between 1 January 2012 and 31 December 2016 this factor was 6. Facts committed before January 1, 2017 and which have not yet been tried yet, remain subject to the old factor of 6.
252. The reasons that justify the severity of the sanction pronounced pertain to each cause. The absence of pronouncement or enforcement of a sanction under the law from June 29, 1964 on the suspension, reprieve and probation (http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1964062930&table_name=loi) that applies to all the offences of the criminal code, in relation to corruption, or under art. 21ter CPC (Please refer to article 29 of the Convention for this article).
253. Belgian law recognizes the principle under which it is possible, for example, if mitigating circumstances exist, to take a crime as an offence (“correctionnalisation”) or an offence as a misdemeanor (“contraventionnalisation”) in order to pronounce lower penalties.
254. With regard to how the penalties are decided, Belgium explained that the judge can take into account all the circumstances that are relevant in the case to try the offence. The criminal court is not bound by the prosecution's submissions as to the sentence and may impose a lower or a higher sentence than the one required by the prosecutor, within the limits set by the law. The criminal judge has a very wide margin of appreciation in determining a sentence and will choose in good conscience an appropriate penalty for the offense and the offender. The judge can take into account the fact that he or she has or has not a criminal record, if there is a repeated offense, the attitude towards the victim,

the attitude in court, the youthful age of the perpetrator, etc. Whatever the motivation of the court, there is a general principle of law which is expressed in article 149 of the Constitution: "Any judgment is reasoned".

(b) Observations on the implementation of the article

255. Corruption offences are punishable by imprisonment, fines and confiscation (article 42 of the Criminal Code), as prescribed under the relevant provisions of the Criminal Code. Pecuniary fines are regularly updated through a schedule allowing for their multiplication (the Law of 5 March 1952 on Surcharges on Criminal Fines with subsequent updates).

256. During the country visit, the issues of plea bargains and out-of-court settlements were discussed. In this regard, it was recommended that Belgium ensures adequate transparency, predictability and proportionality in entering into plea bargains and out-of-court settlements.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

257. Belgium indicated that it has implemented the provision under review and referred to the following national provisions as applicable:

Constitution

Article 88

The person of the King is inviolable; his ministers are responsible.

Article 58

No member of either of the Chambers may be prosecuted or investigated for his opinions or for the votes issued in the exercise of his functions.

Article 59

Other than for *flagrante delicto*, no member of either of the Chambers may, during the sessions, for law enforcement purposes, be sent or summoned directly before a court or tribunal, or be arrested, except with authorization from the Chamber to which he belongs.

Other than for *flagrante delicto*, no binding measures that require the intervention of a judge may be ordered against a member of either of the Chambers during the sessions,

for law enforcement purposes, except by the first chairman of the appeals court upon request from a competent judge. This decision is communicated to the president of the Chamber in question. Any search or seizure under the preceding paragraph may only take place in the presence of the president of the Chamber in question, or of a member designated by him.

During the session, only the officials of the prosecution and the competent agents may carry out law enforcement proceedings against a member of either Chamber.

The member of either of the Chambers in question may, at any stage during the investigation, request to the Chamber he belongs to, during the session and for law enforcement purposes, to suspend the proceedings. The Chamber in question must make a decision on this regard with a majority of two thirds of the votes.

The detention of a member of either of the Chambers or his prosecution before a court or tribunal is suspended during the session if the Chamber to which he belongs so requests.

Article 120

All the members of Community and regional Parliaments enjoy the immunities provided for in articles 58 and 59.

Article 103

The ministers are judged exclusively by the court of appeals for the offences they may have committed in the exercise of their functions. The same applies to any offences that may have been committed by the ministers outside the exercise of their functions, and for which they are prosecuted during the exercise of their functions. Articles 59 and 120, in that case, shall not apply.

The law determines how to proceed against them, both in terms of prosecution and of judgment. The law designates the competent appeals court, which acts in a general assembly, and specifies its composition. The decisions of the appeals court may be appealed before the Court of Cassation, in joint session, which did not hear the case.

Only the prosecution, before the competent court of appeals may bring and direct proceedings in criminal matters against a minister.

Any searches related to the proceedings, any direct summons to appear before the Appeals Court and, except for *flagrante delicto*, any arrest, require the authorization of the Chamber of Representatives.

The law determines the procedure to be followed when both article 103 and 125 apply. No grace shall be granted to a minister sentenced under paragraph one except when requested by the Chamber of representatives.

The law determines in which case and under which rules shall the affected parties bring civil action.

Transitory provision.

This article does not apply to the acts that have been investigated or to any prosecution brought before the enactment of the law for its implementation. In that case, the following rule shall apply: The Chamber of Representatives has the right to indict the ministers and to bring them before the Court of Cassation. The latter has the exclusive right to judge them, in joint session, in the cases contemplated under criminal law and to apply the penalties provided therein. The law from December 17, 1996 on the temporary and partial implementation of article 103 of the Constitution continues to apply on the matter.

Article 125

The members of a Community or regional government are judged exclusively by the court of appeals for the offences they may have committed in the exercise of their functions. The same applies to any offences that may have been committed by the members of a Community or regional government outside the exercise of their functions, and for which they are prosecuted during the exercise of their functions. Articles 120 and 59, in that case, shall not apply.

The law determines how to proceed against them, both in terms of prosecution and of judgment. The law designates the competent appeals court, which acts in a general assembly, and specifies its composition. The decisions of the appeals court may be appealed before the Court of Cassation, in joint session, which did not hear the case.

Only the prosecution, before the competent court of appeals may bring and direct proceedings in criminal matters against a member of a Community or regional government. Any searches related to the proceedings, any direct summons to appear before the Appeals Court and, except for *flagrante delicto*, any arrest, require the authorization of the Community or regional [Parliament], each of them as it may correspond to them.

The law determines the procedure to be followed when both article 103 and 125 apply and when there shall be a double application of article 125.

No grace shall be granted to a member of a Community or regional government sentenced under paragraph one except when requested by the Parliament of the Community or the region in question.

The law determines in which case and under which rules shall the affected parties bring civil action.

The laws contemplated in this article shall be adopted with the majority provided for in article 4, last paragraph.

Transitory provision.

This article does not apply to the acts that have been investigated or to any prosecution brought before the enactment of the law for its implementation. In that case, the following rule shall apply: The Community or regional [Parliaments] have the right to indict the members of their government and to bring them before the Court of Cassation. The latter has the exclusive right to judge them, in joint session, in the cases contemplated under criminal law and to apply the penalties provided therein. The special law from February 28, 1997 on the temporary and partial implementation of article 125 of the Constitution continues to apply on the matter.

Article 126

The constitutional provisions related to the members of the Community and regional governments, as well as the implementation laws contemplated in article 125, last paragraph, apply to the regional secretaries of State.

258. Belgium has provided the following examples of cases and jurisprudence:

The Agusta case (or Agusta-Dassault case) is a judicial case of corruption linked to the purchase by the Belgian defense, in 1988, of combat helicopters manufactured by the Italian company Agusta. It involved the resignation of several politicians. In January 1994, the Belgian Senate (Justice Commission) voted a partial lifting of the parliament immunity of Guy Spitaels and Guy Mathot, then regional ministers. The Prosecutorial Commission of the Chamber concluded in its report from 1/27/1994 that there is sufficient evidence to order bringing Mr. Coëme (then national minister) before the Court of Cassation for the punishable acts of corruption of a public official under articles 246 and 247 of the Criminal Code, for the award of the helicopter

contract to the company Agusta. On December 23, 1998, the Court of Cassation (competent in cases involving ministers) sentenced Willy Claes to three years of prison with conditional suspension and to a five-year disqualification from public office; Guy Coëme and Guy Spitaels were sentenced to two years of prison with conditional suspension and to a five-year disqualification from public office. The French industrial tycoon Serge Dassault, also prosecuted in this case, was sentenced to two years of prison with conditional suspension. Of those indicted, only Guy Mathot (PS) was not convicted.

The report by the Prosecutorial Commission of the Chamber can be found at: <http://www.dekamer.be/FLWB/PDF/49/0141/49K0141001.pdf>.

259. A judge can be held personally responsible (civil grounds) if his judgement caused damage, in the following cases:

Art. 1140. Judges may be called to account in the following cases:

- (1) if they have been guilty of deceit or fraud, either during the investigation or in the judgments;
- (2) if the calling to account is expressly prescribed by the law;
- (3) if the law declares the judges liable for damages;
- (4) if there is a denial of justice.

Art. 1141. In the cases provided for in article 1140, (1), (2) and (3), the calling to account may similarly take place with regard to the officers of the public prosecutor's office.

260. Belgium noted that checks and balances were secured. The Chamber of Belgium also created a new body in 2016, the Federal Ethics Commission. Its main task is to investigate the respect for ethical principles, at the request of a representative, a minister or secretary of state. The Commission has as chairman a professor of the University of Leuven. The law provides guarantees of neutrality and diversity as it does not admit active parliamentarians, the presence of magistrates and professors is required and there is a minimum number of 1/3 women need. The Commission is in the process of drafting internal regulations, a Code of Conduct and a Code of Ethics for parliamentarians.

(b) Observations on the implementation of the article

261. Article 88 of the Belgian Constitution establishes the King's absolute immunity during his reign and which does not extend to his family. Members of the federal, regional and community parliaments cannot be prosecuted without the consent of their respective parliament (articles 58,59 and 120 of the Constitution). Given the far-reaching immunities of parliamentarians, Belgium is recommended to use continued vigilance to ensure that these immunities do not present an obstacle to the prosecution of corruption cases.

262. Public officials do not enjoy any immunities, other than as described above. The court of appeal has jurisdiction over cases against ministers, judges, and members of community and regional governments (Constitution, articles 103 and 125). Following a legislative measure in 2014, a Federal Commission of Ethics and Integrity has been established with an oversight function for the bi-cameral Federal Parliament. It is in the process of drafting internal regulations, a Code of Conduct and a Code of Ethics for

parliamentarians. Public officials do not enjoy any immunities, other than as described above. The court of appeal has jurisdiction over cases against ministers, judges and members of community and regional governments (Constitution articles 103 and 125).

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

263. Belgium indicated that it has implemented the provision under and referred to the following measures as relevant:

Criminal Procedure Code

Article 28quater, §1

Considering the criminal policy guidelines defined under article 143ter of the Judicial Code, the royal prosecutor evaluates the convenience of the proceedings. He shall specify the reason for any decision to close a case.

264. Prosecutors apply the principle of opportunity “opportunité de poursuite”. But if (s)he classifies a file “sans suite” (i.e. to discontinue the prosecution), this also has to be motivated.

265. The College of Prosecutors General regularly makes guidelines to explain legislation, so that everybody interprets it in the same way. Regular meetings of expertise networks (inter alia ECOFIN-prosecutors) take place, where practical problems can be discussed.

(b) Observations on the implementation of the article

266. The prosecutors apply the principle of opportunity for criminal proceedings. Any decision to halt or refrain from prosecution is subject to review by superiors and must be motivated as well as be in the interest of the public according to the criminal policy guidelines (CPC article 28quater). Belgium is in compliance with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to

the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

267. Belgium indicated that it has implemented the provision under review and referred to the following national provisions as applicable:

Criminal Procedure Code

CHAPTER VIII. - PROVISIONAL RELEASE AND BAIL.

Article 113

The provisional release of a defendant may not be granted when the accusation involves a criminal penalty.

Article 114

If the offence is punishable with a correctional penalty, the council chamber shall order, at the request of the defendant and based on the conclusions of the royal prosecutor, that the defendant be provisionally released, on the condition that he shall appear at every act of the procedure and for the enforcement of the ruling, as soon as he is required to do so.

The provisional release on bail may be requested and granted at any stage of the action.

Article 116

The request for provisional release shall be notified to the plaintiff, at his address or any address chosen by him.

Article 117

The solvency of the guarantor offered shall be discussed by the royal prosecutor and by the duly summoned plaintiff.

It shall be guaranteed by non-encumbered assets, for the amount of the bail and a half, unless the guarantor chooses to deposit the amount of the bond in the Caisse des dépôts et consignations in cash.

Article 118

The defendant may be admitted as its own guarantor, either by depositing the amount of the bond, or by guaranteeing it with non-encumbered assets for the amount of the bail and a half, in either case, making the submission mentioned below.

Article 119

The bond may not be inferior to five hundred Euros.

If the correctional penalty is at once a prison term and a fine of which the double would exceed five hundred Euros, the bond that may be requested may not exceed the double of that fine.

If the offence results in civil damages that may be assessed in cash, the bond shall be the triple of the value of the damages, which shall be arbitrated, exclusively for this purpose, by the investigative judge, provided the bond shall not be inferior to five hundred Euros.

Article 120

The approved guarantor shall pledge, before the court clerk or before a notary, to pay the receiver of registry fees the amount of the bond, if the defendant were to fail to appear before the court.

An enforceable copy of the sentence shall be delivered to the plaintiff, before the defendant is released on bail.

Article 121

Any cash deposited and the assets used as guarantee will be allocated, 1) to the payment of the civil compensation and the costs claimed by the plaintiff; 2) to any fines; notwithstanding the privilege of the public treasury for any costs incurred in by the public party.

The royal prosecutor and the civil party may register mortgages, without waiting for the final judgment. Any registration claimed by either of them shall benefit both of them.

Article 122

The investigative judge shall issue, if applicable, based on the conclusions of the royal prosecutor or upon request from the civil party, an order for the payment of the amount provided as guarantee.

This payment shall be followed at the request of the [royal prosecutor], and the diligence of the director of the registry. Any amounts collected will be paid to the cash office, notwithstanding the proceedings and rights of the civil party.

Article 124

The defendant shall only be released on bail after he has chosen an address in the site of competence of the correctional court, in a document delivered to the court clerk.

Article 125

Apart from any proceedings against the guarantor, if applicable, the defendant shall be detained and imprisoned in the house of detention, in the enforcement of an order by the investigative judge.

Article 126

Any defendant who causes his guarantor to be forced to pay, will not be admitted in the future to request his own provisional release on bail.

(b) Observations on the implementation of the article

268. Release on bail (CC articles 113-126) is possible at any stage of the criminal action and can be requested by the defendant; it is based on the considerations of the prosecutor (CC article 114). Belgium is in compliance with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) **Summary of information relevant to reviewing the implementation of the article**

269. Belgium indicated that it has implemented the provision under review and referred to the following national provisions as applicable:

Law from May 17, 2006 on the external legal status of those sentenced to a prison penalty, and on the rights recognized to the victim within the modalities of execution of the penalty.

CHAPTER II. – Conditional Release

Section I: - Definition.

Article 24

Conditional release is a modality of execution of the prison penalty under which the convict serves his penalty outside the prison, respecting the conditions that are imposed on him during a certain probation period.

Section II. - Time-related conditions

Article 25

§ 1er. Conditional release is granted to anyone sentenced to one or more prison penalties when the remainder to be served is of three years or more, provided that the sentenced person has served a third of the penalties and that the conditions of article 28, § 1 are met.

§ 2. Conditional release is granted to anyone sentenced to one or more prison penalties when the remainder to be served is of three years or more, provided that the sentenced person has:

- a) either, served a third of the penalties;
- b) or, if the judgment or the conviction has verified that the sentenced person is a repeat offender, served two thirds of the penalties, without the length of the penalties already served exceeding fourteen years;
- c) [1 either, if the person was sentenced to a prison term of thirty years, or to life imprisonment, served fifteen years of the penalty;
- d) or, if the person was sentenced to a prison term of thirty years, or to life imprisonment, and if the reason of the decision shows that he previously was sentenced to a correctional penalty of no less than three years of prison for acts contemplated:

- in articles 102, 103, paragraph 2, 106, 107, 108, 136bis to 136septies, 137, 138, 140, 141, 146, 147, 278, paragraph 2, 279, 279bis, 280, 3° to 8°, 323, 324, 324ter, 327, paragraph 1er, 330bis, 331bis, 337, 347bis, §§ 2 to 4, 348, 349, paragraph 2, 352, 372, 373, 375, 376, 377, 377bis, 379, 380, 381, 383bis, §§ 1 and 3, 385, paragraph 2, 386, paragraph 2, 393 to 397, 399, paragraph 2, 400 to 405, 405bis, No. 3 to No. 11, 405ter, 405quater, 406, paragraph 1, 407 to 410ter, 417ter, 417quater, 423, 425, 427 to 430, 433, 433ter to 433duodecies, 435 to 438bis, 442quater, §§ 2 et 3, 454 to 456, 470, 471, seventh clause of the listing, 472 to 475, 477sexies, § 2, 488bis, § 2, No. 1, and § 3, 518, 531, 532 and 532bis of the Criminal Code;

- in articles 77bis to 77quinquies of the Law from December 15, 1980 on the access to, the permanence and establishment in and the departure of foreigners from the territory;

- in article 4 of the law from December 30, 2009 on the fight against maritime piracy;

- in article 30 of the Law from June 27, 1937 regarding the revision of the law from November 16, 1919 on the regulation of air navigation;

- in article 34 of the Law from June 5, 1928 regarding the revision of the Disciplinary and criminal code for the Merchant Navy and for sea fishing;
 - in article 7, paragraph 2, of the law from March 12, 1858 on the crimes and offences against international relations,
- and that less than ten years have elapsed from the moment he served his sentence or the moment in which his sentence prescribed and the acts that resulted in his sentencing to a prison term of thirty years or to a life imprisonment sentence, served nineteen years of this penalty;
- e) or, if the person was sentenced to a prison term of thirty years, or to life imprisonment, and if the reason of the decision shows that he previously was sentenced to a criminal penalty, served twenty-three years of this penalty;
- and that he meets the conditions of articles 47, § 1, and 48.

CHAPTER I – Prison penalties of three years or less.

Section I: - Definition.

Article 27

For the application of this chapter, prison penalties of three years or less shall be one or more prison penalties for which the remainder to be served is of three years or less.

Section II. - Conditions.

Article 28

§ 1er. Except for the provisional release to leave the territory or for the surrender, except for the reduction of the interdiction, pronounced by the judge, of the right to inhabit, to reside or to stay in a specific determined area, the modalities of execution of the penalty provided under Title V may be granted to the sentenced person provided that there are no indications to the contrary. These counter indications relate to:

- 1) The fact that the sentenced person does not have the possibility of supporting himself;
- 2) A manifest risk for the physical integrity of third parties;
- 3) The risk that the sentenced person may upset the victims;
- 4) The attitude of the sentenced person with respect to the victims of the offences that resulted in his conviction;
- 5) The refusal of the sentenced person to follow a guidance or a treatment that are considered useful for him, or his inability to do so, when the person serves a penalty for any of the acts contemplated in articles 372 to 378 of the Criminal Code, or for the facts contemplated in articles 379 to 387 of the same Code, if they were committed against minors or with their participation;
- 6) The efforts made by the sentenced person to compensate the civil party, considering the patrimonial status of the sentenced person as it has evolved after the perpetration of the acts for which he was convicted.

No. 1 does not apply to limited detention.

§ 2. The provisional release for the departure from the territory or the surrender may be granted to the sentenced person provided that there are no indications to the contrary. These counter indications relate to:

- 1) The possibilities for the sentenced person to obtain accommodation;
- 2) A manifest risk for the physical integrity of third parties;
- 3) the risk that the sentenced person may upset the victims;
- 4) The efforts made by the sentenced person to compensate the civil party, considering the patrimonial status of the sentenced person as it has evolved after the

perpetration of the acts for which he was convicted.

§ 3. The reduction of the interdiction, pronounced by the judge, of the right to inhabit, to reside or to stay in a specific determined area may be granted to the sentenced person provided that there are no indications to the contrary with respect to the risk that the sentenced person may upset the victims.

CHAPTER II. – Prison penalties of more than three years.

Section 1: - Conditions.

Article 47

§ 1er. Except for the provisional release to leave the territory or for the surrender, [2 except for the reduction of the interdiction, pronounced by the judge, of the right to inhabit, to reside or to stay in a specific determined area, the modalities of execution of the penalty provided under Title V may be granted to the sentenced person provided that there are no indications to the contrary. These counter indications relate to:

- 1) The absence of social reinsertion perspectives for the sentenced person; 2) The risk of perpetration of new serious offences;
- 3) The risk that the sentenced person may upset the victims;
- 4) The attitude of the sentenced person with respect to the victims of the offences that resulted in his conviction;
- 5) The refusal of the sentenced person to follow a guidance or a treatment that are considered useful for him, or his inability to do so, when the person serves a penalty for any of the acts contemplated in articles 372 to 378 of the Criminal Code, or for the facts contemplated in articles 379 to 387 of the same Code, if they were committed against minors or with their participation;
- 6) The efforts made by the sentenced person to compensate the civil party, considering the patrimonial status of the sentenced person as it has evolved after the perpetration of the acts for which he was convicted.

§ 2. The provisional release for the departure from the territory or the surrender may be granted to the sentenced person provided that there are no indications to the contrary. These counter indications relate to:

- 1) The possibilities for the sentenced person to obtain accommodation; 2) The risk of perpetration of new serious offences; 3) the risk that the sentenced person may upset the victims;
- 4) The efforts made by the sentenced person to compensate the civil party, considering the patrimonial status of the sentenced person as it has evolved after the perpetration of the acts for which he was convicted.

§ 3. The reduction of the interdiction, pronounced by the judge, of the right to inhabit, to reside or to stay in a specific determined area may be granted to the sentenced person provided that there are no indications to the contrary with respect to the risk that the sentenced person may upset the victims.

(b) Observations on the implementation of the article

270. Early release and conditional release are regulated by articles 24-28 and 47 of the 2006 Law on the External Legal Status of Persons Convicted to a Prison Sentence and the Rights Accorded to Victims in the Frame of the Modalities of Sentences. Due consideration shall be given to the gravity of the offence prior to any such release, including the attitude of the sentenced person with respect to the victims and efforts to

compensate the civil party after conviction (article 47 of the Criminal Code). Belgium is in compliance with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

271. Belgium indicated that it has implemented the provision under review.

272. Belgium explained that if the penalty is above 5 years of imprisonment, suspension of public exercise is always a possible additional penalty. If the penalty is lower, suspension is not automatically considered, and the article in the Criminal Code has to explicitly foresee this possibility (with a reference to article 33 of the Criminal Code). For the chapter on corruption, article 252 CC foresees the possibility of suspension for all the acts, that is why it is not mentioned in every article separately.

Criminal Code

Article 252

Notwithstanding the application of articles 31 and 32, any person punished under the provisions of this chapter may also be sentenced to interdiction, in accordance with article 33.

Article 33

The courts may, in the cases provided by the law, prohibit, in whole or in part, the exercise of the rights mentioned in article 31, paragraph 1 for a period of five to ten years.

Article 31

Any convictions imposing prison sentences, life imprisonment, or prison terms for ten to fifteen years or more, shall impose, for the convict, the permanent interdiction of the right:

- 1 To serve in public functions, employments or offices;
- 2 To be elected;
- 3 To bear any distinction, or nobility titles;
- 4 To be a jury, expert, witness or certifier in acts; to testify other than to provide simple information;
- 5 To be appointed as guardian, auxiliary guardian or custodian, other than of his children; and to serve as court appointed administrator of the assets of someone allegedly absent) or as the administrator of a person protected under article 492/1 of the Criminal Code,

6 To manufacture, modify, repair, assign, hold, bear, transport, import, export or cause the transportation of weapons or ammunitions, or to serve in the Armed Forces.

273. A disciplinary procedure starts with the convocation of the public official. In this convocation, the facts (s)he is charged for, the fact that (s)he can be heard, possibilities for assistance, possible sanctions, etc. are mentioned. This convocation can be done electronically or by a letter. The official is heard by a hierarchical superior between the fourteenth and the thirtieth day following the reception of the convocation. In this hearing (s)he can contradict the facts and witnesses can be heard. A report is made of the hearing, and the official can submit written comments to it. Afterwards, the competent superior sends the file to the management committee. The superior adds a report with an overview of the facts, possible testimonies, the report of the hearing and any objections of the official against this. The management committee also hears the official within 10 days after they received the file. They have two months to draft a sanction proposal. The official may appeal within 20 days after receiving his or her sanction.

274. Criminal procedure: Until 1 October 2016, disciplinary proceedings were automatically suspended when a criminal procedure was ongoing. As this caused excessive delays for the disciplinary proceedings, now disciplinary proceedings will also continue. If the superior considers that the established facts are sufficiently clear and sufficiently proven to impose a disciplinary action, it can be decided autonomously to continue the disciplinary proceedings and no longer need to wait for the outcome of the criminal proceedings.

Royal decree from October 2, 1937 on the statute of the agents of the State

Article 77, §1

The following disciplinary sanctions may be pronounced:

- 1) a warning;
- 2) withholding of salary (max 36 months);
- 3) the disciplinary relocation;
- 4) compulsory resignation;
- 5) revocation.

Article 78

§ 1.- The disciplinary penalty is pronounced by the authority that exercises the appointing authority with respect to officials of B, C and D levels.

For level A officials, the penalty is pronounced by the minister, exception for demotion, compulsory resignation and revocation which are pronounced by Us. § 2.- Disciplinary penalties are pronounced after a provisional proposal by the competent hierarchical superior. He will hear the official beforehand with regard to the acts that are claimed against him, and proceeds, if applicable, to hear the witnesses. The official may receive the assistance of any person of his choice.

A minute shall be prepared for these hearings.

§ 3.- The official reviews the minute and returns it within seven days. If he has any objections, he shall return the minute with a written note.

§ 4.- Within five days of the expiration of the term established by paragraph 3, the hierarchical superior notifies the disciplinary penalty that he intends to propose to the official, and transmits the proposal to the steering committee.

§ 5.- The minister appoints the competent hierarchical superior for the application of this

article.

Article 79

§ 1.- The steering committee, within five days of the day in which it received the proposal with the disciplinary penalty, summons the official by registered letter to appear before it; the hearing of the official must take place between the twentieth and the thirtieth day of the engagement of the council.

The notice shall indicate the place, the date and the time of the hearing, as well as the place, and the period in which the disciplinary file may be consulted.

The official shall appear in person; he may receive the assistance of any person of his choice. The attorney may not be part of the steering committee in any capacity. If having been duly summoned, the official or his attorney fail to appear, without any valid excuse, the steering committee shall rule based on the documents of the file. This also applies when the case is the subject of a second hearing, even if the official or his attorney invoke a valid excuse.

However, if the steering committee formulates a final penalty proposal that is more severe than the proposed provisory penalty, it shall again summon the official for a hearing.

§ 2.- No official that is the subject of the disciplinary action or who has participated in bringing the disciplinary action, or who has participated, in any capacity, in the disciplinary procedure, shall sit or participate in the deliberation of the steering committee. § 3.- Within two months of the day in which the steering committee is engaged, the committee shall formulate the final proposal and notify it to the official within thirty days. In the absence of the notification in the thirty-day period, the steering committee shall be considered to have renounced to the procedure for the acts charged to the official.

...

§ 5.- Within ten days of the notification of the final proposal, the official may introduce an appeal against the proposal before the competent chamber of appeals.

Article 80

§ 1.- Except for the revocation and the compulsory resignation, any disciplinary penalty shall be erased from the personal file of the official in conditions established in § 2.

Notwithstanding the execution of the penalty, the elimination has the effect of the erased penalty not being taken into consideration for the assessment of the titles for promotion of the official, or at the time of an evaluation.

§ 2.- The elimination of the disciplinary penalties is performed automatically after a period of:

- six months for warnings;
- one year for the withholding of salary;
- eighteen months for the disciplinary relocation;

The period starts on the date in which the penalty is pronounced.

Article 81

§ 1.- The competent authority may not pronounce a disciplinary penalty that is more severe than the penalty of the final proposal.

No disciplinary penalty may produce effect for a period before its pronouncement, except under an express regulatory provision to the contrary.

§ 2.- When the official is accused of several acts, only one procedure shall be established, which shall result in the pronouncement of a single disciplinary penalty.

If the official is accused of a new act during the execution of the disciplinary procedure, a new procedure may be established without the ongoing procedure being interrupted.

§ 3.- Criminal actions suspend the disciplinary procedure and ruling.

Regardless of the result of the actions, the administrative authority shall judge the convenience of pronouncing a disciplinary penalty.

§ 4.- Subject to new elements that may warrant reopening the file and which take place during the prescription period mentioned in § 5, no one may be subject to disciplinary action for acts that have been already sanctioned at the disciplinary level.

§ 5.- The disciplinary action may only relate to acts that took place and were verified during the six months preceding the date in which the action is established.

In the event of a criminal action, and if the prosecution has communicated the final legal decision to the minister under whose authority the official has been placed, the disciplinary action shall be established within six months of the date of the communication.

Article 81bis

This title applies to interns

275. Belgium explained that there are three types of penalties:

Minor

They are used to warn the official about any breaches that are detected by the authority, and their effects

- the warning

Major

- Withholding of salary: it is applied for a maximum of 36 months, and it may not exceed 20% of the salary
- The disciplinary relocation: the official is assigned to a job different to the one he had, and he may not obtain, at his request, another changer or transfer for a period of 18 months.

Maximum

- compulsory resignation: this sanction terminates the work relationship, but the right to pension is maintained.
- revocation: maximum sanction that terminates the link between the official and the federal administration. This penalty involves a deprivation of the right to pension.

(b) Observations on the implementation of the article

276. The 1937 Royal Decree on the Statute of the Agents of the State sets out the disciplinary sanctions that may be imposed on public officials. These include, among others, relocation, temporary suspension, demotion and removal (articles 77-81bis). The Decree requires that disciplinary proceedings be suspended if criminal proceedings are initiated (article 81 paragraph 3) and that they only continue once the results of the criminal proceedings are communicated to the relevant minister (article 81 paragraph 5). The Criminal Code includes additional sanctions, such as the prohibition to serve in public functions, including state owned enterprises, and to be elected (articles 31-34). Belgium is in compliance with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

277. Belgium indicated that it has implemented the provision under review and cited the following measures as applicable:

Criminal Code

Article 31

Any convictions imposing prison sentences, life imprisonment, or prison terms for ten to fifteen years or more, shall impose, for the convict, the permanent interdiction of the right:

- 1) To serve in public functions, employments or offices;
- 2) To be elected;
- 3) To bear any distinction, or nobility titles;
- 4) To be a jury, expert, witness or certifier in acts; to testify other than to provide simple information;
- 5) To be appointed as guardian, auxiliary guardian or custodian, other than of his children; and to serve as judicial advisor, court appointed administrator of the assets of someone allegedly absent, or as a provisional administrator.
- 6) To manufacture, modify, repair, assign, hold, bear, transport, import, export or cause the transportation of weapons or ammunitions, or to serve in the Armed Forces.

The convictions contemplated in the preceding paragraph may additionally pronounce the interdiction of the right to vote against the sentenced person, either permanently or for twenty to thirty years.

Article 32

The Appeals Courts (*cours d'assises*) may interdict, in whole or in part, either permanently or for ten to twenty years, the exercise of the rights contemplated in the preceding article for anyone sentenced to prison terms of five to ten years or to detention.

Article 33

The courts may, in the cases provided by the law, prohibit, in whole or in part, the exercise of the rights mentioned in article 31, paragraph 1 for a period of five to ten years.

Article 33bis

The courts may interdict the exercise of the right contemplated in article 31, paragraph 2 for a period of five to ten years for anyone sentenced in correctional procedures.

Article 34

The length of the interdiction, established by the ruling or the conviction, starts on the day the sentenced person has served his penalty, or when the penalty prescribed.

The interdiction shall additionally produce its effects starting on the day in which the conviction in which all the parties have been heard, or the conviction in absentia, has become final.

The interdiction pronounced against a sentenced person who benefits of a total or partial reprieve for the execution of the penalty under the law from June 29, 1964 on suspension, reprieve and probation, starts on the day in which the reprieve should start, provided that it is not revoked.

(b) Observations on the implementation of the article

278. Disqualification is regulated in articles 31-34 of CC. Belgium is in compliance with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

279. Belgium indicated that it has implemented the provision under review and referred to its responses under article 30 paragraph 6 of the Convention.

(b) Observations on the implementation of the article

280. Disqualification is regulated in articles 31-34 of CC. Belgium is in compliance with the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

281. Belgium indicated that it has implemented the provision under review. The

disciplinary procedure must be suspended if judicial institutions take the case.

Royal decree from October 2, 1937 on the statute of the agents of the State

Article 81

§ 3 Criminal actions suspend the disciplinary procedure and ruling.

Regardless of the result of the actions, the administrative authority shall judge the convenience of pronouncing a disciplinary penalty.

§ 5....

In the event of a criminal action, and if the prosecution has communicated the final legal decision to the minister under whose authority the official has been placed, the disciplinary action shall be established within six months of the date of the communication.

(b) Observations on the implementation of the article

282. Belgium is in compliance with the provision under review. The Decree requires that disciplinary proceedings be suspended if criminal proceedings are initiated (article 81 paragraph 3) and that they only continue once the results of the criminal proceedings are communicated to the relevant minister (article 81 paragraph 5).

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

283. Belgium indicated that it has implemented the provision under review. A team of psychologists and social workers are available in prisons to guide the detainees on a psychosocial level. This team prepares the detainee for his psychosocial reinsertion and evaluates any proposals for his reclassification. This guarantees a psychosocial reception for each detainee who enters the prison. (Law from 01/12/2005 on principles related to the penitentiary administration and the legal statute of detainees can be found at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005011239&tab le_name=loi).

284. With regard to conditional release, if the person is sentenced to a prison term of more than 3 years, the sentence enforcement court may grant a conditional release. That means that the person is released before the end of the prison penalty subject to certain conditions. The conditions are adapted to the situation of the person and take his daily activities into consideration. The purpose of the conditions is that the person shall not commit new acts. One of the conditions provides that the person shall be monitored by a law clerk. The conditions shall be respected during a certain probation period. This period shall be two years at minimum and ten years at maximum. The law clerk shall meet the person regularly and report back to the sentence enforcement court that controls the case. The sentence enforcement court may adapt, suspend or customize the

conditions. If the conditions are respected throughout the probation period, the person shall be freed permanently. If the conditions are not respected, the law clerk shall summon the person to an interview, giving him the chance to explain what went wrong. The law clerk prepared a report that he submits to the sentence enforcement court. The sentence enforcement court may suspend or revoke the conditional release. In this case, the person shall return to prison.

285. If the person is sentenced to a prison term of less than 3 years (same system, other authorities), the director of the prison may grant a conditional release. That means that the person is released before the end of the prison penalty subject to certain conditions. The conditions are adapted to the situation of the person and take his daily activities into consideration. The purpose of the conditions is that the person shall not commit new acts. One of the conditions provides that the person shall be monitored by a law clerk. The conditions shall be respected during a certain probation period. This period shall be two years at maximum. The law clerk shall meet the person regularly and report back to the Directive Office of the SPF Justice that controls the case. If the conditions are respected throughout the probation period, the person shall be freed permanently. If the conditions are not respected, the law clerk shall summon the person to an interview, giving him the chance to explain what went wrong. The law clerk prepared a report that he submits to the sentence enforcement court. The Directive Office may terminate the provisional release. In this case, the person shall return to prison.

(b) Observations on the implementation of the article

286. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

287. Belgium indicated that it has implemented the provision under review and cited the following provisions as applicable:

Criminal Code

Article 42

Special confiscation applies to:

- 1 Any property that comprises the object of the offence, and any property that served or is destined to the commission of the offence, when it is owned by the convict;
- 2 To any property produced by the offence;
- 3 To any patrimonial advantages directly derived from the offence, any assets and

securities with which it may have been replaced and the proceeds of the investment of the advantages.

Article 43

The special confiscation that applies to the property contemplated in No. 1 and 2 of article 42 shall always be pronounced for a crime or offence.

It shall not be pronounced by a breach except in the cases provided for by the law.

Article 43bis

The special confiscation that applies to the property contemplated in article 42, No. 3, may be always pronounced by the judge, but only to the extent that it is requested in writing by the royal prosecutor.

If the property cannot be found in the patrimony of the convict, the judge shall proceed to make an appraisal, and the confiscation will involve an equivalent sum of money. When the property belongs to the civil party, it shall be returned to it. Any confiscated property shall also be returned to the civil party if the judge pronounced the confiscation for the reason that it constitutes property or securities that were replaced by the convict with property belonging to the civil party or because it constitutes the equivalent of such property under paragraph 2 of this article.

Any other third party claiming rights over confiscated property may enforce the right within a period, and in the modalities determined by the King.

The special confiscation of real estate assets shall be pronounced by the judge, under the applicable legal basis, but only to the extent that it was requested in writing by the prosecution.

The written request of the prosecution for the confiscation of a real estate assets that was not criminally seized under the applicable formalities is, under penalty of inadmissibility, registered for free in the margin of the last title transcribed or of the ruling contemplated in article 1, paragraphs 1 and 2, of the mortgage law from December 16, 1851. The prosecution shall attach evidence of the marginal note to the criminal file before closing the hearings. The prosecution requests, if applicable, the free removal of the marginal note.

The judge reduces the value of the patrimonial advantages contemplated in article 42, No. 3 or of the economic appraisal of paragraph 2 as needed in order to avoid subjecting the convict to an unreasonably heavy penalty.

Article 43ter

The special confiscation that applies to the property contemplated (in articles 42, 43bis and 43quater) may be also pronounced when the property is outside the territory of Belgium.

288. Belgium explained that common law applies to the confiscation of corruption-related patrimonial benefits, (article 42 e.s. CC):

- direct confiscation: the advantages received by the bribed party are confiscated under article 42, No. 3 of the Criminal Code; this also applies to the benefits of these advantages, or any profits generated by their placement;
- equivalent confiscation: if the illegal patrimonial benefits cannot be found in the patrimony of the convict, the judge shall proceed to make an economic appraisal of the benefits that cannot be found and pronounce a confiscation equivalent to the value of the patrimonial benefits (article 43bis CC).

289. Extended patrimonial benefits may be eventually confiscated (article 43quater CP). What is important is that confiscation by the Belgian criminal judge remains possible if the assets considered for a confiscation are abroad (article 43ter CP). Belgian criminal law may still be applied, in a limited fashion, outside its territory (article 10quater CPC).
290. In sum, the confiscation may be applied:
- to any property that comprises the object of the offence (i.e.: drugs, forbidden weapons) and to any property that served or was destined to its commission, when it is owned (or jointly owned) by the convict (i.e.: a vehicle, weapon);
 - to any property produced by the offence (i.e.: counterfeit money);
 - to any patrimonial advantages directly derived from the offence, any assets and securities with which it may have been replaced and the proceeds of the investment of the advantages (i.e.: the money obtained from the sale of illegal products, from a fraud or a kidnapping, a car bought with this money, the interest produced by that money);
 - to any patrimonial advantages, assets and securities with which they may have been replaced and the proceeds of the investment of the advantages that are found in the patrimony or the possession of a person, and which are derived from the offences listed in § 1 of article 43quater. There must be serious evidence that the patrimonial advantages were acquired by the sentenced person during a five-year period before his indictment for the commission of the offence for which he was sentenced, or for identical offences. The judge may order an equivalent confiscation if the assets are not found in the patrimony of the sentenced person.
291. The confiscation contemplated in articles 42, No. 3 and 43bis, paragraph 1 C.C. must be requested in writing by the prosecution and it is optional. The amount may not exceed that of the object of the measure to which the penalty is attached (Cass. April 14, 2010, Pas., 2010, no. 258). In turn the confiscation of the object of the offence is mandatory.
292. The confiscation of the proceeds or the patrimonial advantages transferred to a third party is possible under a ruling of the Court of cassation from May 29, 2001. The confiscation is also possible within the criminal transaction under article 216bis of the CC. The Circular of the Prosecutors on the application of this article notes that “the possibility is given to the magistrate of the prosecution to include in his proposal both the objects, already seized or otherwise, that are subject to mandatory or optional confiscation, and the patrimonial advantages derived from the offence”.
293. Belgium has provided the following examples of cases and jurisprudence.
- In the case cited under article 16 of the Convention (EU cereal subsidies case), the advantages granted were consumed immediately (restaurants, trips, prostitutes). However, the advantages granted underwent an accounting study to compare the lifestyle level of the official with his income. As a result, an equivalent confiscation was made.
 - the confiscation of real estate located abroad (Cassation, 17 December 2013), the sale of perishable seized goods, the confiscation of assets of a corresponding value from a third party, with restitution to the victims (Brussels Court of Appeal, 10 October 2013).
 - the confiscation from third parties of property acquired together with the proceeds of the offence (Cassation, 4 March 2014); the confiscation of assets of a corresponding

value of a portion financed by the proceeds of the offence of a property bought jointly with a bona fide third party (Liège Court of Appeal, 20 May 2009). Even a golf court in Canada was confiscated, because money that was laundered in Belgium was used to buy it.

(b) Observations on the implementation of the article

294. The direct confiscation of proceeds of crime as well as confiscation of property of a corresponding value to that of the proceeds of crime (“value confiscation”) are foreseen through articles 42 and 43 bis/ter of the Criminal Code. All confiscation must be based on a prior conviction and is deemed a penalty.

295. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

296. Belgium indicated that it has implemented the provision under review and cited the following national provision as applicable:

Criminal Code

Article 42

Special confiscation applies to:

- 1 Any property that comprises the object of the offence, and any property that served or is destined to the commission of the offence, when it is owned by the convict;
- 2 To any property produced by the offence.
- 3 To any patrimonial advantages directly derived from the offence, any assets and securities with which it may have been replaced and the proceeds of the investment of the advantages.

297. Belgium explained that articles 42 and 43bis/ter of the Criminal Code cover the confiscation of instrumentalities, as well as objects of crime and proceeds of crime that are transformed, converted into or intermingled with other property.

(b) Observations on the implementation of the article

298. CC article 42 covers the confiscation of instrumentalities, as well as objects of crime and proceeds of crime that are transformed, converted into or intermingled with other property. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

299. Belgium indicated that it has implemented the provision under review and cited the following national provisions as applicable.

Criminal Procedure Code

Article 35

1er. The royal prosecutor shall seize anything that may appear to constitute the property contemplated in articles 42 and 43quater of the Criminal Code and of anything that may assist to establish the truth; he shall ask the defendant to provide explanations in relation to any seized property that is delivered to him; he shall prepare minutes, which shall be signed by the defendant, or a note will be made of his refusal to do so. § 2. If the property of the preceding paragraph includes vehicles, they may, provided that they are the property of the defendant, be made available to the federal police. The decision to make them available is made, as the case may be, by the royal prosecutor or by the federal prosecutor, under the directions of the minister of justice under articles 143bis and 143ter of the judicial code. The decision is not subject to appeal. By making them available, the federal police, who is authorized to use the vehicle with due diligence, may use it for its regular operations. In the event of restitution, any depreciation due to the use of the vehicle shall give rise, after being offset with any eventual capital gain, to compensation.

The appeal of article 28sexies may only be brought the month after the seizure of § 1. The applicant shall not send or submit any request for the same purpose before the expiration of a period of one year, starting on the day of the last decision related to the same purpose, or the day of the expiration of the six-month period contemplated above.

Article 35bis

When the property that appears to constitute a patrimonial advantage obtained from an offence is real estate assets, the precautionary seizure shall be made by way of a writ served to the owner, containing, under penalty of annulment, a copy of the request from the royal prosecutor, as well as the different mentions of articles 1432 and 1568 of the Judicial Code, and the text of paragraph three of this article.

The seizure notice shall be presented for transcription, on the same day it is served, at the office of mortgages of the venue of the assets. The transcription shall be dated on the date of delivery of the notice.

The precautionary seizure is valid for five years starting on the date of the transcription, except when renewed for the same term by submitting to the custodian, before the expiration of the period of validity of the transcription, of a request from

the prosecutor or the competent investigative judge in two copies.

The seizure is maintained, by making a succinct note on the margin of the transcription, during its period of validity, until the final judicial decision ordering the confiscation of the real estate asset is made.

The removal of the precautionary seizure may be granted by the aforementioned prosecutor or investigative judge or, if applicable, by the beneficiary of the confiscation, or it may be ordered by a judicial decision.

Article 35ter

§ 1er. If serious and concrete evidence exists that the suspect has obtained a patrimonial advantage under articles 42, No. 3 or 43quater, § 2 of the Criminal Code and that the property that materializes the patrimonial advantage cannot or can no longer be found as such in the patrimony of the suspect that is found in Belgium, or has been mixed with other legal property, the prosecution may seize other property found in the patrimony of the suspect up to the value of the alleged proceeds of the offence. In his decision, the prosecution shall indicate the estimate of the value, and indicate the serious and concrete evidence that supports the seizure. These elements appear in the minute prepared in relation to the seizure.

§ 2. Property that cannot be seized under articles 1408 to 1412bis of the Judicial Code or under special laws, cannot, under any circumstance, be seized.

§ 3. For the seizure of a real estate asset or a debt, the formalities of articles 35bis and 37 shall apply.

§ 4. The prosecution may seize property different to the patrimonial advantages that belong to third parties, subject to the following conditions:

1) There is sufficient, serious and concrete evidence that the suspect transferred the property to a third party, or has financially permitted him to acquire it with the express intention of preventing or seriously complicating the execution of an eventual special confiscation in relation to an amount of money; 2) the third party knew, or should have reasonably known that the property was directly or indirectly transferred to him by the suspect, or that he was able to acquire it with the financial aid of the suspect to evade the execution of an eventual special confiscation in relation to a sum of money.

In his decision, the prosecution shall indicate the serious and concrete evidence that makes it appear that the suspect meant to evade the execution of an eventual special confiscation, as well as the information that indicates or which allows to infer that the third party was aware of the fact. These elements appear in the minute prepared in relation to the seizure.

(b) Observations on the implementation of the article

300. Articles 35, 35bis and 35ter of the Criminal Procedure Code regulate the seizure procedures. The Central Office for Seizure and Confiscations (COSC) has been established within the judiciary as a principal public institution responsible for the execution of confiscation orders and the management of seized assets. However, there is no reliable centralized database of confiscated assets, and consequently no statistics and data on confiscation in general are available yet. One of the reviewing States opined that Belgium should create a centralized data bank of seized goods, which should be updated at least every six months. The Belgian Ministry of Justice is currently developing a computerized accounting system (NAVISION, available as of 1 January 2017).

301. Belgium indicated that in 2015, the organ has registered an amount of EUR 1,246,000 of income out of the selling of confiscated and seized goods.
302. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

303. Belgium referred to the Law from March 26, 2003 on the creation of a Central body for Seizures and Confiscations and on the provisions of the management of seized assets at constant value and on the execution of certain patrimonial sanctions².
304. The central body for seizures and confiscations (COSC) is a body of the prosecutor's office. an organ of the prosecution. It was created by the law from March 26, 2003 and it began operations in September 1, 2003. This office is in charge of the account where all the seized and confiscated money is transferred to. Goods can be sold.
305. The COSC assists the judicial authorities in the search, prosecution and the investigation of offences, as well as in the execution of penalties in terms of
- (1) the seizure or patrimonial assets linked to a list of Criminal Code offences;
 - (2) the exercise of a public action for the purpose of the special confiscation members of such assets;
 - (3) the execution of judgments and rulings that have become final, and that involve the special confiscation members of such assets. It is also in charge of providing assistance in international legal assistance in relation to the seizure of patrimonial assets.
306. The COSC assumes the role of an information centre on criminal matters for the judicial authorities within the framework of the seizure of property assets. It plays a supporting role in the prosecution framework regarding confiscation, and a facilitator role in the enforcement of confiscation sentences and judgments.
307. The COSC is a federal institution run by prosecutors. Among the core tasks of the COSC is managing data on seizures and confiscations. All significant seizure must be notified to this body. The same applies for judgments and confiscation sentences.
308. In addition, the COSC intervenes in the management measures taken by prosecutors and judges during a seizure action. The best-known management measure is the sale of

² The law can be downloaded at:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2003032663&table_name=loi. A 2004 circular with practical guidelines can be found here: http://www.ommp.be/extern/getfile.php?p_name=3318273.PDF&pid=4016922

seized items. It follows a specific procedure involving the substitution of the price obtained for the goods sold (subrogation). It facilitates management, guarantees the rights of all those concerned, while remaining truly economical.

309. The COSC has a legal obligation to manage the seized cash. This is done jointly with the ING bank. ING manages some of the assets seized, which, given their value can hardly be filed at the court office. An example would be diamonds and jewellery.

310. An increasingly important mission of the COSC is its international function. The COSC is the Belgian office for asset recovery. Each Member State of the European Union must have an equivalent body. The COSC has links with foreign counterparts with whom it exchanges information. The COSC is a member of CARIN, a global network of experts on seizure and confiscation.

(b) Observations on the implementation of the article

311. The Central Office for Seizure and Confiscations (COSC) has been established within the judiciary as a principal public institution responsible for the execution of confiscation orders and the management of seized assets. However, there is no reliable centralized database of confiscated assets, and consequently no statistics and data on confiscation in general are available yet. The Belgian Ministry of Justice is currently developing a computerized accounting system (NAVISION, available as of 1 January 2017). Belgium is recommended to consider enhancing the current COSC-managed central database of seized and confiscated assets, and ensure it is updated regularly.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

312. Belgium indicated it has implemented this provision and cited the following national provisions as applicable:

Criminal Code

Article 43quater

§ 1. Notwithstanding article 43bis, paragraphs 3 and 4, the patrimonial advantages contemplated in § 2, the assets and securities with which they may have been replaced and the proceeds of the investment of the advantages that are in the possession of a person may, at the request of the royal prosecutor, be confiscated, or the person may be sentenced to pay an amount that the judge considers that corresponds to the value of the property if the person is found guilty:

(a) of one or more of the offences contemplated: ...

2) in articles 246 to 251 and in article 323; ...

3) in articles 504bis to 504ter and in article 323; ...

5) in article 505, except for the property covered by article 42, No. 1;

§ 2. The confiscation contemplated in § 1 may be pronounced against the perpetrators, co-perpetrators or accomplices who have been convicted for one or more of the offences of this article, and under the conditions defined in § 1 if the sentenced person has acquired supplementary patrimonial advantages during a pertinent period, and serious and concrete evidence exist that they are derived from the offence for which he was sentenced or from identical acts and that the sentenced person cannot reliably prove otherwise.

That option may also be asserted by any third party claiming to have rights over the advantages.

§ 3. Under this article, pertinent shall be understood to mean a period starting five years before the indictment of the person until the date of the ruling.

The serious and concrete evidence of § 2 may be contained in any trustworthy elements that have been submitted to the court in a regular fashion and which show an imbalance of any interest between, on the one hand, a temporary or ongoing increase of the patrimony and the expenses of the sentenced person during the pertinent period, of which the prosecution submits the evidence, and, on the other hand, a temporary or ongoing increase of the patrimony and the expenses of the sentenced person during this period that the person may prove that is not related to the acts for which he was sentenced, or to identical acts.

Identical acts shall be understood to mean acts that fall into the classifications contemplated in § 1, and which:

a) may have the same qualification as the offence that resulted in the conviction;

b) may have a related qualification, provided that it appears in the same category, provided for in § 1, a), as the offence that resulted in the conviction.

When the court orders the special confiscation under this article, it may decide to not include a portion of the pertinent period or the revenues, the assets or the securities if it considers that such measure is convenient in order to avoid subjecting the convict to an unreasonably heavy penalty.

§ 4. The patrimony of a criminal organization must be confiscated, subject to the rights of third parties in good faith.

(b) Observations on the implementation of the article

313. Belgium explained that articles 42 and 43bis/ter of the Criminal Code cover the confiscation of instrumentalities, as well as objects of crime and proceeds of crime that are transformed, converted into or intermingled with other property. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

314. Belgium indicated that it implemented the provision under review and referred to its responses under previous paragraphs of article 31 of the Convention.

(b) Observations on the implementation of the article

315. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

316. Belgium has indicated that it implemented the provision under review and referred to its responses under previous paragraphs of article 31 of the Convention.

(b) Observations on the implementation of the article

317. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

318. Belgium indicated that it has implemented the provision under review and referred to the following articles of the Criminal Procedure Code as relevant:

Criminal Procedure Code

Article 46quater

§ 1er. In the investigation of the crimes and offences, the Royal prosecutor may request, if there are serious indications that the offences may give rise to a principal correctional prison penalty of one year or to a heavier penalty, the following information:

a) the list of bank accounts, safety boxes or financial instruments defined in article 2,

No. 1, of the law from August 2, 2002 on the surveillance of the financial sector and financial services, of which the suspect is the titleholder, the principal or the actual beneficiary and, if applicable, all data on them;

b) the bank transactions that have been carried out during a certain period on one or several bank accounts or financial instruments, including information related to any issuing or receiving account;

c) any data on the titleholders or principals who, for a certain period, had access to safety boxes.

§ 2. When warranted by the information needs, the royal prosecutor may additionally request that:

a) during a renewable maximum period of two months, the bank transactions related to one or several bank accounts, or the safety boxes or financial instruments of the suspect, are monitored;

b) the bank of credit establishment may not divest itself of the debts or commitments linked to said bank accounts, safety boxes or financial instruments for a period determined by him, but which shall not exceed the period that starts when the bank or credit establishment becomes aware of the request until five business days after the notification of the data in question by the establishment; This measure may only be requested if warranted by serious and exceptional circumstances, and if the investigations are related to the crimes or offences of article 90ter, §§ 2 to 4, of the Criminal Procedure Code.

§ 3. The royal prosecutor may, in a written and substantiated decision, request the assistance of the bank or the credit establishment in order to permit the measures contemplated in §§ 1 and 2. The bank or the credit establishment shall provide its assistance without delay. In the request, the Royal prosecutor shall specify the form in which the data contemplated in § 1 shall be communicated to it.

Any person who, by virtue of their function, becomes aware of the measure or provides their assistance, shall have the obligation of maintaining confidentiality. Any violation of the confidentiality shall be punished in accordance with article 458 of the Criminal Code.

Any person who refuses to provide their assistance to the requests contemplated in this article shall be punished with a prison term of eight days to one year and a fine of twenty-six to ten thousand Euros, or one of those penalties.

319. The Belgian National Bank has established a register of all bank account holders' names. However, at present only COSC and fiscal authorities can consult the list and thereby know from which financial institutions they must request information and the register is only updated annually. New legislation has been enacted and under it, the Belgian CFI-CTIF, prosecutors, (investigating) judges and notaries also have access to the central register of bank accounts.

(b) Observations on the implementation of the article

320. In Belgium, the prosecutor can request the production of bank and financial records directly from any financial institution (CPC article 46quater) as well as initiate tracing of assets. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. *States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

(a) Summary of information relevant to reviewing the implementation of the article

321. Belgium indicated that it has implemented the provision under review and referred to its responses under article 20 of the Convention on illicit enrichment. Once a person is convicted of a corruption offence, the division of the burden of proof is used for extended confiscation (CC article 43quater).

(b) Observations on the implementation of the article

322. Belgium is in compliance with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. *The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

(a) Summary of information relevant to reviewing the implementation of the article

323. Belgium indicated that it has implemented the provision under review and cited the following article of the Criminal Code as applicable:

Criminal Code

Article 44

The imposing of the penalties established by the law is pronounced notwithstanding any restitutions and damages that may be due to the parties.

324. The penalty of confiscation does not overlap with the claims of any other person who is a victim of the offence, regardless of whether the person has become a civil party. Article 44 of the Criminal Code specifies that the imposing of the penalties (including the penalty of confiscation) is pronounced notwithstanding any restitutions that may be due to the parties and article 50 of the same Code appends this restitution to the joint liability of those sentenced for the same offence; the restitution is a civil remedy and it also applies in the absence of a claim from a civil party

325. Article 43bis, paragraph 3 of the Criminal Code establishes the rights of the victim who becomes a civil party, specifying that:

- when the confiscated property belongs to the civil party, it shall be restituted to it (This restituted property belongs to the civil party and are beyond the reach of the creditors (other than mortgage creditors) of the sentenced party: Civ. Brussels (j. sais.), November

29, 2004, J.L.M.B., 2005, p. 835.).

- Any confiscated property shall also be returned to it if the judge pronounced the confiscation:

- for the reason that it constitutes property or securities that were replaced by the convict with property belonging to the civil party;
- or because it constitutes the equivalent of such property under paragraph 2 of this article.

326. Beyond the possibility of intervening at the hearing (the third party claiming a right over the confiscated property may prepare an intervention at the criminal hearing to assert his rights (Cass., July 17, 1995, Pas., 1995, p. 733); article 5ter of the preliminary title of the Criminal Procedure Code, introduced by the law from 19 December 2002, imposes that any concerned third party shall be notified of the date of the hearing), article 43bis in fine of the Criminal Code regulates the situation of any other third party claiming a right over the confiscated property: it specifies that this third party may exercise this right within a period, and in the modalities determined by the King; in effect, if the victim is not a civil party, or if a third party claims any right over the confiscated property, a royal decree has organized a procedural system to allow these persons to exercise their rights. (Any third party claiming rights over confiscated property may invoke the Royal decree from August 9, 1991, on the procedures available to third parties claiming a right over confiscated property. As for any confiscation pronounced under article 43bis of the Criminal Code (namely, the optional confiscation of primary or secondary patrimonial advantages, including any replacement assets, or any equivalent confiscation), a period of 90 days starts running on the moment the decision becomes final. Before the expiration of this period, no enforcement measure of the confiscation may apply. The concerned third party (a joint tenant may be considered as a third party, as it appears to us - comp. Cass., February 10, 1999, R. Cass., 1999, p. 342, note G. STESSSENS) has this period to bring an action before the civil court (Cass., September 22, 1998, Pas., p. 971, concl. min. publ.; Civ. Turnhout, March 28, 2002, R.G.D.C., 2003, p. 126; Antwerp, ch. mises acc., March 31, 2000, T. Strafr., 2002, p. 263, note P. ARNOU; Cass., October 6, 2010, P.10.0723.F). The Royal decree provides that the clerk shall notify any third party claiming a right over the property within 30 days (art. 2 of the Royal decree from August 9, 1991. The persons to be notified shall be those who have objected the restitution under article 3 of the Royal Decree No. 260 from March 24, 1936 on the custody at the court and the procedure for the restitution of property confiscated for law enforcement purposes, and those indicated by the prosecution as authorized to claim rights over confiscated property by following the indications provided by the procedure.

(b) Observations on the implementation of the article

327. Confiscation from a third party is legally possible but shall not prejudice the rights of bona fide third parties. Articles 44 and 43 bis of the Criminal Code and articles 1382 and 1383 of the Civil Code safeguard the rights of bona fide third parties to claim restitution and damages.

(c) Success and good practices

328. The reviewing experts highlighted as a good practice the fact that, in seizure matters, Belgium allows the suspect to reclaim the seized asset in exchange for money. This

approach lifts the burden of managing and maintaining the seized property from national authorities.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

329. Belgium indicated that it has implemented the provision under review.

330. The protection of threatened witnesses has been established by the law from July 7, 2002 modified by the law from July 14, 2011 named the Law on the Protection of Witnesses under Threat (to be accessed at:
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002070742&table_name=loi)

331. In addition, **article 102** of the **Criminal Procedure Code** says the following: 1) Threatened witness: a person in danger as a result of statements made or to be made in the context of a criminal case during the preliminary hearing or during the trial, either in Belgium or in an international court, or when reciprocity is ensured abroad, and is willing to confirm said statements upon request during the hearing.
(http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002070742&table_name=loi)
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002070742&table_name=loi)

332. A commission for the protection of witnesses has been established. It may provide protection measures to the witnesses and their families, which include:

- 1) the protection of data related to the person before the citizen's registry and the civil registrar's office;
- 2) providing advice in the field of prevention;
- 3) establishing a preventative technical team;
- 4) designating a contact official;
- 5) elaborating an alarm procedure;
- 6) providing psychological assistance;
- 7) organizing, on a preventative basis, police patrols;
- 8) recording incoming and outgoing calls;
- 9) the regular control of national registry queries and/or the protection of data related to the person;
- 10) the provision of a secret telephone number;
- 11) the provision of a protected license plate;
- 12) the provision of a GSM for urgent calls;

- 13) the close and immediate physical protection of the person;
- 14) the electronic protection of the person;
- 14) relocating the person for a maximum of 45 days;
- 16) placing a concerned detainee in a specially protected section of the prison;
- 17) registering a contact address;
- 18) the relocation in Belgium or abroad;
- 19) changing the identity of the person by modifying their name, last name, the date and place of birth;
- 20) a temporary protection identity;
- 21) considering the specific situation of the person, providing financial assistance measures such as:
 - a monthly payment to guarantee the subsistence of the witness and the members of his family and other relatives that are protected with him, of which a certain portion may be destined to specific purposes;
 - a one-time payment of an amount to get started in an independent activity; - a special financial contribution reserved to specific purposes;

333. In addition, the beneficiary of special protection measures automatically has the right to receive psychological assistance, and assistance in the search for a job.

334. Due to security reasons, there are no detailed statistics available. In 2012, no new files were opened. There are 4 files in course, 11 persons receive protection.

(b) Observations on the implementation of the article

335. The 2002 Law on the Protection of Witnesses under Threat establishes various measures for physical protection, identity protection, relocation and safe integration of witnesses. Belgium clarified that experts and victims are also covered by the Law. This also includes witnesses' families. The family is relocated, and gets a new identity by given them a new name and date of birth. The Minister of Justice decides if the protection is granted. The person that committed the crime cannot be given witness protection.

336. The Witness Protection Commission is in charge of granting protection measures.

337. Belgium is in compliance with the provision under review.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

338. Belgium indicated that it has implemented the provision under review and referred to its responses under article 32 paragraph 1.

(b) Observations on the implementation of the article

339. Belgium is in compliance with the provision under review.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

340. Belgium indicated that it has implemented the provision under review and referred to the following provisions of the Criminal Procedure Code as relevant. Under articles 75 and 75ter of the Criminal Procedure Code, any persons who, in the exercise of their professional activities, are in charge of investigating particularly serious forms of crime may benefit from anonymity.

Criminal Procedure Code

Article 75

The witness takes an oath to say the truth and nothing but the truth; the investigative judge will ask their names, last names, age, civil status, profession, place of residence, if they are relatives, parents or partners of the parties, and to which degree; a note shall be made of the questions and the answers of the witnesses.

Article 75ter

Due to the derogation of article 75, it is not necessary to state the place of residence of the persons who, in the exercise of their professional activities, are in charge of verifying and investigating an offence or who, in the enforcement of the law, become aware of the circumstances in which the offence was committed, and who are considered in that capacity as witnesses. Instead, they may indicate their address of service, or the place where they habitually exercise their profession. The subpoena to testify may be regularly served at this address.

Under article 75bis of the Criminal Procedure Code, if a witness or a person related to the witness is in risk of serious harm, they may be granted anonymity.

Art. 75bis

The investigative judge may decide, either *ex officio*, or at the request of the witness or the person for whom the public action was brought within the investigation, of the defendant, of the civil party or its attorneys, or at the request of the prosecution, that no mention is made in the minute of the hearing of the identity data contemplated in article 75, if there is a reasonable presumption that the witness, or a person related to him, is in risk of suffering serious damages following the disclosure of the data and the testimony. The reasons of the investigative judge to make this decision shall be indicated in a minute. The ruling of the investigative judge granting or refusing partial anonymity may not be subject to appeal.

The Royal prosecutor keeps a registry of all the witnesses whose identity data, in accordance to this article, do not appear in the minute of the hearing.

The Royal prosecutor and the investigative judge shall take, each one within their area of competence, reasonably necessary measures to prevent the disclosure of the identity data contemplated in paragraph 1.

CHAPTER VII c. - Taking statements and the use of audio-visual media

Section I.- Remote hearing

Art. 112. § 1.

The public prosecutor or the examining magistrate may decide to hear via videoconference the statement of a threatened witness, to whom the Witness Protection Commission granted protective measures, or a witness, expert or suspect residing abroad when reciprocity in this aspect is guaranteed, if it is not desirable or possible for the person to appear in person and always with said person's consent.

§ 2. The public prosecutor or the examining magistrate may decide to hear through a closed circuit television (CCTV) a threatened witness, to whom the Witness Protection Commission granted protection measures, if it is not desirable or possible for the person to appear in person and always with said person's consent.

§ 3. A judiciary police officer or a normal police officer must be near the person to be heard, or in the case of the person to be heard being abroad a foreign judicial authority, and must have been nominally appointed by the public prosecutor or the examining magistrate. Said official or authority verifies the identity of the person to be heard and draws up a report which is signed by said person.

§ 4. The public prosecutor or the examining magistrate draws up a report of the hearing in which he or she incorporates, without prejudice to the rights under Article 47 bis, the main points of the hearing and, possibly, a transcript of the most significant parts.

The reasons why it was decided to hear the person through a video conference or a closed circuit television must also be included in the report.

§ 5. The hearing will always be videotaped under Article 112 ter.

§ 6. The person heard via videoconferencing or CCTV is supposed to have appeared and have answered the summons.

Art. 112 bis. § 1. The public prosecutor or the examining magistrate may decide to hear via a conference call the statement of a threatened witness, to whom the Witness Protection Commission granted protective measures, or a witness, expert or suspect residing abroad when reciprocity in this aspect is guaranteed, if it is not desirable or possible for the person to appear in person or via videoconference or CCTV, and always with said person's consent.

§ 2. A judiciary police officer or a normal police officer must be near the person to be heard, or in the case of the person to be heard being abroad a foreign judicial

authority, and must have been nominally appointed by the public prosecutor or the examining magistrate. Said official or authority verifies the identity of the person to be heard and draws up a report which is signed by said person.

§ 3. The public prosecutor or the examining magistrate draws up a report of the hearing in which he or she incorporates, without prejudice to the rights under Article 47bis, the main points of the hearing and, possibly, a transcript of the most significant parts.

The reasons why it was decided to hear the person through a conference call must also be included in the report.

§ 4. The hearing will always be videotaped under Article 112 ter.

§ 5. The person heard via conference call is supposed to have appeared and have answered the summons.

§ 6. The court may only consider statements made by way of a conference call as evidence if they are corroborated enough by other evidence.

(b) Observations on the implementation of the article

341. Belgium is in compliance with the provision under review. Witnesses can be granted anonymity during the criminal proceedings (CPC article 75bis) and can be allowed to give evidence through videoconference or closed-circuit television (CPC article 112).

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

342. Belgium indicated that it has implemented the provision under review. Cooperation agreements have been entered into with a certain number of States for the reciprocal relocation of threatened witnesses. Due to operational security reasons, these agreements are confidential.

(b) Observations on the implementation of the article

343. Belgium has entered into agreements with several States for the reciprocal relocation of witnesses. Belgium is in compliance with the provision under review.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

344. Article 102, No. 1 of the Criminal Procedure Code defines threatened witnesses as persons who are in danger following declarations made or to be made within a criminal case during the information or the investigation phase, either in Belgium, or before an international court, or, if reciprocity is guaranteed, abroad, and who is willing to confirm these declarations at a hearing upon request;

345. Belgium explained that the status of protected witnesses is naturally applicable to victims, they are not excluded from the definition. The 2002 Law on the Protection of Witnesses under Threat establishes various measures for physical protection, identity protection, relocation and safe integration of witnesses as well as victims.

(b) Observations on the implementation of the article

346. Belgium is in compliance with the provision under review.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

347. Belgium explained that the status of victim is considered at all stages of the criminal procedure. The rights of the defense are protected at any stage of the proceedings.

Criminal Procedure Code

Article 63

Any person claiming to be aggrieved by a crime may file a complaint and appear before the competent judge to bring a civil claim.

Any victim, who is a civil party, can be heard, upon request, at least once by the judge handling the case.

Article 67

The plaintiffs may bring a civil claim at any time until the proceeding is closed; but their withdrawal will never be accepted after the judgment is issued, even if it was submitted within twenty-four hours of giving their testimony of which they are a civil party.

348. Victims of crime are given the following rights in Belgium:

- right to a correct treatment;
- right to information;
- right of giving information;
- right to judicial assistance;
- right to a compensation for the damage;
- right to psychologic aid;
- right to the protection of your personal life;

- right to be heard (also if there is plea bargaining); and
- right to be compensated for the damage.

349. The victim can also be heard if the criminal procedure is a plea bargaining (article 216 CC, §4). Where applicable, the court also hears the victim and his lawyer about the facts and compensation for damage. The victim may act as a civil party in the procedure and claim compensation for the loss at the court hearing, which has to ratify the concluded agreement. The defendants are also heard regarding civil proceedings.

350. Belgium noted that the following brochures were developed for victims:

Your rights as a victim:

<http://justice.belgium.be/sites/default/files/downloads/Vos%20droits%20en%20tant%20que%20victime%20d%E2%80%99infractions.pdf>

“You’re a victim”:

<http://justice.belgium.be/sites/default/files/downloads/FR%2001-08-2013.pdf>

(b) Observations on the implementation of the article

351. Numerous rights are accorded to victims at various stages of the criminal proceedings (e.g. articles 63 and 67 CPC). Belgium is in compliance with the provision under review.

(c) Successes and good practices

352. The broad range of protection measures available under the 2002 Law on the Protection of Witnesses under Threat was seen by the reviewing States as a good practice.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

353. Belgium indicated that it has implemented this provision of the Convention.

354. In 2013, Belgium has adopted the Law on the Reporting of Suspected Violations of Integrity in Federal Administrative Authorities by members of their staff (the law from 09/15/2013 (MB 04/10/2013) enacted on 04/04/2014, to be accessed at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013091506&table_name=loi)

355. Under article 3, § 2, paragraph 2 of the Law, each federal service has one or more trusted persons per language group who act as point of contact. The function of the trusted persons (roles, competences and responsibilities) is regulated by the Royal Decree on the Execution of article 3, § 2 of the Law.

(http://www.fedweb.belgium.be/nl/binaries/kb_20141009_melding_veronderstelde_integ)

riteitss chending_ar_denonciation_atteinte_suspectee_a_l_integrite_tcm120-259411.pdf).

356. The Law gives the members (in active duty) of the federal staff the possibility to report suspected violations of integrity in their organization.
357. This reporting system is managed:
- by the federal mediators services by way of the creation of a "Central point of contact for suspected violations of integrity" (external component)
 - or by an internal point of contact comprised of a "trusted person" per language group in each federal organization (internal component).
 - If the information provided by the member of the staff is found to be a reasonable suspicion reported in good faith in accordance with the forms provided for by the law, federal mediators shall protect the person of any retaliation that may affect his working conditions.
 - On the other hand, if the report is considered to be abusive, the member of the staff shall be sanctioned.
358. A brochure with the procedure to be followed can be found at: http://www.federaalombudsman.be/sites/1070.b.fedimbo.belgium.be/files/procedure_de_denonciation.pdf
359. Belgium explained that given that the Law was recently enacted, there are no examples available. Since April 2014: 6 cases, 2 closed, 4 pending.

(b) Observations on the implementation of the article

360. In 2013, Belgium has adopted the Law on the Reporting of Suspected Violations of Integrity in Federal Administrative Authorities, which gives the federal staff the possibility to confidentially report violations of integrity, including corruption to the Integrity Centre as a division of the federal Ombudsman. Federal staff that make use of this procedure are relieved from the obligation to report to the prosecutor. In order to improve the accessibility of this procedure, each federal service is required to establish one or more "Persons of Confidentiality" per language group. The law includes automatic protection from sanctions or retaliation for the whistle-blower, the persons involved in the investigation of the reported wrongdoing and their counsellor. Abusive reports are sanctioned.
361. Belgium is recommended to consider taking measures to provide protection for "any person" who reports to the competent authorities, and not only civil servants.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) **Summary of information relevant to reviewing the implementation of the article**

362. Belgium indicated that it has implemented this provision of the Convention and referred to the following national provisions as applicable.

Royal decree No. 22 from October 24, 1934 allows appending criminal convictions for the corruption of public officials to a disqualification from the offices of administrator, commissioner or manager in a joint-stock company, a limited liability private partnership or a cooperative, as well as any role that confers the authority to engage any of these societies.

Article 1.

Notwithstanding any interdiction enacted by particular provisions, a judge, either in Belgium or in the territories that are under the authority or under the administration of Belgium, who sentences a person, including conditionally, as a perpetrator or an accomplice of one of the following offences or attempts to commit the offence;

...

- e) bribery of public officials or concussion;
- f) theft, extortion, misappropriation or abuse of trust, fraud, concealment or any other operation related to property derived from a private corruption offence;

...may append to the sentence the interdiction to exercise, either personally or through third parties, the offices of administrator, commissioner or manager in a joint-stock company, a limited liability private partnership or a cooperative, as well as any role that confers the authority to engage any of these societies, or the functions of agent for the administration of a Belgian establishment, as provided for in article 198 § 6, paragraph 1, of the laws on commercial companies, coordinated on November 30, 1935, or the profession of stockbroker or correspondent agent. The judge shall determine the duration of the interdiction, but it shall be a minimum of three years and a maximum of ten years.

363. Belgium also referred to the **law from June 15, 2006 on public procurement and certain services, supplies and works contracts**.

Article 20

§ 1. The King establishes the rules on the right of access, as well as those related to the qualitative selection of the candidates and applicants.

Except for any imperative public interest needs, any candidate or applicant who has been convicted in a final judicial decision of which the awarding authority is aware for participation in a criminal organization, corruption, fraud or money laundering, shall be excluded from participating in any public contract. The King may waive this principle for small contracts that are an inferior to an amount established by him.

§ 2. The King shall regulate the consequences for the proposal submitted by a natural person if the person is replaced with a legal person during the procedure. He may impose joint liability to these persons.

364. **Royal decree from July 15, 2011 on the awarding of public contracts in classical sectors** is also relevant.

Article 61

§ 1er. Under article 20 of the law, no candidates or applicants shall have the right to seek public contracts, at any stage of the procedure, if they have been convicted in a final judicial decision of which the awarding authority is aware for:

...

2) corruption, as defined in articles 246 and 250 of the Criminal Code;

3) fraud under article 1 of the Convention on the protection of the European Communities financial interests, approved by the law from February 17, 2002.

4) money laundering, as defined in article 5 of the law from January 11, 1993 on the prevention of the use of the financial system for the purposes of money laundering and the financing of terrorism.

Subject to the application of article 60, § 1, the awarding authority, in the enforcement of this paragraph, shall request the candidates or applicants to submit any information or documents required. When any doubts exist on the personal situation of the candidates or applicants, it may contact any competent Belgian or foreign authorities to obtain the information it may deem necessary for this purpose.

The awarding authority may, due to imperative public interest needs, waive the obligation of exclusion from access to public contracts under this paragraph.

§2 ...

§ 3. The evidence that the candidate or applicant is not in one of the cases cited in §§ 1 and 2, may be submitted by:

1) for § 1 and § 2, No. 1, 2 or 3: an excerpt of the criminal record or an equivalent document issued by a judicial or administrative authority of the country of origin or of source, from which it is inferred that the requirements are met;

2) for § 2, No. 5 and 6: a statement issued by the competent authority of the country in question; 3) for § 2, No. 4 and 7: any means that the awarding authority may justify.

When one of the documents or statements contemplated in No. 1 and 2 of paragraph 1 is not issued in the country in question or it does not mention all the cases contemplated in § 1 and § 2, No. 1, 2 or 3, it may be replaced by a statement under oath, or in countries where such oath does not exist, by a solemn statement by the interested party before a judicial or administrative authority, a notary or a qualified professional body of the country of origin or of source.

§ 4. For open procedures, public direct negotiation procedures and non-publicly negotiated procedures, when the latter procedure is performed in a single phase, the applicant, simply by submitting his proposal, implicitly declares on his honor that the exclusion conditions of paragraphs 1 and 2 do not apply to him.

The mandatory application of the implicit declaration of honor only applies to the extent that the awarding authority has free access, with the electronic means contemplated in article 60, § 1, to the information or documents related to the exclusion conditions related to the statement.

For the procedures of the first paragraph, when the condition in paragraph 2 is not met, but also for restricted procedures, competitive dialogues, publicly negotiated procedures and non-publicly negotiated procedures, when the latter procedure is performed in many phases, the awarding authority may provide in the documents of the tender that by the simple act of submitting the participation request or proposal, respectively, the candidate or applicant implicitly declares on his honor that the exclusion conditions of paragraphs 1 and 2 do not apply to him.

Subject to the provisions of article 63, § 2, last paragraph, on the verification of compliance with the fiscal obligations of § 2, No, 6, the awarding authority, applying

the statement contemplated in the preceding paragraphs, shall proceed to the verification of the situation, as applicable: 1) of the candidates to be considered for the selection, before making the decision to select;

2) of any applicant that may be designated as the awarded bidder, before making the decision to award.

(b) Observations on the implementation of the article

365. The Royal Decree No. 22 of 24 October 1934 as well as the Laws on Public Procurement (15 June 2006) and Awarding of Public Contracts (15 July 2011) contain a wide range of applicable measures where corruption offences have been involved. These range from interdiction to hold certain professional functions, to prohibition to seek public contracts.

366. Belgium is in compliance with the provision under review.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

367. Belgium indicated that it has implemented this provision of the Convention and cited the following applicable measures.

Preliminary title of the Criminal Procedure Code

Article 3

The action for the remediation of any damages caused by the offence belongs to anyone who has suffered the damages.

Article 4

The civil claim may be pursued at the same time and by the same judges as the public case. It may also be pursued separately; in that case the proceeding is adjourned until the public case has been ruled on, whether it was filed before or during the civil claim.

The judge in charge of the public case automatically adopts the civil claim, even in the absence of a civil party, if the case is not ready for judgment based on said claim.

Notwithstanding the right to take on the civil jurisdiction under Articles 1034 bis to 1034 sexies of the Judicial Code, any person aggrieved by the offense may then demand for free that the court which ruled on the public case rules on the civil claim, with a petition submitted to the Court office with as many copies as there are parties.

This request will be an adhesion procedure and will be notified to the parties and, if applicable their lawyers, by the Court office, indicating the place, day and time of the

hearing.

When ordered by the prosecution, any party in the case may request that the judge in charge determines deadlines for the submission of documents and conclusions and to fix the date for the plea hearing.

This request must be made through an application and signed by the lawyer of the party or, in his absence, by the party itself and submitted at the Court office with as many copies as there are parties involved. The request will be notified by the clerk, in a judicial notification to the other parties and, if appropriate, by post to their lawyers.

The other parties may, within fifteen days of the judicial notification being sent, and in the same conditions, send their comments to the judge.

Within eight days after the expiry of the period specified in paragraph 8 or, if the application is made by all the parties in the case, the judge will rule based on the items put forward except when he or she considers it necessary to hear the parties, in which case they will be summoned by judicial notification; the ruling will be made within eight days of the hearing.

The judge determines the deadline for summing up and fixes the date for the plea hearing. The ruling is subject to appeal. It will be notified to the parties and their lawyers by ordinary mail. If a party does not have a lawyer, it will be notified by a judicial notification.

Unless the parties agree, or in the case of the exception in Article 748, § 2 of the Judicial Code, the conclusions submitted after the deadlines specified in paragraph 10 will not be included in the proceedings. On the appointed day, the first party to take action may request a contested judgment.

When the judge only takes on the civil claim, the presence of the prosecution at the hearing is not mandatory.

Judicial Code

Article 1034 bis

In cases where the general rule of making the main requests by way of summons is waived, this section shall apply to applications submitted by a request notified to the other party, except for the formalities and legal notices governed by legal provisions and which are not expressly revoked.

368. Belgium explained that in order to be granted compensation, the person claiming damages must prove:

- That he/she sustained a damage;
- That there is a fault (the damage must be the result of a fault) i.e. a conviction for corruption; and
- That there is a causal relationship between the damage and the fault (see articles 1382-1387 of the Civil Code).

369. Belgium explained that victims of corruption can initiate legal proceedings to seek

compensation in accordance with article 3 of the Criminal Procedure Code. Who has suffered damage can apply to the civil courts (articles 1034bis to 1034sexies of the judicial code), even if the damage was caused by a crime. If this person knows the date when the case will be treated in court (this will be the case if he made a “declaration as injured” by the prosecutor’s office – this is free of charge), he can, even without invitation, go to this court to claim to be the civil party and thus claim compensation. When he had no knowledge of the date and there is already a conviction, the injured party can appeal to art. 4 of the previous title of the criminal code to obtain a hearing date on his claim for damages.

370. Belgium stressed that the cornerstone for allowing plea bargaining is the fact that the victim is compensated.

(b) Observations on the implementation of the article

371. A person who suffered damage as a result of crime can claim damages within criminal proceedings (CPC article 3) or in separate civil proceedings (Civil Code articles 1382-1387). The plea-bargaining procedures (CPC articles 216bis) requires that victims be restituted whatever assets they may have lost and be duly compensated.

372. Belgium is in compliance with the provision under review.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

373. Belgium indicated that it has implemented the provision under review.

374. The Central Office for the Repression of Corruption (OCRC) – Specialized service of the federal police is a central service within the federal police with operational competence. That means that its members may start judicial investigations (searches, seizures, hearings, arrests, PV, etc.), either autonomously, either in support of or in collaboration with the Devolved Judicial Offices of the districts, based on the severity of the investigation, its sensitivity, the offence held by the perpetrator, the complexity of the acts requested, etc. More precisely, the OCRC has competence to investigate and support the investigation of offences committed against the interests of the State, and of complex and serious corruption offences. In addition, it exercises a pilot role in the fight against abuse and infringing behaviors in public procurement processes, in the legislation related to subsidies, approvals and permits. The investigations of the OCRC are also mostly concerned with offences of corruption, concussion, taking of interest and misappropriation in the domain of public procurement, subsidies, permits and approvals.

The corruption addressed here must be thus contemplated in broad sense, namely, the offences sanctioned by the law from February 10, 1999 on the repression of corruption. The existence of this operational capacity at the central level is indispensable for the following reasons:

- District (and local) authorities not always grant a priority importance to the fight against corruption (given the other criminal phenomena they face).
- A certain lack of expertise, and particularly, of capacity, has been verified in certain districts.
- It is necessary to have a specialized investigation service, sufficiently independent, capable of performing complex and delicate investigations, or international investigations.

375. In addition, as a central service, the OCRC also performs the following missions:

- On the operational level:
 - Coordinating operations at the national level.
 - Supporting other police services (assistance, advice, guidance, etc.)
- On the strategic level:
 - The management of the priorities provided for in the National Security Plan.
 - Research and development.
 - The monitoring of the phenomenon.

376. The OCRC has two sections with investigators of the French-speaking and the Dutch-speaking linguistic groups:

- The section "Public procurement" mainly deals with cases related to fraud in public procurement matters.
- The section "financial fraud" deals with any other cases of fraud that are assigned to the OCRC (particularly the frauds to subsidies) and with corruption cases related to public officials and politicians.

Each section is divided in investigative teams that vary in size depending on the importance and the extent of the case.

377. In addition, the OCRC has developed privileged liaisons with particular entities:

- The "Fraud and Football" unit gathers the partners in the fight against fraud in this sport, including OCRC, which is in charge of the criminal aspects linked to the fixing of matches, which involves bribing players or referees.
- Liaison officers (LO) with the "Gambling Commission" are members of the OCRC who coordinate investigations in which the Commission and OCRC are partners.

378. Belgium referred to the **Royal decree from 02/17/1998 on the Commissioner General**, the board of directors and the collaborative council of the judicial police before the prosecution offices.

Article 1

§ 1er. The Office of the General Commissioner of the Judicial Police before the Prosecution Offices, hereinafter, the "Commissioner General," is the central body of the judicial police before the prosecution offices and it is comprised of:

- 1) The "administrative and logistical support" division; 2) the "technical support" division;
- 3) the "operational and investigative support" division;

§ 2. The "administrative and logistical support" division includes all the non-

operational administrative and logistical services.

§ 3. The "technical support" division includes all the non-operational technical services, including an IT service and the telecommunications service.

§ 4. The "operational and investigative support" division includes;

- 1) The special brigade in charge of the repression of serious crime and it includes a section for operational and special interventions and a section for the application of particular investigative techniques;
- 2) The Central office for the fight against organized economic and financial crime;
- 3) The Central office for the repression of corruption;
- 4) The Central operational documentation for district brigades, the special brigade and central offices.

Article 9

The mission of the "operational and investigative support" division is;

§ 1. Through the intervention of the special brigade in charge of the repression of serious crime:

- 1) To support the district brigades in the investigation of crimes and offences that, due to their extent or incidence take or may take national or international proportions;
- 2) To provide operational support for the special interventions and the application of special investigative techniques.

§ 2. Through the intervention of the Central office for the fight against organized economic and financial crime:

- 1) To investigate or to provide support to the investigation of complex and serious economic, financial, social and fiscal crimes in relation to organized crime, particularly:

The laundering of the proceeds of serious or organized crime;

b) Serious and/or organized social or fiscal offences, namely those that resort to particularly complex mechanisms, which use procedures at an international dimension or which cause a serious prejudice to the Public Treasury of the Belgium State or of foreign States;

c) The fraud against financial goals or interests of the European Union; d) the offence of insider trading;

e) the illegal use of public savings;

f) price fixing;

g) financial fraud;

- 2) the dynamic management and the exploitation of specialized operational documentation for the benefit of all the police services.

§ 3. Through the intervention of the Central office for the repression of corruption:

- 1) To investigate or to provide support to the investigation of complex and serious crimes and offences against moral or material interests of public service, and more particularly, to the preparation, award, and execution of public contracts, as well as to the preparation, award, and use of public subsidies, and to the issuance of authorizations, permits, approvals, and accreditations;
- 2) The dynamic management and the exploitation of specialized operational documentation for the benefit of all the police services.

§ 4. The dynamic management and the exploitation of specialized operational documentation for the benefit of the district brigades, the special brigade and the central offices. The offices shall exchange any useful information for this purpose.

379. The Financial Information Processing Unit (CTIF) is an independent administrative

authority with legal personality comprised of judicial and financial experts and a senior officer of the Federal Police (see Composition of the Unit), and under the direction of a magistrate or his deputy. The CTIF is mainly in charge of analyzing suspicious financial transactions for money-laundering or terrorist financing that are transmitted to it by the institutions and the persons established by the law. For this purpose, the CTIF has a set of prerogatives under the Law from January 11, 1993. Other than its main mission of filter between the institutions and the persons established by the law and the judicial authorities, CTIF also has a mission of guidance and a mission of coordination of the anti-laundering and anti-terrorist financing plan at the national level. The CTIF is also the liaison between the different actors involved in the fight against money-laundering and terrorist financing (SPF, control, supervisory, disciplinary or judiciary authorities, police services, custom authorities).

380. The College of Public Prosecutors may establish networks of experts in the subjects it determines, made up of prosecutors from the Federal Prosecutor's Office, the General Prosecutor's offices, the King's Public Prosecutor's offices, the General Labour Prosecutor's Office, the Labour Prosecutor's Office and, where appropriate, other experts.
381. Under the authority of the College of Public Prosecutors and under the direction and supervision of the Public Prosecutor designated for this purpose, these networks shall promote the circulation of information and documentation among members of the public prosecutor's office
382. These networks may also be entrusted by the College with any tasks to support the exercise of its functions.
383. The activity of these networks is aimed at contributing to the coherent implementation and coordination of criminal policy determined by the directives adopted by the Minister of Justice after having consulted with the College of the Public Prosecutors.
384. Various expert networks have thus been set up with the aim of providing specialized support in matters relating to the specific tasks assigned to each public prosecutor: narcotics, economic and financial crime, corruption, road safety, protection of youth, victim assistance, human trafficking and human smuggling, organized crime and terrorism, international cooperation in criminal matters, police reform, criminal procedure, criminal policy, enforcement of sentences, IT and statistics, public prosecution information management, military criminal law, social criminal law, environment and food safety.
385. The federal prosecutor is an office whose competence covers the entire territory of Belgium. The federal prosecutor was created to permit a more efficient action against the offences that exceed the competence of local prosecutors, such as human trafficking, terrorism, organized crime, money laundering and international corruption. The federal prosecution also has competence in serious violations of humanitarian international law, and to prosecute Belgian military officers who commit offences in peacetime abroad. The federal prosecutor is comprised of federal magistrates directed by a federal attorney, and it is based in Brussels.
386. Belgium also referred to the following resources:

- The (2012) annual report of the Federal Judicial Police – Economic and Financial Crime Office, of which the OCRC is a member (in English):
http://www.polfed-fedpol.be/pub/rapport_activites/pdf/2012/ecofin/RAecofin2012-en.pdf
- The 2013 annual report (in French):
http://www.polfed-fedpol.be/pub/rapport_activites/pdf/2013/ecofin/RAecofin2013-fr.pdf
- The 2013 annual report of the CTIF (in French):
http://www.ctif-cfi.be/website/images/FR/annual_report/ra2013-03102014.pdf We draw your attention to pages 76-77.

387. Belgium referred to the **Royal decree from 06/11/1993 on the composition, organization, operation and the independence of the Financial information processing unit (CTIF)**
(http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1993061130&table_name=loi)

Article 2

The unit is comprised of a minimum of three effective members and a maximum of [eight] effective members, including the chairman, the deputy chairpersons and the vice president.

They are appointed by Us following a proposal from Our Ministers of Finance, Justice and Our Ministers whose attributions include Economic Affairs and the middle Classes, and from the member of the unit, senior officer, member of the federal police, and Our Minister whose attributions include the Interior.

Under article 22, § 3, paragraph 2, of the law from January 11, 1993 on the prevention of the use of the financial system for the purposes of money laundering and the financing of terrorism, they may not exercise, either concomitantly, or during the year leading up to their appointment, a function of administrator, director, manager or agent in the organisms or for the persons contemplated in articles 2, § 1, and 4 of the aforementioned law.

388. Belgium has provided the following statistical data.
Overview of the training level, grade and experience of the investigators of the OCRC.

Specific experience and training - intermediate:

The intermediate period spent by an investigator of the OCRC in an anticorruption service is 14 years. The intermediate period spent by an investigator of the OCRC in a police service or in other control organ of the State is 26 years. The average number of trainings specifically linked to corruption and Ecofin (either internal or external to the police) increased to approximately 5 per investigator for the period between the start of 2002 and the end of 2012, a training every two years in average per investigator. This figure does not consider larger police trainings, either of an ongoing nature (to maintain the competences of the police officers up to date) or related to their wage (to permit a progression in the wage scale with the acquisition of new competences and not to maintain the competences already acquired) not specific to corruption and to Ecofin.

Distribution of investigators by time spent in an anticorruption service:

| <i>Period</i> | <i>Number of investigators</i> | <i>%</i> |
|--------------------|--------------------------------|---------------|
| less than 5 years | 16 | 26,23 |
| 5 to 10 years | 16 | 26,23 |
| 11 to 20 years | 9 | 14,75 |
| 21 to 30 years | 11 | 18,04 |
| more than 30 years | 9 | 14,75 |
| Total | 61 | 100,00 |

The reader must keep in mind that the fact that it is possible that one of the investigators in question may have performed corruption related investigations before joining a specialized service.

Distribution of investigators by time spent in a control service of the State:

| <i>Period</i> | <i>Number of investigators</i> | <i>%</i> |
|--------------------|--------------------------------|---------------|
| less than 5 years | 0 | 0,00 |
| 5 to 10 years | 6 | 9,84 |
| 11 to 20 years | 14 | 22,95 |
| 21 to 30 years | 16 | 26,23 |
| more than 30 years | 25 | 40,98 |
| Total | 61 | 100,00 |

We draw the attention of the reader to the fact that the number of investigators grows as the period of experience increases, which means two things: first, that the amount of expertise related to investigations at the OCRC is particularly high, and two, that the retirement of these highly specialized officers has a serious incidence on the know-how and experience at the OCRC.

Distribution of investigators by the highest academic title received:

| <i>Degree</i> | <i>Number of investigators</i> | <i>%</i> |
|---------------|--------------------------------|---------------|
| Humanities | 17 | 27,87 |
| Higher, short | 19 | 31,15 |
| Higher, long | 24 | 39,34 |
| Unknown | 1 | 1,64 |
| Total | 61 | 100,00 |

In substance, it can be seen that almost three quarters of the staff of the OCRC has received higher academic training, without considering the training of more or less comparable level in the police forces. We remind the reader that the academic degree obviously does not account for the internal training at the police, which permits a social promotion to a higher rank than the rank the degree gives access to.

Distribution of investigators by rank (obtained by way of wage-scale trainings): Belgian police is structured in two levels: local and federal police. The COL 2/2002, official document of police and criminal policy, establishes the criteria that magistrates use to assign the investigations: He shall assign them to the federal police if the acts are more serious. At the federal level, the police encompasses 27 districts, plus a specialized service for corruption matters: The OCRC. The magistrate in question chooses the most suitable service. The most complex, hardest and most sensitive investigations are entrusted to this service most of the time, due to the experience and expertise of its investigators.

In the Belgian system implemented by the “Vitruvius” project, investigations are in principle performed by inspectors (including chief and specialized chief inspectors). Since the 2001 reform, the rank of commissioner is supposed to correspond to a function of administrator, attributed for a higher degree of the long type; the rank of specialized chief inspector is attributed for higher degrees of the short type (accounting or assistant psychologist, for example), the rank of inspector is attributed for a completed secondary education degree.

| <i>Rank</i> | <i>Number of investigators</i> | <i>%</i> |
|-----------------------------|--------------------------------|---------------|
| Inspector | 1 | 1,64 |
| Chief Inspector | 19 | 31,15 |
| Specialized chief inspector | 10 | 16,39 |
| Police commissioner | 31 | 50,82 |
| Total | 61 | 100,00 |

A very strange case in the investigation services, more than half of the members of the OCRC are officers, with the rank of police commissioner. If many of its members are college graduates and commissioners, it is particularly due to the recruiting policy of the Higher Control Committee, most of whose members were transferred to OCRC after the 2001 reform. Please also note the importance of the contingent of specialized chief inspectors, and the fact that virtually all the other investigators are chief inspectors, having a solid experience and matching training. We specify that all these investigators, including the commissioners, are in charge of investigations, and not of administrative tasks. The need for highly specialized, and particularly highly trained, staff, lies in the investigation assignment system in effect in the Belgium police as explained above.

389. Belgium clarified that the “Vision 2012-2016” statement of the federal police states clearly that they are resolutely opting for transparency, cooperation and responsibility. The code of ethics and values of the integrated police, says that the police acts in particular with: integrity; respect; open mind; flexibility; service attitude; and pride. Article 151 of Belgian Constitution guarantees the independence of the judiciary: §1 The judges are independent in the exercise of their jurisdictional powers. The prosecutor is independent in carrying out individual investigations and prosecutions, notwithstanding the relevant Minister’s right to issue prosecution orders and stop binding directives on crime policy, including those regarding search and arrest policies.

390. The federal police has also « a watchdog »: Committee P was created in 1991 in order to provide the Federal Parliament with an external body responsible for monitoring the

police. It became operational in mid-1993. Thanks to the many inspection inquiries and the examination of complaints conducted by its Investigation Department, Committee P can provide a reliable picture of the current working of the police. With the help of information from numerous other sources, it acts as a watchdog by monitoring the working of the police forces on behalf of the Federal Parliament and all citizens. The Minister uses his power only a couple of times to insist on prosecution. And even if it happens, the prosecutor still has the independence to classify the files.

(b) Observations on the implementation of the article

391. The Central office for the Repression of Corruption (OCRC) is the principal investigative anti-corruption agency and is located within the federal police. The OCRC is empowered to coordinate national operations, support police services, and carry out research and monitoring functions. Special training is provided to OCRC investigators.

392. In addition, the Federal Prosecutor's Office is responsible for dealing with crimes exceeding the competence of local prosecutors, including money-laundering, organized crime, as well as federal and international corruption. The College of Prosecutors General has established a specialized network of prosecutors with anti-corruption expertise.

393. The Financial Information Processing Unit (CFI-CTIF), established by the Royal Decree from 11 June 1993, is an independent administrative FIU in charge of analyzing suspicious financial transactions for money-laundering and terrorist financing. CFI-CTIF guides the national anti-money laundering and anti-terrorist financing plans.

394. Belgium is in compliance with the provision under review.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

395. Belgium indicated that it has implemented the provision under review and cited the following applicable measures.

Criminal Procedure Code

Article 47bis

§ 1. For the hearing of persons, in any capacity whatsoever, it is necessary to respect the following rules:

1. At the start of the hearing, the person being interrogated shall be succinctly

informed of the acts in relation to which he shall be heard, and the person is informed:

- a) That he may request that any questions that are made to him, as well as his answers, are registered in the terms used;
- b) That he may request that they may proceed to a certain investigative measure or hearing;
- c) that his declarations may be used as evidence in court;
- d) That he cannot be compelled to accuse himself.

All these elements shall be accurately registered in the minute of the hearing.

2. Any person being interrogated may use the documents in his possession, without that involving the postponement of the interrogatory. The person may, during the interrogatory or subsequently, demand that the documents are attached to the minute of the hearing or filed before the registry.

3. The minute shall accurately report the hour in which the hearing takes place, is eventually interrupted, resumed, and completed. It makes accurate mention of the identity of the persons that intervene in the interrogatory or in a part of it, as well as of the moment of their arrival and departure. It also mentions the specific circumstances and everything that may clarify a particular day, the declaration or the circumstances in which it was made.

4. At the end of the hearing, the minute is read to the person being interrogated, unless the person does not request the reading. The person is asked whether his declarations must be corrected or complemented.

5. If the person being interrogated wishes to speak in a language different to the language of the procedure, either a sworn interpreter is called, or he writes the declarations in his language, or he is asked to write himself his declaration. If the interrogatory took place with the assistance of an interpreter, a mention shall be made of his identity and capacity.

§ 2. Notwithstanding § 1, before proceeding to the hearing of a person for the offences that may be attributed to him, the person to be interrogated is succinctly informed of the acts he will be heard in relation to, and he is informed:

- 1) That he cannot be compelled to accuse himself;
- 2) That he has the choice, after identifying himself, to make a statement, to respond to any questions posed to him, or to remain silent;
- 3) That he has the right, before the first hearing, of confidentially consulting with an attorney of his choice or with an attorney appointed to him, provided that the acts that may be charged to him involve an offence which may give rise to the issuance of an arrest warrant;
- 4) That he is not deprived of his liberty, and that he may come or go in any moment.

If the person to be interrogated does not have sufficient means, articles 508/13 to 508/18 of the Judicial Code, on the benefice of full or partial gratuity and the second line legal assistance apply in full.

Only adults who are to be interrogated may voluntarily and thoughtfully waive the right contemplated in paragraph 1, 3°. The person shall proceed to state the waiver in writing, in a document showing the date and signed by him.

If the first hearing took place on written notice, the rights of paragraph 1, No. 1, 2, 3 and 4, as well as a succinct communication of the acts for which the person to be interrogated shall be heard, may be informed in the notice, a copy of which is attached to the minute of the hearing. In that case, the concerned person is considered to have consulted with an attorney before appearing at the hearing.

If the hearing did not take place on written notice, or if the notice does not mention the elements of paragraph 4, the hearing may be postponed one single time at the request of the person to be interrogated, in order to give the person the opportunity to

consult with a lawyer.

All these elements shall be accurately registered in a minute.

§ 3. Notwithstanding §§ 1 and 2, paragraph 1, No. 1 and 2, any person who is deprived of his liberty under articles 1, 2, 3, 15bis and 16 of the law from July 20, 1990 on preventive detention shall be informed that he enjoys the rights of articles 2bis, 15bis and 16 of the same law.

§ 4. A written declaration of the rights provided for in §§ 2 and 3 is delivered to the person contemplated in §§ 2 and 3 before the first hearing.

The form and the content of this declaration of rights shall be established by the King.

§ 5. If, during the hearing of a person who is not initially considered a suspect, it appears that certain elements indicate that there are acts that may be attributed to the person, the person shall be informed of the rights he enjoys under § 2 and, if applicable § 3, and the written notice contemplated in § 4 is delivered to him.

§ 6. No conviction may be pronounced against a person based on any declarations made in violation of §§ 2, 3 and 5, excluding § 4, with respect to the previous confidential consultation or the assistance of an attorney during the hearing.

§ 7. Notwithstanding the rights of the defense, the attorney has the obligation of maintaining as confidential any information he may receive in the provision of his assistance under articles 2bis, § 2, and 16 § 2 of the Law from July 20, 1990 on preventive detention. Anyone who violates this confidentiality shall be punished with the penalties contemplated in article 458 of the Criminal Code.

396. Circular 6/2012 (pursuant to Article 216bis CPC, especially as regards the extension of the termination of a public prosecution in exchange for a sum of money (EEAPS)) gives guidelines to the prosecutors on settlements:
http://www.om-mp.be/extern/getfile.php?p_name=4263345.PDF&pid=4943261

397. Belgium provided following case example: in 2013, Chodiev paid a settlement of tens of millions of euros to the Prosecutor's Office in Brussels (in a money laundering case of 55 million euro). The investigation began on the basis of a report of the CFI-CTIF in 1996 about a suspicious real estate transaction. Tractebel filed a criminal complaint against the trio in 1999. The company had engaged them as consultants on the acquisition of a gas pipeline in Kazakhstan, but was disappointed by how it turned out. There was a settlement because there was a risk that all suspects would go free if it came to a trial.

(b) Observations on the implementation of the article

398. Belgium is in compliance with the provision under review.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

399. Belgium indicated that it has implemented the provision under review.

Criminal Procedure Code

Art. 216bis

§ 1. When the Royal prosecutor considers that the act does not appear to be of a nature that must be punished with correctional imprisonment of more than two years, or with a heavier penalty, including, if applicable, confiscation, and that it does not involve a serious attack on physical integrity, he may invite the perpetrator to pay a certain amount of cash to the Federal Service of Public Finance.

The Royal prosecutor establishes the payment modalities and timeframe, and specifies, in space and time, the acts for which he proposes the payment. This period shall be a minimum of fifteen days and a maximum of three months. The Royal prosecutor may extend this period when particular circumstances warrant it, or shorten it, if the suspect consents.

The proposal and the decision to extend it interrupt the prescription of the public action. The amount contemplated in paragraph 1 cannot exceed the maximum fine provided for by the law, with additional surcharges, [2 and it shall be proportional to the severity of the offence. For the offences contemplated in the social Criminal Code, the amount contemplated in paragraph 1 cannot be inferior to 40 percent of the minimum amounts of the administrative fine, if applicable, multiplied by the number of workers, applicant workers, independent workers, interns, independent interns or children involved.

When the offence causes analysis or expert costs, the amount established may be increased by the value or a portion of the value of the costs; the portion of the amount paid to cover said costs shall be attributed to the body or the person who incurred in them.

The Royal prosecutor shall invite the perpetrator of the offence who may be subject to confiscation to forfeit, within a period established by him, the assets or patrimonial advantages seized or, if they have not been seized, to deliver them at the address established by him.

The payments, forfeiture and delivery performed within the indicated period extinguish the public action. The agents of the federal service of public finance shall inform the Royal prosecutor of any payment made.

§ 2. The power granted to the Royal prosecutor in paragraph 1 may also be exercised when the investigative judge is already in charge of investigating or when the court has already been engaged in the case, if the suspect, the indicted or the defendant expresses his will to remedy the damage caused to third parties, provided that no final judgment or ruling has been issued. The initiative may also come from the Royal Prosecutor. If applicable, the Royal prosecutor requests that the criminal file is communicated to him by the investigative judge, who may submit a note on the status of the investigation. Either at the request of the suspect, or ex officio, the Royal Prosecutor, if he considers that this paragraph may apply, shall inform the suspect, the victim and his attorneys that they may consult the criminal file, provided that they have not already done it. The Royal prosecutor establishes the day, the time and the place to summon the suspect, the indicted or the defendant and the victim and his attorneys, explains his intention and indicates the acts, described in time and space, to which the payment of the sum of money is related. He shall establish the amount of the sum of cash and the costs and indicate the objects or patrimonial advantages to be

forfeited or delivered, as per the modalities specified in paragraph 1. He shall establish the period in which the suspect, the indicted or the defendant and the victim may come to an agreement in relation to the importance of the damage caused and the compensation. If the aforementioned parties reach an agreement, they shall notify the Royal prosecutor, who shall register the agreement in a minute. In accordance with paragraph 1, the public action against the perpetrator who accepts and complies with the settlement proposed by the Royal prosecutor is extinguished. However, the settlement does not extinguish the public action against the other perpetrators, co-perpetrators or accomplices, or to the actions of the victims against them. Any persons sentenced for the same offence shall be jointly liable for the restitutions and damages and, notwithstanding article 50, paragraph 3, of the Criminal Code, to the payment of any legal costs, even if the perpetrator who accepted the settlement has already been released. When a settlement is executed in a pending case, and the public action has not caused the issuance of a final judgment or ruling, the Royal Prosecutor or the General Prosecutor before the appeals court or the Labor court, as the case may be, shall promptly notify the police court, the correctional court and the appeals court that have been engaged and also, if applicable, the Court of Cassation. At the request of the Royal prosecutor and after verifying he is satisfied of the formal application conditions of § 1, paragraph 1, if the perpetrator has accepted and complied with the proposed settlement, and if the victim and the fiscal or social administration have been compensated in accordance with § 4 and § 6, paragraph 2, the competent judge shall certify the extinction of the public action against the perpetrator. If there is no agreement to be enforced by the Royal prosecutor, the documents established and the communications made during the discussion cannot be used against the perpetrator in a criminal, civil, administrative, arbitral or any other procedure for the resolution of disputes, and they are not admissible as evidence, even as extrajudicial confessions.

§ 3. The right provided for in paragraphs 1 and 2 also belong, for the same acts, to the labor prosecutor, the federal prosecutor and the general prosecutor on appeal and, for the persons contemplated in articles 479 and 483 of the Criminal Procedure Code, to the general prosecutor before the appeals court.

§ 4. Any damage eventually caused to third parties must be remedied in full before the settlement may be proposed. However, it may also be proposed if the perpetrator has recognized in writing his civil liability for the act that caused the damage, and produces proof of the compensation of the undisputed portion of the damage and of the payment modalities related to it. In any case, the victim may exercise his rights before the competent course. In this case, the payment of the sum of money by the perpetrator constitutes an irrefutable presumption of his guilt.

§ 5. The requests contemplated in this article shall be made by ordinary letter. § 6. The transaction described above does not apply to the offences for which there may be no settlement under article 263 of the Royal decree from July 18, 1977 on the coordination of the general provisions related to customs and excise. For the fiscal or social offences that allowed the evasion of taxes and social contributions, the settlement shall only be possible after paying the taxes and social contributions evaded for which the perpetrator is obliged, including any interest, and with the consent of the fiscal or social administration.

400. At the prosecution level, since 2011, it is possible to propose a settlement after attempting the instituting the public action under art. 216bis Criminal Procedure Code when the Royal prosecutor considers that the act does not appear to be of a nature that must be punished with correctional imprisonment of more than two years, or with a

heavier penalty, including, if applicable, confiscation and that it does not involve a serious attack on physical integrity. The possibility of an out-of-court settlement, based on the consent of the suspect to a proposal formulated by the Prosecution, was introduced in our legal system by the law from June 28, 1984 in article 216bis of the Criminal Procedure Code (in annex 18). In the law from April 14, 2011 containing various provisions (Belgian Monitor from May 6, 2011), the legislator has sensibly extended the possibility for the Prosecution to propose, under certain conditions, to anyone who is suspected of having committed an offence, to pay a certain amount of cash and to eventually forfeit certain assets. The Royal prosecutor may propose a settlement if he considers that the act is not of a nature that must be sanctioned with a principal penalty of correctional imprisonment of more than two years, or with a heavier penalty, including, if applicable, confiscation. The settlement is excluded for the offences "that involve a serious attack on physical integrity". If the person accepts the proposal, the public action against him is extinguished.

401. On the procedural level, the Prosecutor has the possibility of proposing a settlement, even if the public action has been initiated. The settlement is even possible when the investigative judge has been engaged in an investigation, and even when the case has been submitted to a court or an appeals court. The settlement may thus intervene as long as no final judgment has been issued (that is to say, that decision that is not subject to appeal).
402. The initiative to propose a transaction always comes from the Prosecution. When a judicial investigation is in course, the Royal prosecutor requests that the criminal file is communicated to him. In the occasion of this communication of the file, the investigative judge may submit to the Royal Prosecutor a non-binding notice informing him of the status of the investigation in course. The investigative judge does not have the obligation of submitting said notice, and may not, under any circumstances, make any statements regarding the convenience, or inconvenience, or a criminal prosecution or a settlement. In any case – regardless of the status of the criminal procedure – the Royal Prosecutor shall inform the suspect, the victim and his attorneys that they may consult the criminal file (provided that they have not already consulted it). The Royal prosecutor shall thus summon the suspect, the indicted or the defendant and the victim and his attorneys on a specific date, time and place, in order to make them a proposal of settlement and describes the facts, in terms of time and space, involved in the proposed settlement.
403. In addition, the Royal prosecutor is also supposed to contribute to the implementation of a framework for an eventual settlement between the suspect, the indicted or the defendant, on the one hand, and the victim, on the other. In that case, he determines the period within which the parties may reach an agreement in relation to the extent of the damage and the payment of the compensation for damages. When the parties reach an agreement, they inform the Royal Prosecutor, who registers the agreement in a minute. In the absence of an agreement, and as was already the case under the preceding regime, the settlement may however be proposed with the perpetrator recognizing his civil liability and the compensation of the undisputed portion of the compensation to the victim. When the conditions of a settlement have been met in a case that is pending before a jurisdiction, it is necessary that a judicial ruling brings the criminal procedure in course to an end. At the request of the Prosecution, the competent jurisdiction shall thus verify the extinction of the public action by way of the settlement. The judge verifies in advance if the formal conditions of application of a settlement have been met, if the

perpetrator has accepted and respected the proposed settlement and if the victim, the fiscal and/or social administration have been compensated. In the eventuality that after the procedure no settlement may be concluded, the documents that have been established and the communications between the parties that occurred during the discussions, may not be used against the suspect in any judicial procedure of any kind (criminal, civil, commercial), or in any administrative or arbitral procedure or any other procedure whatsoever for the resolution of disputes. These documents and communications are not in effect admissible as evidence, other than as extra-judicial confessions.

404. At the court level, Belgium referred to the following national provisions as applicable:

Criminal Code

CHAPTER IX – Mitigating circumstances

Article 79

If mitigating circumstances exist, the criminal penalties shall be reduced or modified in accordance to the following provisions.

Article 80

Life imprisonment shall be replaced with a specific prison term, or a minimum prison term of three years.

A prison term of twenty to thirty years, with a prison term of fifteen to twenty years, or an inferior term, or a minimum prison term of three years.

A prison term of fifteen to twenty years, with a prison term of ten to fifteen years, or a prison term of five to ten years, or a minimum prison term of three years.

A prison term of ten to fifteen years, with a prison term of five to ten years, or a minimum prison term of six months.

A prison term of five to ten years, with a minimum prison term of one month.

Article 81

A life imprisonment sentence for a crime against the security of the State shall be replaced with a specific prison term, or a minimum prison term of one year.

A prison term of twenty to thirty years, with a prison term of fifteen to twenty years, or an inferior term, or a minimum prison term of one year.

A prison term of fifteen to twenty years, with a prison term of ten to fifteen years, or a prison term of five to ten years, or a minimum prison term of one year.

A prison term of ten to fifteen years, with a prison term of five to ten years, or a minimum prison term of six months. A prison term of five to ten years, with a minimum prison term of one month.

Article 82

For multiple offences as provided for in articles 61 and 62 of the Criminal Code, if, due to the existence of mitigating circumstances, the criminal penalties are reduced to correctional penalties, the judging jurisdiction may, however, only pronounce a single penalty.

Article 83

The fine in criminal matters may be reduced, but it may not be, under any circumstance, inferior to twenty-six Euros.

Article 84

Any sentenced person for whom the criminal penalty has been commuted to a prison sentence, may be imposed a fine of twenty-six to one thousand Euros.

They may be sentenced to the total or partial interdiction of the rights contemplated in article 31, paragraph 1, for a minimum of ten years and a maximum of twenty years for crimes punishable with a prison term of more than twenty years, and for a minimum of five years and a maximum of ten years for any other crimes.

Article 85

If mitigating circumstances exist, prison penalties, forced labor penalties and fine penalties may be respectively reduced to eight days, forty-five hours and twenty-six Euros, but they may not be inferior to police penalties.

The judges may also separately apply one or the other of these penalties.

If the imprisonment is imposed alone, the judges may replace it with a fine that may not exceed five hundred Euros.

If the interdiction of the rights mentioned in article 31, paragraph 1 is ordered and authorized, the judges may pronounce these penalties for a period of one to five years, or to dismiss it in full.

(b) Observations on the implementation of the article

405. Belgium does not provide for any specific immunities or incentives for persons who cooperate with law enforcement in corruption cases. However, based on the judges' discretion and appreciation of any mitigating circumstances (such as cooperation) the CC foresees the reduction or modification of the criminal penalties (articles 79-85). There is also a general provision in the CPC on the possibility of out-of-court settlements between the defendant and the prosecutor (CPC article 216bis), where criminal liability need not be accepted, but civil liability shall be imposed. The latter includes indemnification of victims and the returning of any proceeds of crime. Such an agreement must be validated, but cannot be amended, by a judge. On 2 June 2016, the Belgian Constitutional Court in its decision No. 83/2016, found the limited involvement and role of the judge in this proceeding unconstitutional (Constitution articles 10, 11 and 15). Steps are taken to amend the law.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

406. Belgium explained that one of the fundamental principles of its internal legal system is that the Royal prosecutor evaluates the convenience of the proceedings. Granting immunity from prosecution to a person only because the person cooperates in a substantial manner is not possible. Even if the prosecutor decides to close the file, it is

possible to reopen it if new elements emerge.

Criminal Procedure Code

Article 28quater

Considering the criminal policy guidelines defined under article 143ter of the Judicial Code, the royal prosecutor evaluates the convenience of the proceedings. He shall specify the reason for any decision to close a case.

He will exercise the public action following the modalities provided for by the law. ...

(b) Observations on the implementation of the article

407. Please refer to observations under paragraph 2 of article 37.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

408. Belgium indicated that it has implemented the provision under review and referred to its responses under article 32 of the Convention.

(b) Observations on the implementation of the article

409. Belgium is in compliance with the provision under review.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

410. Belgium indicated that it has implemented this provision of the Convention and referred to its responses under chapter IV of the Convention.

(b) Observations on the implementation of the article

411. Belgium is in compliance with the provision under review.

Article 38 Cooperation between national authorities

Subparagraph (a)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(a) Summary of information relevant to reviewing the implementation of the article

412. Belgium indicated that it has implemented the provision under review.

413. A. Under article 29 of the Criminal Procedure Code, all officials have the obligation to report to the Royal Prosecutor any crimes and offences (including those of corruption) of which they become aware. This provision does not concern suspicion. The procedure can be found in article 31 CPC: The disclosures shall be drafted by the reporting persons, or by their proxy holders, or by the [Royal Prosecutor] if so required; They shall always be signed by the Royal Prosecutor on each sheet, and by the reporting persons or by their proxy holders. If the reporting persons or their proxy holders do not know or do not want to sign, it shall be mentioned.

Criminal Procedure Code

Article 29

Any constituted authority, any public official or officer, as well as, for the sector of family benefits, any volunteer institution under the law from April 11, 1995 for the institution of the charter of social contributors who, in the exercise of their functions, becomes aware of a crime or an offence, has the obligation of immediately notifying the [Royal prosecutor] before the court of the site where the crime or offence may have been committed, or in which the [indicted] may be found, and to transmit any related information, minutes and acts to this magistrate.

414. However, the officials of the Administration of Direct Contributions, the officials of the Value Added Tax Administration, of the Land Registration and Estates, the officials of the Special Tax Inspection Administration and the officials of the Corporate and Income Tax Administration, may not, without authorization from the regional director of which they depend, inform the Royal prosecutor of acts that are criminally punishable under fiscal laws and the decrees issued for their enforcement.

415. The regional director of paragraph 2 or any official designated by him may, in the fight against fiscal fraud, consult with the Royal Prosecutor in relation to specific cases. The Royal prosecutor may prosecute any criminally punishable acts that he may become aware of during the consultation. The consultation may also take place at the initiative of

the Royal Prosecutor. The competent police authorities may participate in the consultation.

416. Any officials who, based on the Law from 15 September 2013 on the reporting of a suspected attack against the integrity in a federal administrative authority by a member of its staff, have used the reporting system, are dispensed of the obligation contemplated in paragraph 1.
417. In addition, article 7, § 3, of the Royal decree from October 2, 1937 on the statute of State officials provides that, notwithstanding article 29 of the Criminal Procedure Code, any State official shall inform his hierarchical superior or, if necessary, a higher hierarchical superior, of any illegality or irregularity of which he may become aware.
418. B. The SPF Finances particularly, in the occasion of the publication of the Law from May 11, 2007 to adapt the legislation for the fight against corruption and to transpose into Belgian law certain recommendations of the OECD Working Group, issued circular No. CAF/01/2008-0009 (CAF No. 16/2008) from 10/07/2008 to recall the criminal definition of corruption and the legal principles that establish the obligations of the officials in face of corruption, particularly those prescribed in article 29 CPC (cfr pages 7 to 10 of the attached circular).
419. C. There is also a circular on the cooperation between OLAF and the Federal Prosecutor's Office: <http://www.om-mp.be/extern/getfile.php?pname=3316921.PDF&pid=4017193>

(b) Observations on the implementation of the article

420. Regarding the reviewers' question concerning public officials' duty to report crime, Belgium clarified that all public officials are bound to this obligation, and they have to swear an oath that they will comply with the laws of Belgium when they are appointed. The obligation is mentioned in the general information that the official gets before to get started at the job. Specifically for public official of the Ministry of Finances, a referral can be made to "Circulaire CAF N° 16/2008 dd. 07.10.2008" (internal guidelines), which comprises information about:

Tax Legislation.

Code of Criminal Procedure.

Amendment of legislation.

Corruption.

Fight against corruption.

Official.

Obligations of the official (the obligation of article 29 CPC is mentioned here).

421. On the question of why it is that officials from the Direct Contributions Administration cannot inform the public prosecutor regarding knowledge of an offence, Belgium explained that the tax director does not act as a filter for the prosecutor's office and does not have his or her own dismissal powers. By this provision, he or she can have an overview of the things that happen and link several cases. So, all the information can be transmitted in one time to the prosecutor's office. It must not be forgotten that this director is also a public servant, bound by the obligation.

422. A federal official can report the alleged breach of integrity to the “confidential person on integrity”, if he does not want to pass by his superior. He can opt for an open or a confidential message. In an open message, the federal ombudsman receives permission to disclose the identity of the reporter. In confidential reporting the federal ombudsman does not reveal the identity of the reporter. The federal official can also report directly to the 'Reporting Point for Alleged Violations of Integrity'. The law of September 15th 2013 provides a (temporary) protection mechanism for the federal officials who follow the notification procedure, to ensure that they would not suffer an effect on employment or working conditions. The persons protected include the whistleblower, but also the staff who are involved in the investigation and the employee-counselor who advises the employee who is involved in the investigation. There are no special steps must therefore be taken to seek protection. If an unduly measure is taken, there can be a disciplinary sanction imposed on the person who inflicted the measure. If the protected employee abuses his or her protection, there can also be taken disciplinary actions against him or her. The protection remains at least for two years after completion of the research.

423. Belgium is in compliance with the provision under review.

Article 38 Cooperation between national authorities

Subparagraph (b)

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

424. Belgium indicated that it has implemented the provision under review and explained that under article 29 of the Criminal Procedure Code, all officials have the obligation to report to the Royal Prosecutor any crimes and offences (including those of corruption) of which they become aware. This provision does not concern suspicion.

Criminal Procedure Code

Article 29

Any constituted authority, any public official or officer, as well as, for the sector of family benefits, any volunteer institution under the law from April 11, 1995 for the institution of the charter of social contributors who, in the exercise of their functions, becomes aware of a crime or an offence, has the obligation of immediately notifying the [Royal prosecutor] before the court of the site where the crime or offence may have been committed, or in which the [indicted] may be found, and to transmit any related information, minutes and acts to this magistrate.

However, the officials of the Administration of Direct Contributions, the officials of the Value Added Tax Administration, of the Land Registration and Estates, the

officials of the Special Tax Inspection Administration and the officials of the Corporate and Income Tax Administration, may not, without authorization from the regional director of which they depend, inform the Royal prosecutor of acts that are criminally punishable under fiscal laws and the decrees issued for their enforcement.

The regional director of paragraph 2 or any official designated by him may, in the fight against fiscal fraud, consult with the Royal Prosecutor in relation to specific cases. The Royal prosecutor may prosecute any criminally punishable acts that he may become aware of during the consultation. The consultation may also take place at the initiative of the Royal Prosecutor. The competent police authorities may participate in the consultation.

Any officials who, based on the Law from September 15, 2013 on the reporting of a suspected attack against the integrity in a federal administrative authority by a member of its staff, have used the reporting system, are dispensed of the obligation contemplated in paragraph 1.

425. In addition, article 7, § 3, of the Royal decree from October 2, 1937 on the statute of State officials provides that, notwithstanding article 29 of the Criminal Procedure Code, any State official shall inform his hierarchical superior or, if necessary, a higher hierarchical superior, of any illegality or irregularity of which he may become aware.

426. B. The SPF Finances particularly, in the occasion of the publication of the Law from May 11, 2007 to adapt the legislation for the fight against corruption and to transpose into Belgian law certain recommendations of the OECD Working Group, issued circular No. CAF/01/2008-0009 (CAF No. 16/2008) from 10/07/2008 to recall the criminal definition of corruption and the legal principles that establish the obligations of the officials in face of corruption, particularly those prescribed in article 29 CPC (cfr pages 7 to 10 of the attached circular).

427. C. There is also a circular on the cooperation between OLAF and the Federal Prosecutor's Office: <http://www.om-mp.be/extern/getfile.php?pname=3316921.PDF&pid=4017193>

(b) Observations on the implementation of the article

428. Belgium is in compliance with the provision under review.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

429. Belgium indicated that it has implemented the provision under review.

430. A. Based on the **law from January 11, 1993 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing** (<<http://www.ejustice.just.fgov.be/cgi/loi/changelg.pl?language=fr&la=F&cn=1993011141&table name=loi>>), the CTIF is in charge of analyzing suspicious financial transactions for money laundering or terrorist financing that are transmitted to it by the institutions and the persons established by the law.
431. The law applies, in accordance to a general regime, to the following financial organisms and persons (**Article 2**):
- 1) The National Bank of Belgium;
 - 2) The Deposits and Consignments Fund (*Caisse des Dépôts et Consignations*);
 - 3) The Postal Service, for its financial services;
 - 4) The Belgian credit establishments listed in article 1 of the Law from March 22, 1993 on the statute and control of credit establishments, the Belgian branches of credit establishments subject to the law of another country of the European Economic Area, as per title III of the same law, and the branches of credit establishments subject to the law of another country that is not part of the European Economic Area, as per title IV of the same law;
 - 4) bis The liquidation organisms contemplated in article 23, § 1, of the law from August 2, 2002 on the monitoring of the financial sector and financial services;
 - 4) ter The payment institutions contemplated in article 4, No. 8, of the Law from December 21, 2009 on the statute of payment institutions, the access to the activity of provider of payment services and the access to payment systems;
 - 5) The banking and investment services brokers contemplated in article 4, No. 4 of the law from March 22, 2006 on the intermediation in banking and investment services and the distribution of financial instruments;
 - 6) The insurance companies established in Belgium and authorized to exercise the activity of life insurance under the law from July 9, 1975 on the controlling of insurance companies;
 - 7) The insurance intermediaries contemplated by the law from March 27, 1995 on the intermediation in insurance services and the distribution of insurance who exercise their professional activities outside an exclusive agency contract, in the group of “life” activities as defined by the law from July 9, 1975 on the controlling of insurance companies;
 - 8) The companies whose companies consist of providing investment services or to exercise investment activities, under article 46, No. 1, of the Law from April 6, 1995 on the statute and the controlling of investment companies, which require, under article 47, § 1 of the same law, an approval as stock companies, portfolio management companies and investment advice companies;
 - 9) a) The branches established in Belgium of investment companies subject to the laws of another country of the European Economic Area, as per article 110 of the Law from April 6, 1995 previously cited;
 - 9) b) The branches established in Belgium of investment companies subject to the laws of another country that does not belong to the European Economic Area, as per article 111 of the Law from April 6, 1995 previously cited;
 - 10) The statutory Belgian collective investment companies contemplated in article 6 of the Law from July 20, 2004, on certain forms of collective management of investment portfolios provided that, and to the extent that, these companies guarantee

the marketing of their titles, under article 3, No. 9, c) and 14 of the same law, without relying on third parties under articles 41 or 43 of the same law;

11) The Belgian collective investment company management societies contemplated in Part III, Book II of the Law from July 20, 2004 cited above, excluding those exclusively authorized to exercise the function of management of collective investment companies contemplated in article 3, No. 9, b) of the same law;

12) a) The Belgian branches of collective investment company management societies that are subject to the laws of another country of the European Economic Area, as per article 110 203 of the Law from July 20, 2004 cited above;

12) b) The Belgian branches of collective investment company management societies that are subject to the laws of another country that does not belong to the European Economic Area, as per article 204 of the Law from July 20, 2004 cited above;

13) The persons established in Belgium that are contemplated in article 139, paragraph 1, No. 1 of the law from April 6, 1995 cited above, and who engage, professionally, in the operations contemplated in articles 137, paragraph 2 and 139bis, paragraph 2 of the same law;

14) The mortgage companies of article 37 of the law from August 4, 1992 on mortgage credit and which are established in Belgium;

15) The stock exchange companies that organize Belgian regulated markets, and which are contemplated in the law from August 2, 2002 cited above, on the monitoring of the financial sector and the financial services, except in anything related to their public missions;

16) The natural or legal persons contemplated in article 1, No. 2 of the law from June 12, 1991 on consumer credit;

17) The natural or legal persons who issue or manage letters of credit;

18) The companies contemplated in article 2 of the Royal Decree No. 55 from November 10, 1967 organizing the legal statute of companies that practice finance lease activities;

19) The real estate agents contemplated in article 2 of the Royal decree from September 6, 1993 protecting the professional title and the exercise of the profession of real estate agent and who exercise the activities contemplated in article 3 of the same decree; and the expert surveyors contemplated in article 3 of the law from May 11, 2003 to create the federal councils of expert surveyors, who exercise the regulated activities of a real estate agent under article 3 of the Royal decree from September 6, 1993 cited above;

20) The security companies contemplated in article 1, § 1 of the law from April 10, 1990 to regulate private and particular security, which provide surveillance and cash transportation protection services, as provided for in No. 3 of the same article;

21) The diamond merchants contemplated in article 169, § 3 of the program law from August 2, 2002;

432. The law also applies to the following professions (**Article 3**):

1) Notaries;

2) Judicial officers;

3) The natural persons or entities who exercise activities in Belgium and which are registered as auditors in the public registry of the Institute of Auditors, under article 11 of the law from July 22, 1953 for the creation of an Institute of Auditors and organizing the public supervision of the auditor profession, coordinated on April 30, 2007;

4) The natural or legal persons registered with the external accounting experts registry

and the external fiscal consultants registry contemplated in article 5, § 1, of the law from April 22, 1999 on the accounting and fiscal professions, as well as the natural or legal persons registered in the table of licensed accountants and the table of licensed accounting-fiscal experts contemplated in article 46 of the same law;

5) Lawyers:

- a) When they assist their client in the preparation or the performance of transactions involving: 1) The purchase or sale of real estate property or business enterprises;
- b) The management of funds, instruments or other assets owned by the client;
- c) The opening or management of bank or savings accounts or of portfolios;
- d) The organization of the contributions necessary for the incorporation, management or direction of companies;
- e) The incorporation, management or direction of trusts, societies or similar structures;
- f) or when they act on behalf of their client as an intermediary in any financial or real estate transaction.

433. The law also applies to the natural or legal persons who exploit one or many of the gambling establishments Class I contemplated in the law from May 7, 1999 on gambling establishments and the protection of gamblers (**Article 4**).

434. In order to facilitate the respect of their obligations, the respondents found in the website of the CTIF a copy of the guidelines and the suspicious activity report forms. They also found practical information on the online reporting system: The guidelines are aimed at the organisms and persons contemplated in article 2, § 1 and 4 of the law from January 11, 1993. (<http://www.ctif-cfi.be/website/images/FR/ld121220132.pdf>)

435. B. Since 2011, Belgium has a brochure “Corruption? Not in our company”³. Its purpose is to alert and warn commercial actors of the risks they may find in their professional exchanges. The brochure includes advice on the identification of the corruption, and potential actions.

436. Belgium has provided the following examples of cases and jurisprudence. i.e.: Auditors. Any suspicion of money laundering or of terrorist financing with money linked to corruption-related acts must be communicated to the Financial information processing unit (art. 5 §2 and 26 of the law from January 11, 1993 on the prevention of the use of the financial system for the purposes of money laundering and the financing of terrorism). Any auditor who reports suspicious activity shall be exonerated from any civil, criminal or disciplinary liability (art. 32 of the law from January 11, 1993 cited above). The IRE (Institute of Auditors) has adopted the ISA standards that apply to the audit of financial statements. These ISA standards provide that the auditor shall implement testing procedures to evaluate the adequate operation of the internal control implemented to prevent, or to detect and correct, significant anomalies at the assertion level. The ISA 240 standard specifies the audit procedures that the auditor must implement to obtain a reasonable assurance that the financial statements, taken as a whole, will not include significant anomalies derived from fraud or mistakes. Under the ISA 240 standard, the auditor shall focus in two types of intentional anomalies: the anomalies derived from the preparation of misleading financial information and the

³ http://justitie.belgium.be/nl/binaries/La%20corruption_tcm265-142566.pdf (FR) http://www.dsb-spc.be/doc/pdf/BROCHURE_CORRUPTION_EN_LowRes.pdf (EN)

anomalies derived from a misappropriation of assets. The IRE has also adopted, on February 4, 2011, a standard on the application of the law from January 11, 1993, on the prevention of the use of the financial system for the purposes of money laundering and the financing of terrorism, and the Information Center for Auditors (ICCI) published a manual of internal procedures on anti-laundering in its website. This manual seeks to assist Belgian auditors in the preparation and implementation of the internal control procedures imposed, on the one hand, by the 1993 law, and on the other, by the February 4, 2011 standard.

(b) Observations on the implementation of the article

437. Financial institutions, insurance companies, real estate agencies, investment companies, notaries, lawyers, auditors and judicial officers must report suspicious financial transactions to the CFI-CTIF (article 2 of the 1993 law on the Prevention of the Use of the Financial System for the Purposes of Money-Laundering and Terrorist Financing). Belgium is in compliance with the provision under review.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

438. Belgium indicated that it has implemented the provision under review.

439. It is always possible to go to a police station or to contact the services of the Royal prosecutor, as a victim or a witness. The information brochures are available in the website, in the police services, at the entrance of the SPF Justice, in legal advice centers, etc.⁴

440. B. In addition, the person has the legal obligation to appear as a witness of offences against people (i.e., street assault), against property (i.e., theft) or against public security (i.e., an attack) (article 30 CPC).

441. On 23 February 2016, a new contact point for fraud, deception, misleading practices and scams was created (<https://meldpunt.belgie.be/meldpunt/en/welcome>). If your rights as a consumer or enterprise have been violated or you have been a victim of a form of deception, you can report it on this new website. The contact point offers personal advice and then directs you to the appropriate authority. The contact point is a collaboration between the Federal Agency for the Safety of the Food Chain, the Federal Agency for

⁴ http://justice.belgium.be/fr/binaries/FR%2001-08-2013_tcm421-142530.pdf (FR - Victim)
http://justice.belgium.be/fr/binaries/VOUS%20%C3%84TES%20TEMOIN_tcm421-142578.pdf (FR - Witness)

Medicines and Health Products, the Social Intelligence and Investigation Service (SIOD), the Federal Police, FPS Finance and FPS Economy.

(b) Observations on the implementation of the article

442. Belgium is in compliance with the provision under review.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

443. Belgium indicated that it has implemented the provision under review.

Criminal Procedure Code

Article 46quater

§ 1er. In the investigation of the crimes and offences, the Royal prosecutor may request, if there are serious indications that the offences may give rise to a principal correctional prison penalty of one year or to a heavier penalty, the following information:

- a) the list of bank accounts, safety boxes or financial instruments defined in article 2, No. 1, of the law from August 2, 2002 on the surveillance of the financial sector and financial services, of which the suspect is the titleholder, the principal or the actual beneficiary and, if applicable, all data on them;
- b) the bank transactions that have been carried out during a certain period on one or several bank accounts or financial instruments, including information related to any issuing or receiving account;
- c) any data on the titleholders or principals who, for a certain period, had access to safety boxes.

§ 2. When warranted by the information needs, the royal prosecutor may additionally request that:

- a) during a renewable maximum period of two months, the bank transactions related to one or several bank accounts, or the safety boxes or financial instruments of the suspect, are monitored;
- b) the bank of credit establishment may not divest itself of the debts or commitments linked to said bank accounts, safety boxes or financial instruments for a period determined by him, but which shall not exceed the period that starts when the bank or credit establishment becomes aware of the request until five business days after the notification of the data in question by the establishment; This measure may only be requested if warranted by serious and exceptional circumstances, and if the investigations are related to the crimes or offences of article 90ter, §§ 2 to 4, of the Criminal Procedure Code.

§ 3. The royal prosecutor may, in a written and substantiated decision, request the assistance of the bank or the credit establishment in order to permit the measures

contemplated in §§ 1 and 2. The bank or the credit establishment shall provide its assistance without delay. In the request, the Royal prosecutor shall specify the form in which the data contemplated in § 1 shall be communicated to it.

Any person who, by virtue of their function, becomes aware of the measure or provides their assistance, shall have the obligation of maintaining confidentiality. Any violation of the confidentiality shall be punished in accordance with article 458 of the Criminal Code.

Any person who refuses to provide their assistance to the requests contemplated in this article shall be punished with a prison term of eight days to one year and a fine of twenty-six to ten thousand Euros, or one of those penalties.

Note: Article 46quater of the Criminal Procedure Code does not apply to bank information. In other cases, the professions that are not subject to professional privilege may voluntarily provide information or documents to the Royal prosecutor or the investigative judge. As to professions that are subject to professional privilege, they may transmit any declaration or document to the investigative judge.

444. The provisions of the Tax Code related to bank secrecy (introduced by Law Various Provisions from 04/14/2011, articles 55 and 56) allow, since July 1, 2011, having access to financial information related to taxpayers for whom there are indications of fraud or if they are involved in an indexed taxation procedure. In this case, the Belgian tax authority may request bank data, provided that it respects the preliminary formalities provided for the purpose (particularly, an authorization from the Regional Director). Likewise, other countries may submit a similar request through the Belgian Tax Administration, provided that they have signed a reciprocal data exchange agreement with Belgium. For taxpayers who correctly respect their fiscal obligations, the obligation of confidentiality remains unchanged. The new regime gives a new role to the National Bank of Belgium. It will act in effect as a “central point of contact,” allowing fiscal authorities, when they meet the conditions for access to the information, to know from which financial institution they must request the information.

445. A **Royal decree specifying the modalities and the conditions for the concrete implementation of this “central contact point”** from July 17, 2013 (RD on the operation of the Central Point of Contact (PCC) contemplated in article 322 §3 of the 1992 Income Tax Code).

Article 55.

Article 322 of the same Code, whose current text forms paragraph 1, is complemented by the following paragraphs:

"§ 2. When the administration obtains, within the investigation, one or more indications of fiscal fraud or when the administration contemplates determining the tax base under article 341, a banking, exchange, credit or savings establishment is considered as a subject third party for the application of the provisions of paragraph 1 without restriction.

If applicable, an official with a minimum rank of a director, designated for this purpose by the Minister of Finance, may order an official with a minimum rank of an inspector, to request to the banking, exchange, credit and savings establishment any information that may be useful to determine the amount of the taxable revenues of the taxpayer.

The agent appointed by the minister may only grant authorization:

1) after the agent conducting the investigation has requested during the investigation

the information and data related to the accounts, through a request for information as that of article 316, and has clearly stipulated in this occasion that he may request the application of article 322, § 2, if the taxpayer disguises the information requested or if he refuses to submit it. The mission contemplated in paragraph 2 can only be conducted after the expiration of the period contemplated in article 316;

2° After verifying that the investigation carried out involves an eventual application of article 341 or that it has revealed one or several indications of fiscal fraud and that there is an assumption that the taxpayers disguised the data in one of the establishments contemplated in paragraph 2 or refuses to submit them himself.

§ 3. All banking, exchange, credit and savings establishments have the obligation of communicating the following data to a central point of contact of the National Bank of Belgium: the identity of the clients and their account and contract numbers.

When the agent designated by the minister, as contemplated in paragraph 2, No. 3, has verified that the investigation contemplated in paragraph 2, has revealed several indicators of fiscal fraud, it may request the central point of contact any available data related to said taxpayer.

The King shall determine the operating mode of the central point of contact.

§ 4. Paragraphs 2 and 3 also apply when a foreign State requests information:

- 1) As provided for in article 338, § 5;
- 2) Under the provisions related to the exchange of information of an applicable convention to prevent double taxation or any other international convention that guarantees reciprocity.

The request of the foreign State is equivalent to one of the indications contemplated in paragraph 2. In this case, the agent designated by the minister grants, notwithstanding paragraph 2, the authorization based on the request of the foreign State."

Article 56.

The same Code includes an article 333/1, which reads:

"Art. 333/1. § 1er. In the case contemplated in article 322, § 2, the administration shall inform the taxpayer in writing of the indicators of fiscal fraud that justify a request for information from a financial establishment. This notification is made by certificate letter at the same time of the submission of the aforementioned request for information.

Paragraph 1 only applies when the rights of the Treasury are at risk. The notification is made, if applicable, post factum by certificate letter within 30 days after the submission of the request for information of paragraph 1.

§ 2. On a yearly basis, the fiscal administration shall submit a report to the minister containing, among others, the following information:

- 1) The number of times that an investigation has been conducted with financial establishments under article 318, paragraph 2, and that the data has been used for the purpose of taxing their clients;
- 2) The number of times that an investigation has been conducted under article 322, § 2, and that data has been requested from financial establishments;
- 3) The concrete indications, distributed in categories, which guided the persons contemplated in article 322, § 2, paragraph 2, to make the decision to grant the authorization;
- 4) The number of positive and negative decisions of the directors;
- 5) a global evaluation, both at the technical and at the legal level, of the manner in which the procedure under article 322, §§ 2 to 4 has been implemented.

This report shall be published by the Minister of Finance and transmitted to the

Chamber of representatives."

446. As an example, Belgium made a reference to the April 24, 2012 ruling of the Court of cassation. (<http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20120424-2>)
447. Article 341 of the Income Tax Code allows the administration to determine the taxable base for taxpayers based on "signs or indications of a prosperous financial situation that does not correspond to the income declared". Thus, in case of unjustified circumstantial deficit, the administration is entitled to judge that this financial prosperity comes from undeclared taxable income. Accordingly, it may replace the taxable base declared by an estimated base consistent with its findings. By way of example, a person who declares an annual taxable income of EUR 30,000 per year and drives around in a luxury sports car worth EUR 150,000 could, if they fail to justify the source of the funds used to purchase the car, be applied a recalculated taxable base based on the expenditure, that is a total of EUR 180,000. In practice, not all cases of circumstantial deficit are this obvious. This raises the question of when are the signs and indications sufficient to enable the administration to set in motion the process of circumstantial taxation.
448. The Ghent Court of Appeal had to take up a stance regarding this issue in a judgment of 27 May 2014 (R. G. No. 2012/AR/865 www.fiscalnet.be). In this case, the taxpayer argued that the circumstantial deficit calculated by the administration was too small to apply Article 341 of the Civil Code. The circumstantial deficit amounted to about two thousand Euros, a sum which the administration said was important in view of the income declared by the taxpayer. The Court of Appeal started by recalling the principle and referring to the legislative history of the Act: signs and evidence of the financial prosperity can only be used if said prosperity is significantly higher than the declared income. The Court also notes that the technique of signs and evidence of financial prosperity is only an estimate. During the assessment, the administration, and ultimately the magistrate, must take into account factual circumstances, including: the inability of the taxpayers to prove all their expenses, the fact that the contentious amounts may come from non-taxable income, but also the person's lifestyle and therefore the amount of expenses, which can vary greatly from person to person.
449. In the case above, the Court decided that a circumstantial deficit of EUR 1,858.82 was too low to enable the administration to apply Article 341 of the Civil Code even though said amount seemed too high compared to the taxpayer's declared income. However, the following financial year, the Court held back the circumstantial deficit of EUR 6,573.84, which was considered more substantial. This decision confirms the use of this special technique for proving cases. It also helps highlight the extent of the administration's discretion and, in the case of dispute in the Court, its power to determine the probative value of the evidence raised.
450. Therefore, the question of when is evidence considered revealing enough of a financial prosperity "significantly" higher than attested by the declared income, cannot be resolved following any specific rule. No doubt, the amount cannot be too low, even if the declared income is low. In any case, when faced with a threat of circumstantial taxation, the taxpayer must gather as much factual evidence as possible to disprove the evidence against him and the taxability of the supposed income. Thus, if we once again look at the example of the taxpayer driving a sports car, the purchase may have been

possible through a loan taken out, savings, cash acquired by inheritance, funds from the sale of securities, etc. Any of these justifications must always, of course, be supported by documentary evidence in order to be effective.

(b) Observations on the implementation of the article

451. The prosecutor can request the production of bank and financial records directly from any financial institution (CPC article 46quater) as well as initiate tracing of assets. The Belgian National Bank has established a register of all bank account holders' names. However, at present only COSC and fiscal authorities can consult the list and thereby know from which financial institutions they must request information (1992 Tax Code article 322 paragraph 3) and the register is only updated annually. New legislation has been enacted (Law of 1 July 2016). Under the new legislation the Belgian CFI-CTIF, prosecutors, (investigating) judges and notaries also have access to the central register of bank accounts. Belgium noted that the prosecutors had previously been obliged to write to all the bank institutions to ask if a person was known there. As there were over 200 bank institutions in Belgium, this meant a lot of work and time needed. This new legislation would therefore be very useful.

452. While the reviewers welcomed the recent legal amendment to broaden access to the Belgian National Bank's register, Belgium is encouraged to ensure that the register be kept up to date.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

453. Belgium indicated that it has implemented the provision under review.

454. Belgium is a member of the European Union, and so it participates in ECRIS (European Criminal Records Information System).

455. The framework-decision 2009/315/JAI for the creation of a European Criminal Records Information System (ECRIS) has facilitated the interconnection of legal records by electronic means, in the framework of the exchange of information on the convictions between the State members in a uniform and digital manner. ECRIS is a decentralized computer system based on data related to the legal records in member States. It has interconnection software that allows information exchanges between the national databases and a common communication infrastructure that, in a first stage, will be the network of Trans European Services for Telematics between Administrations (S-TESTA).

456. The interconnection of legal records facilitates a faster response to the requests for

European excerpts, foreign convictions of other countries can be better understood in Belgium, and the notification of the conviction of European citizens to the State members may be carried out faster. The goal is that the legal records of the set of European countries are connected with each other in the future.

457. The ECRIS system replaced since 2012 the NJR (National Joint Registry) pilot system, in which Belgium participated along with other seven European countries. In April 2014, Belgium was connected to all the countries using this system, except for Greece and Slovakia.

458. Belgium clarified that it does not have a mechanism or bilateral agreement in place with countries outside of the European Union for the exchange of criminal records.

(b) Observations on the implementation of the article

459. Belgium is in compliance with the provision under review. Belgium participates in the European Criminal Records Information System (ECRIS). ECRIS allows for the information exchange on convictions within the European Union. Belgium stated that due to the transnational nature of corruption, the Prosecution would always seek to present any previous conviction also in jurisdictions outside the European Union as part of the case.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

460. Belgium indicated that it has implemented the provision under review and cited the following national provision as relevant:

Criminal Code

Article 3

An offence committed in the territory of the Kingdom, by Belgian or foreign citizens, is punished in accordance with the provisions of Belgian law.

461. With regard to concrete cases, Belgium referred to the examples cited under other articles of the Convention, considering that all of them were committed in Belgium.

(b) Observations on the implementation of the article

462. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

463. Belgium indicated that it has implemented the provision under review.

Ships

Law from June 5, 1928 on the revision of the Disciplinary and criminal code for the Merchant Navy and for sea fishing

Article 73

Offences committed onboard a Belgium ship are considered as committed in the territory of the kingdom.

...

Belgian merchant ships and fishing ships are considered as Belgian territory, subject to the application of criminal law. This concept is common. It is applied regardless of the place where the boat or ship is found.

Aircraft

Law from June 27, 1937 regarding the revision of the law from November 16, 1919 on the regulation of air navigation

Article 36

Offences committed onboard a Belgian ship in a private or State flight are considered as committed in Belgium and may be prosecuted even if the indicted person is not in the territory of the Kingdom.

The Royal prosecutor of the site of the offence, that of the residence of the indicted person, that of the place where he is found and, in their absence, that of Brussels shall be competent to prosecute the offences provided by this law and by the rulings issued for its execution. Articles 6 to 13 of the law from April 17, 1878, which form the preliminary title of the Criminal Procedure Code apply to the offences committed onboard a foreign aircraft in flight, as if the act was accomplished outside the territory of the Kingdom. In addition, any person who is found guilty of a crime or an offence committed onboard a foreign aircraft in flight may be prosecuted in Belgium, if he or the victim is a Belgian national or of the vehicle lands in Belgium after the offence.

The Royal prosecutor of the site of residence of the indicted person, that of the place where he is found, that of the landing site, and, in their absence, the Royal Prosecutor of Brussels shall be competent to prosecute the offences contemplated in the

preceding paragraph.

(b) Observations on the implementation of the article

464. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

465. Belgium indicated that it has implemented the provision under review.

Preliminary Title of the Criminal Procedure Code

Article 10

Except for the cases contemplated in articles 6 and 7, § 1, any foreigner may be prosecuted in Belgium when he commits, outside the territory of the Kingdom:

...

5) A crime against a Belgian citizen, if the act is punishable under the laws of the country where it has been committed with a maximum penalty of more than five years of prison. If the indicted person is not in Belgium, the proceedings, including the investigation, for the offences contemplated in articles 347bis, 393 to 397, and 475 of the Criminal Code and committed against a person who, at the moment of the acts, is a Belgian national, may only be started at the request of the federal prosecutor or the Royal prosecutor, who shall examine the complaints. After admitting a complaint in application of the precedent paragraph, the federal prosecutor or the Royal prosecutor requests the investigative judge to investigate the complaint except when:

- 1) The complaint is evidently without grounds; or
- 2) The facts of the complaint do not correspond to an offence under articles 347bis, 393 to 397 and 475 of the Criminal Code; or
- 3) No admissible public action may result from this complaint; or
- 4) The specific circumstances of the case indicate that, in the interest of an adequate administration of justice and of complying with the international obligations of Belgium, this case shall be submitted to international jurisdictions, either to the jurisdiction of the place where the acts were committed, or before the jurisdiction of the State of which the perpetrator is a national, or that of the place where he was found, and provided that said jurisdiction presents the characteristics of independence, impartiality and equality, as may be indicated by the relevant international obligations that bind Belgium and that State.

If he considers that one or more of the conditions of paragraph 3, No. 1, 2 and 3, have not been met, the federal prosecutor or the general prosecutor submit request to the Chamber of Indictments to obtain a declaration, as the case may be, that there are no grounds for prosecution or that the public action is not receivable. Only the federal

prosecutor or the Royal prosecutor shall be heard.

When the Chamber of Indictments verifies that any of the conditions of paragraph 3, No. 1, 2 and 3, has not been met, it appoints the investigative judge that is territorially competent and indicates the acts that the judge shall investigate.

From here on, the case proceeds in accordance to common law.

The federal prosecutor or the general prosecutor has the right to file an appeal against any rulings issued in application of paragraphs 4 and 5. In any case, this appeal shall be filed within fifteen days of the issuing of the ruling.

In the case of paragraph 3, No. 4, the federal prosecutor or the Royal prosecutor shall classify the case as closed and notify his decision to the Minister of Justice. This decision to close the case is not subject to appeal.

...

(b) Observations on the implementation of the article

466. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

467. Belgium indicated that it has implemented the provision under review.

468. If the act is committed in Belgium, Article 3 of the Criminal Code is applied (Please refer to article 42, paragraph a). If the act is committed outside Belgium, the following national provisions were cited as relevant:

Preliminary Title of the Criminal Procedure Code

Article 7

§1. Any Belgium citizen or any person having their main residence in the territory of the Kingdom who, outside the territory of the Kingdom, is found guilty of an act qualified as a crime or an offence by Belgian law, may be prosecuted in Belgium, if the act is punished by the laws of the country where it was committed.

§ 2. If the offence was committed against a foreigner, the prosecution may not take place except when requested by the public prosecutor, preceded by a complaint brought by the affected foreigner or his family, and an official notice delivered to the Belgian authority by the authorities of the country where the crime was committed.

In cases where the offence is committed, in wartime, against of a country that is an ally to Belgium and under paragraph two of article 117 of the Criminal Code, the official notice may also be given by the authorities of the country where the foreigner is found

or of which he is a national.

Article 11

Any foreigner who is the co-perpetrator of a crime committed outside the territory of the kingdom, by a Belgian national, may be prosecuted in Belgium, along with the Belgian indicted, or after the conviction of the latter.

Article 10quater

§ 1er. Any person may be prosecuted in Belgium when he commits, outside the territory: 1) an offence provided for in articles 246 to 249 of the Criminal Code;

2) An offence provided for in article 250 of the same Code, when the person exercising public duties in a foreign State or in an international public organization is a Belgian national, or when the international public organization for which he exercises public duties has its seat in Belgium.

§ 2. Any Belgian citizen or any person having their main residence in the territory of the Kingdom who, outside the territory of the Kingdom, is found guilty of an offence under article 250 of the criminal code may be prosecuted in Belgium, if the act is punished by the laws of the country where it was committed.

Explanation art. 10quater

Paragraph 1 maintains the principle of universality. Any person may be prosecuted in Belgium for acts of corruption committed abroad against Belgian public officials. The extraterritorial competence is unlimited for corruption that involves persons that exercise public duties in Belgium. This competence is grounded in the principle of protection under which a State may reserve the right to prosecute the offences committed abroad which are intended at attacking the legal interests of the State. Likewise, “Belgian public official” is understood to refer to public officials of Belgian nationality who exercise public duties in a foreign State or in an international public organization.

469. The Belgian judge will always have the authority to prosecute corruption acts committed abroad against Belgian and foreign public officials when said officials exercise their duties in an international public organization having its seat in Belgium. This is justified, on the one hand, by the requirements of the European Union Convention on Corruption and, on the other, by the various international organizations that have their seat in Belgian territory.

470. Under article 4.2. of the OECD Convention, the Belgian State must establish its extraterritorial competence with respect to the corruption of a foreign public official in accordance with these same principles. Paragraph 2 of Article 10quater has eliminated this distinction since. The only condition remaining is dual criminality.

471. In addition, the extraterritorial competence is applied only when the case involves Belgian citizens or persons having their main residence in Belgium. As to the corruption of foreign public officials, the principle of universality is thus taken to an active principle of personality.

472. The conditions of article 7, § 2, CPC do not apply: it is not necessary that the victim submits a complaint, nor an official notification from foreign authorities for corruption acts committed abroad to be prosecutable.

Preliminary Title of the Criminal Procedure Code

Article 12

The prosecution of the offences addressed in this chapter shall only take place if the indicted person is found in Belgium, except for the cases contemplated in:

- 1) Article 6, No. 1, 1 bis and 2, as well as article 6, No. 1 ter, with respect to the offences contemplated in article 137 of the Criminal Code;
- 2) Article 10, No. 1, No. 1 bis and No. 2 as well as article 10, No. 5, with respect to the offences contemplated in articles 347bis, 393 to 397, and 475 of the Criminal Code;
- 3) Article 10bis;
- 4) Article 10ter, 4^o, with respect to the offences contemplated in article 137 of the Criminal Code; 5) Article 12bis.

However, if the offence was committed in wartime, the prosecution may take place if the indicted person is a Belgian national, in any case, if he is not found in Belgium, and, if the indicted person is a foreigner, in addition to the cases contemplated in paragraph 1, if he is found in an enemy country, or if his extradition may be obtained.

(b) Observations on the implementation of the article

473. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

474. Belgium indicated that it has implemented the provision under review.

475. Article 3 of the Criminal Code does not require that a corruption/laundry offence is committed entirely in the territory of Belgium for Belgium to be able to establish its competence. It is enough that a part of the offence, for example, the acceptance or the offer of a kickback, is committed in our territory: Thus, the principle of territoriality must be interpreted in a broad manner. The place where the act is committed is determined in accordance to what is called the doctrine of ubiquity: that means that a global offence may be considered as committed where a part of the offence was committed. According to another form of the doctrine of ubiquity, an offence may be considered was also committed where the consequences of the offences are produced.

476. The doctrine means that wherever an element of an offence is committed or produces its effects, that place is generally considered as the site of the offence. In this context, it can be seen that the intention of the offender is not taken into consideration and it does not affect the competence based on the principle of territoriality. Likewise, the nationality of the briber or the bribed person is not taken into consideration.

(b) Observations on the implementation of the article

477. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

478. Belgium indicated that it has implemented the provision under review and referred to its responses under article 42/2 b) of the Convention.

(b) Observations on the implementation of the article

479. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

480. Belgium indicated that it has implemented the provision under review and referred to its responses under article 44 of the Convention.

(b) Observations on the implementation of the article

481. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

482. Belgium indicated that it has implemented provision under review and referred to its responses under article 44 of the Convention.

(b) Observations on the implementation of the article

483. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

484. Belgium indicated that it has implemented the provision under review.

485. The European Union has implemented specific structures to facilitate mutual legal assistance and to support cooperation between law enforcement authorities:

- Eurojust: EU body that gathers experienced judges or prosecutors, who support and reinforce the coordination and cooperation between national authorities on serious forms of crime.
- The European Judicial Network on Criminal Matters (RJE): a network of magistrates and prosecutors who serve as points of contact in EU countries to facilitate legal cooperation.

486. In addition, Belgium regularly participates in joint investigation teams (particularly in cases of organised crime or narcotics trafficking, which may lead to MLA).

487. Belgian Liaison Officers can always play a facilitating role in MLA requests.

488. In general, there is always a possibility to consult with colleagues on an informal basis. Contact can be made at international conferences, or through representatives at different working groups at the international level. Information on who to contact can also be sought through the European channels.

(b) Observations on the implementation of the article

489. Belgium is in compliance with the provision under review.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

490. Belgium indicated that it has implemented this provision of the Convention. There is no specific information available, but this Convention does not exclude the exercise of the criminal competence of Belgium.

(b) Observations on the implementation of the article

491. Belgium is in compliance with the provision under review.

IV. International cooperation

Article 44. Extradition

Paragraph 1 of article 44

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

492. Belgium indicated that it has implemented this provision of the Convention.

493. Extradition is regulated by the Extradition Act of 15 March 1874 (as amended in 1980s and 2007) and article 6 of the first Extradition Act of 1 October 1833. Since the 1874 Extradition Act consists of only 13 articles and does not outline in detail the extradition procedure, case law of the Cour de Cassation (Belgian Supreme Court) is also an important source of formal extradition law.

Extradition Act of 15 March 1874 [selected articles]

Article 1

§ 1. The Government may, for the execution of treaties concluded with foreign States on the basis of reciprocity, agree on the extradition of any foreigner who, as a perpetrator, co-perpetrator or accomplice, is prosecuted for an offence to criminal laws or is sought for the enforcement of a sentence or detention order by the judicial authorities of the foreign State.

A detention order, within the current law, shall be understood as all measures of deprivation of liberty which were ordered in addition or substitution of a sentence, by decision of a criminal court.

§ 2. Only acts punishable, under the terms of the Belgian and foreign law, with a sentence of deprivation of liberty where the maximum term exceeds a year, may give rise to extradition.

When the extradition is required for the enforcement of a sentence, it must be equal to a period of at least one year of imprisonment. In the case of the enforcement of a detention order, the deprivation of liberty ordered must be of an indeterminate duration or be of at least four months.

§ 3. If the request for extradition includes various different acts, each punishable, under the terms of the Belgian and foreign laws, by a sentence of deprivation of liberty but where certain of them do not fulfill certain conditions with regard to the scope of the sentence, the extradition may also be agreed to for these acts even if they are solely sanctioned with fines.

Article 2

Nevertheless, when the crime or offence that gives place to the request of extradition

was committed outside of the territory of the requesting party, the Government may only free, on the basis of reciprocity, the prosecuted or condemned foreigner in case the Belgian law authorizes the prosecution of the same offences committed outside of the Kingdom.

Article 8

Articles 6 through 14 of the law dated April 17, 1878, containing the preliminary title of the Code of criminal procedure] are applicable to the offences provided by the first article of the present law.

Extradition Act of 1 October 1833

Article 6 regarding the political offences exception is the only provision of the 1833 Extradition Act remaining in force. Article 6 was amended by Act May 15, 2007, limiting the application of the political offences exception, especially in case of terrorism (related) offences and crimes against humanity, war crimes and other international crimes against humanity.

Article 6

1. It shall be expressly stipulated in these treaties that the foreigner may not be prosecuted or punished for any political offence prior to the extradition, nor for any act connected to any similar offence, nor for any crime or offence not provided for by the present law; otherwise, any extradition and provisional arrest shall be prohibited.

2. An assault against the head of a foreign government or against members of his family shall not be deemed as a political offence or linked to a similar offence when said assault consists of either murder, assassination, or poisoning. The constitutive act of an offence as defined by an international instrument with regard to terrorism or referred to by an international instrument concerning international humanitarian law, shall no longer be deemed a political offence, nor be linked to a similar act, when the extradition is requested on the basis of this instrument and when this involves Belgium and the requesting State Party and explicitly prohibits the refusal of the extradition for political offence, without the possibility of reservation under the law of the treaties.

3. By way of derogation of paragraph 1 of the present article, the government may, on a reciprocal basis, hand over to the governments of the countries associated with Belgium during a war against a common enemy, any foreigner that is, within the aforementioned countries, prosecuted or condemned for a crime or offence against the external security of the State, committed at the time of this war.

4. Nevertheless, it shall be stipulated in these extradition treaties concluded under the previous paragraph, that the extradited individual may not be prosecuted in the requesting State Party due to a political action undertaken for the benefit of the requesting State Party.

5. Likewise, the government may hand over to the governments of the countries referred to in paragraph 3 of the present article, with the purpose of being judged or of serving their sentence, any foreigner prosecuted or condemned for war crimes by the authorities of the aforementioned countries.

6. The government regulates the forms and terms of the extraditions agreed to under

paragraphs 3 to 5.

494. At the international level, Belgium, as a Member State of the Council of Europe, has ratified the 1957 European Extradition Convention (EEC) and its First and Second Protocols (1975 and 1978) only in 1997. The lateness of the ratification is due to the formal suppression of the death penalty from the Criminal Code in 1996. Belgium has not yet signed the Third (2010) and the Fourth Additional Protocols (2012).
495. Outside the Council of Europe's field of application, Belgium has bilateral extradition treaties or conventions with 41 States. Many of these still date back from the late 19th and early 20th century. The majority of these bilateral instruments were concluded with Latin American States (e.g. Venezuela, 1884, the oldest bilateral extradition treaty that is still in force) and some African and Asian States (e.g. Siam, nowadays Thailand, 1937). The 1901 Belgian – Great Britain and Ireland Extradition Convention is still applicable in relation to Bahamas, Botswana, Fiji, India, New Zealand, Kenya, Pakistan, Seychelles, the Solomon Islands, Swaziland and Tanzania. Belgium also concluded a bilateral extradition treaty with Morocco (1997) and the United States (1987, partially amended by the 2003 Agreement on extradition between the European Union and the United States). The bilateral treaties are either just extradition instruments (e.g. the 1901 Belgian-UK Convention) or are extradition instruments containing a small set of articles on mutual legal assistance (MLA) (e.g. all of the extradition treaties with Latin American States). Three more recent conventions are mixed extradition and MLA instruments containing also a full set of MLA provisions (Former – Yugoslavia, 1971, since 2009 applicable to Kosovo, Algeria, 1970 and Tunisia, 1989).
496. When there is no applicable bilateral extradition treaty or the (old) treaty is insufficient (e.g. when modern types of offences such as money-laundering or trafficking in persons are involved), the relevant UN conventions can be applied as an autonomous (subsidiary) treaty basis for extradition. In addition to such a subsidiary treaty basis, a supplemental ad-hoc reciprocity guarantee or declaration can be added.
497. The European arrest warrant (EAW) applies among the Member States of the European Union. As of 1 January 2004, the Act dated December 19, 2003 concerning the European arrest warrant (M.B., December 22, 2003) entered into force. As of 1 January 2014, the Framework-decision 2002/584/JHA dated June 13, 2002 is applicable among the 28 member states of the European Union. The EAWs are transmitted and dealt with by the competent judicial authorities.
498. Dual criminality is applied without exceptions under article 1 paragraph 2 of the 1874 Extradition Act as well as under the extradition conventions and treaties, and is therefore a key condition for extradition. However, this condition is evaluated in an abstract manner (“in abstracto”), i.e. the focus is on the underlying conduct of the offence and not its qualification. It is therefore possible to (re-)qualify the acts under other offences. For example, in the case of materials trafficking that only have military usage or dual use (civil as well as military), it is possible to re-qualify the specific offences of customs or administrative offences under the law of commerce, such as the offence of “fraud” (art. 496 Criminal Code) and/or “forgery and use of forgery” (art. 196 and those that follow in the Criminal Code).
499. Belgium has not yet received a request for extradition based on the incrimination of

corruption. Likewise, Belgium has not yet filed a request for extradition based on such incrimination. Consequently, Belgium has not yet encountered problems with the implementation of dual criminality linked with this particular incrimination.

500. Insofar that the extradition had been requested to Belgium or by Belgium, problems in connection to the terms of the extradition have been rare. The vast majority of extradition requests concern offences of common criminal law and are “ordinary”.
501. An important illustrative example for the implementation of the principle of dual criminality is linked to the moment of reference (the moment when the acts were committed, whether the moment or the decision for extradition is taken) for the evaluation of the dual criminality. Belgium had requested the extradition of a condemned individual (in appeal) in 2005 for serious acts that qualify as human trafficking and forgery and the use of forgery (passports), committed within the period of 1999-2000. The request for extradition and the transmission of this request dated from year 2011. The requested State Party refused the extradition for the acts qualified as “human trafficking” because the criminal law containing the crime of “human trafficking” in this country was introduced and entered into force until 2004, that is, several years after the acts were committed (in Belgium). The requested State Party made reference to the legal principle of (“*nullum crimen sine lege*”) to justify its decision. This approach greatly limited the interests of the requesting State Party – Belgium in this case – because the offence existed at the time of the decision on extradition in the law of the requesting State Party. Generally, the point of the reference is the time of the decision for extradition.
502. Belgium explained that the extradition procedure in Belgium is very similar to the French one. The procedure is, like in many other States, a mixed procedure consisting of a preliminary judicial phase and a follow-up decisive administrative or executive phase. In accordance with article 1 of the 1874 Extradition Act, the Government – in practice the Minister of Justice, decides on the extradition on the basis of a convention or treaty of a foreigner. Article 1 requires: a) a treaty basis for extradition, excluding extradition that is based upon mere reciprocity; and b) excludes the extradition of nationals.
503. In general, there are five stages in extradition proceedings:

I. Provisional arrest – article 5 Extradition Act

Belgium recognizes an Interpol Red Notice as a request for provisional arrest, insofar (a) the requesting State also accepts an Interpol Red Notice as a request for provisional arrest; and (b) the Red Notice contains the minimum information that allows the arrest of the wanted person. Upon receipt of a Red Notice or any other kind of sufficient, written, request for provisional arrest, the competent prosecutor will request the investigating judge to issue a provisional arrest warrant. The competent prosecutor and investigating judge is the prosecutor and investigating judge of the judicial district where the wanted person could be found. The Belgian judicial system has 27 judicial districts, each with a first instance Court and a prosecutor's office. There are five Courts of Appeal, each with a Prosecutor General's Office. The latter are not directly involved in the provisional arrest stage. The Federal Prosecutor's Office has a national competence, but in principle only in a subsidiary way. Only for crimes against humanity, war crimes and genocide, the

federal prosecutor's office has a legal monopoly over the prosecution. For all other offences, its competence is limited to coordination or to prosecution after deferral of a complex case that involves more districts and/or has wide-ranging international aspects. The federal prosecutor is the central coordinator for the European Judicial Network and is also the sole contact point for Eurojust. When a wanted person cannot be located in a specific district, the federal prosecutor's office will be the first point of entry of an Interpol Red Notice or a PA-request.

The provisional arrest warrant is to be distinguished from a Belgian arrest warrant, issued in the course of a Belgian pre-trial criminal procedure. The PA is only valid for the delay prescribed by the applicable extradition Convention or Treaty. Typically, the delay is maximum 40 days in accordance with article 16 EEC. During provisional arrest, the wanted person may request his or her provisional release. The investigating chamber of the first instance court will decide on such request. The wanted person or the prosecutor may appeal the decision. The investigating chamber of the Court of Appeal's decision is eligible for a final Supreme Court appeal. The sole criterion for provisional arrest is the *existence of urgency*, i.e. an imminent risk of flight. If the wanted person is residing in Belgium and there is no indication of imminent flight, the wanted person will not be provisionally arrested. In such cases, the extradition procedure will immediately start at stage II.

II. Preliminary admissibility (exequatur of the foreign arrest warrant or notification of the foreign judgment) – article 3.1, 2 & 4 Extradition Act

If the extradition request is based upon a definitive judgment or - at least - a judgment that can be executed, even if it is an *in absentiae* judgment which is still eligible to a legal remedy (appeal or another type of remedy that allows the sentenced person to have a retrial in his presence), the judgment will be served to the person sought. From that moment on, the extradition detention will start - either immediately or following the end of the provisional arrest period.

In case the extradition request is based upon an arrest warrant or a similar judicial decision, the investigating chamber of the first instance Court will do a preliminary verification of the basic conditions for the extradition (completeness of the request, nationality, double criminality and so on). This unilateral procedure is in fact a mere formality, needed to make the foreign arrest warrant applicable in Belgium. This procedure is called *exequatur*. Afterwards, the arrest warrant and the exequatur decision is notified to the person sought. Again, this marks the beginning of the extradition detention and in case the person sought was provisionally arrested the end of that type of detention.

The exequatur decision can be appealed and further on, be the subject of a Supreme Court appeal. At this stage, the person sought is under the authority of the Government. Since 2009 / 2010 new case law of the Supreme Court allows the person sought to request his or her provisional / conditional release at any time during the extradition procedure.

The procedure is then identical for provisional / conditional release during the provisional arrest stage (above, I). The (long) duration of the detention is basically the only element that *may* end the extradition detention. During this stage the person sought is interrogated by the prosecutor in order to ask his or her consent to his or her extradition. The person is interrogated in the presence of a defence lawyer and a translator. If the person sought consents, stage III, the advice procedure is skipped. The procedure will directly proceed to stage IV. In that case the *simplified procedure applies. In that case the speciality rule does not apply.*

III Advice procedure – article 3, 4-7 Extradition Act

Once stage II is completed and except when the person sought consents to his or her extradition, the preliminary judicial stage of the extradition procedure is formally terminated.

In a next stage, the investigating chamber of the Court of Appeal will hear the person sought and his lawyer and evaluate the conditions to extradition. The outcome is not a judgment in the legal sense of the word but a secret advice that is solely made for the Government, i.e. the Minister of justice who is exclusively competent to decide on the extradition. The advice cannot be appealed since it is a non-binding advice.

IV Extradition Order – article 1 Extradition Act

The case file is transmitted to the Ministry of Justice – Central Authority in order to prepare the extradition order. The case file is thoroughly reviewed. The advice is not binding. Even if it is (partially) negative, the minister may decide to grant the extradition completely.

The extradition order is a ministerial order and must be motivated. All the conditions to extradition are verified. Insofar the defence has files written arguments, they are – again – responded to in the order. If the extradition is granted, and the person sought is (still) either the subject of a Belgian pre-trial investigation or the execution of a Belgian sentence, the surrender is postponed. The person sought may be temporarily surrendered if so requested. The extradition order is then send back to the competent prosecutor. The latter will notify the Extradition Order to the person sought.

As of the date of formal receipt, the person sought may appeal the order before the State's Council, the highest administrative Court. This appeal must be launched within 60 days upon the receipt of the order. The appeal does however not suspend the execution of the order, i.e. the surrender. Only if the appeal is done immediately in accordance with the summary or speedy procedure, the surrender will be delayed until the State's Council has decided on the application to suspend the order. Such a decision is usually taken within 10 to 14 days. In case of suspension, the Minister will immediately prepare a new order that answers to the State's Council's argument for the suspension of the order. At this stage, the person sought may request (again) for his or her provisional release. Another procedure that may be launched is an application before the ECHR. Insofar the person sought also applied for a

provisional measure in accordance with Rule 39 of the Court's Rules and the Court imposes such a provisional measure, the surrender must and will be postponed until further notice of the Court.

V Execution of the extradition Order

If there is no reason to postpone surrender, the prosecutor will make arrangements for the surrender. This is done via the Interpol channel.

504. In general extradition requests are dealt within a 4 to 6-month time frame including the provisional arrest and the ultimate surrender. This timeframe applies to 'normal' proceedings, i.e. when the person sought does NOT consent to his / her extradition. When the simplified extradition procedure applies, the surrender may take place within a time frame of 1.5 to 4 months, including the provisional arrest. When appeals and intervening asylum proceedings are being used, the procedure may take 1 to 1.5 years. Belgium noted that one rare recent case has been ongoing now for over 2 years.

(b) Observations on the implementation of the article

505. Belgium makes extradition conditional on the existence of treaty (article 1 Extradition Act 1874). However, the treaty requirement is applied in a broad sense and the UN instruments, such as the Convention, can serve as a legal basis for extradition in the absence of applicable treaties or where bilateral treaties have become inadequate in terms of extraditable offences.

506. With regard to differences in procedures between an extradition and a European arrest warrant, Belgium explained that there are two different acts in place: the Extradition Acts of 1874 / 1833 and the EAW Framework Decision implemented by the EAW Act of 2003. The EAW Act regulates cases of competing EAW(s) and extradition requests. In those cases, the Federal Prosecutor needs to provide an advice regarding the priority that should be applied. The Minister of Justice decides on the priority surrender / extradition and decides on the eventual re-surrender or re-extradition. This decision relies on the Federal Prosecutor's advice.

507. The Extradition Act relies on the principle of reciprocity. The minimum penalty requirement for extradition is twelve months and captures most offences under the Convention.

508. While Belgium applies the dual criminality principle without exceptions, it focuses on the underlying conduct of the offence and not its qualification. Assessing dual criminality is always based upon the (f)acts as presented in the extradition request and any supplemental materials in support of the request. These (f)acts are then "re-qualified" in accordance with Belgian law. Even a wide difference between the foreign offences and the applicable Belgian offences is irrelevant. Recent case law also allows that there is no need to re-qualify every single fact or cluster of facts under Belgian offences. The broad approach enables Belgium to use "catch-all" offences or just one offence, capturing the whole set of facts, even if these were originally qualified under a wider range of different offences in the requesting State.

509. Belgium is recommended to take further steps to ensure that all the Convention offences are extraditable in light of the dual criminality requirement and applicable punishment for certain corruption offences by imprisonment of less than 12 months.

Paragraph 2 of article 44

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

510. Belgium referred to its response under paragraph 1 of article 44, and cited the following provision of the Extradition Act 1874 as applicable:

Extradition Act of 15 March 1874

Article 1, §2

§ 2. Only the acts punishable, under the terms of the Belgian and foreign law, by a sentence of deprivation of liberty with a maximum duration of more than a year, may give rise to extradition.

511. Art. 1§2 of the Extradition Act 1874 requires only the implementation of a level of sentence (provided by law, to be imposed for the purpose of the extradition). There is therefore no restrictive list of offences for which extradition may be agreed to. The European Convention on Extradition (1957) and the (more) recent bilateral conventions implement a quite similar provided or imposed minimum level of punishment. The corruption offences exceed these levels. There is no problem neither at the level of dual criminality nor at the minimum level of punishment required in order to agree to the extradition for these offences.

512. In case that a previous bilateral convention is applicable, that is to say, a treaty dated at the end of the 19th century or within the first couple of decades of the 20th century that includes a restrictive list of “extraditable” offences, it shall suffice to complement this list via the direct implementation of the UN Convention against Corruption of 2003. The Convention against Corruption can serve as a complement to the bilateral convention that has become inadequate.

513. For example, the bilateral extradition Treaty with Thailand includes the following list of “extraditable offences”:

Extradition convention between Belgium and Siam, signed in Bangkok, on January 14, 1937

Article 2

Extraditable crimes and offences relevant to the Convention against Corruption and the provision under review (Remark: for the sake of brevity, only crimes related to corruption have been retained):

...

9° Criminal associations;

10° Theft, extortion, fraud, breach of trust, deception;

11° Threats of attacks against people or property, punishable by death penalty, hard labor or imprisonment;

12° Offers or proposals to commit a crime or participate in one, or the acceptance of such offers or proposals;

13° Attacks against individual freedom and against the inviolability of one's home committed by individuals;

14° Forged money, including counterfeiting and the alteration of currency, the emission and issuance of the counterfeit or altered money, as well as fraud in the selected samples reserved for the verification of authenticity and the weight of currency;

15° Counterfeiting or falsifying public effects or bank notes, public or private titles; the emission or issuance of these counterfeit or falsified effects, notes or titles; forgery in documents or telegraphic dispatches and the usage of these counterfeit, fabricated or falsified dispatches, effects, notes or titles;

16° Counterfeiting or falsifying seals, stamps, mint marks, prints, tickets for the transportation of people or items, post stamps or other adhesive stamps, and the usage of these counterfeit or falsified objects; the detrimental usage of real seals, stamps, mint marks and prints; malicious or fraudulent application on a work of art, a work of literature or music of the name of an author or of any distinctive signature adopted by him in order to refer to his work; the sale, the display for sale, ownership in stores, introduction in the territory, in order to be sold, of said objects;

17° False testimony and false statements of experts or interpreters; subordination of witnesses, experts or interpreters;

18° False oath;

19° Misappropriation, embezzlement committed by public officials, bribing public officials;

20° Fraudulent bankruptcy and frauds committed in bankruptcy;

...

26° Obstruction to the execution of public works;

...

28° The grounding, loss, destruction by the captain or the officials and crew, misappropriation by the captain of a vessel or a merchant or fishing ship; partially or totally throwing or destroying, without it being necessary, the cargo, supplies or effects aboard; false route; borrowing, without it being necessary, from the body, victuals or equipment of the vessel, or pawning or selling the merchandise or victuals, or their employ on account for damages or supposed expenses; sale of the vessel without special authority, except in the case of unseaworthiness; theft committed aboard; the alteration of supplies or merchandise committed aboard by mixing harmful substances; attack or opposition with violence and mutiny against the captain by more than a third of the crew; refusal to obey the orders of the captain or an officer of the vessel to rescue a vessel or the cargo, by violent means; scheme against the security, liberty or authority of the captain; the taking of the vessel by marines or passengers by fraud or violence against the captain;

29° Concealing objects obtained by means of one of the crimes or offences provided by the present convention. The complicity and the attempt, when punishable by the laws of both countries, are included in the previous qualifications.

514. Extradition may only take place when a similar act is punishable under the legislation of the country to which the request is addressed. “Modern” offences, such as drug trafficking, (participation in) organized crime, laundering, human trafficking, bribery etc. are not included in this list. The UN treaties can serve as complements.

515. Belgium explained that dual criminality is always required. Belgium explained that the implementation of the dual level rarely poses a problem. Only in the cases where the extradition is -solely- requested with the purpose of prosecuting or of enforcing a sentence of deprivation of liberty for road traffic offences, it is possible that the sentence provided or imposed in the requesting State Party greatly exceeds the level of the Belgian sentence, which is well below the minimum level provided by the applicable extradition convention and the Belgian law. When the extradition is requested for the enforcement of a passed sentence, it must be equal to a period of at least one year of imprisonment. When it deals with the enforcement of a detention order, the deprivation of liberty ordered must be of an undetermined duration or be equal to at least four months.

(b) Observations on the implementation of the article

516. Belgium explained that all the offences of the Convention are punishable under Belgian law. Apart from other offences under common criminal law that may also apply to a given case (e.g. fraud, forgery and use of forged documents, participation in a criminal organisation etc.), corruption, in its different forms, is an offence in accordance with articles 246 – 250 and article 252 Criminal Code – articles inserted by Act 10 February 1999.

517. Belgium is in compliance with the provision under review.

Paragraph 3 of article 44

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

518. Belgium indicated that it has implemented this provision of the Convention, and cited the following provisions as applicable:

Extradition Act of 15 March 1874

Article 1, §2 and 3

§ 2. Only acts punishable, under the terms of the Belgian and foreign law, with a sentence of deprivation of liberty where the maximum term exceeds a year, may give rise to extradition.

When the extradition is required for the enforcement of a sentence, it must be equal to a period of at least one year of imprisonment. In the case of the enforcement of a detention order, the deprivation of liberty ordered must be of an indeterminate duration or be of at least four months.

§ 3. If the request for extradition includes various different acts, each punishable, under the terms of the Belgian and foreign laws, by a sentence of deprivation of liberty but where certain of them do not fulfil certain conditions with regard to the scope of the sentence, the extradition may also be agreed to for these acts even if they are solely sanctioned by fines.

519. Belgium explained that it is rather exceptional that an extradition is (also) requested for other offences that are not punishable with the minimum sentences provided for in the Convention or applicable extradition treaty or within the Belgian Extradition Act (aforementioned article 1§3).

520. Incidental extradition has never been a problem. Insofar as one or more offences are not punishable by anything other than a sentence of deprivation of liberty of, for example, a couple of months, or a fine, as soon as a single act (re-qualified in abstracto under the terms of the dual criminality) is included at a minimum level, the other acts which are not included in this level shall be “connected” to this act. Belgium implements the incidental extradition in all cases.

(b) Observations on the implementation of the article

521. Extradition for accessory offences is possible under article 1 paragraph 3 of the Extradition Act 1874. Belgium is in compliance with the provision under review.

Paragraph 4 of article 44

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

522. Belgium indicated that it has implemented this provision of the Convention.

523. Belgium explained that the offences of the Convention cannot be considered a political offence. The potential field of application political offence exception as contained in the sole remaining article 6 of the original Extradition Act 1833. The scope of this article was significantly reduced in 2007 (Act 15 May 2007) when article 6 was adapted in order to exclude certain categories of offences. The current article 6 excludes terrorism (related) offences and crimes against international (humanitarian) law from the scope of application. Theoretically, ‘corruption’ could be considered a political offence –

as long as the conditions in article 6 are fulfilled; however, the possibility that this would ever happen is virtually non-existent. Corruption is by definition a common offence which does not require the intent to change or to overthrow the existing political order of a State. A person sought may invoke the political nature of the corruption he or she – allegedly – committed, yet it would be almost impossible to prove these allegations to or beyond the extent that the political offence exception would require for its limited scope of application.

Extradition Act of 1 October 1833

Article 6

1. It shall be expressly stipulated in these treaties that the foreigner may not be prosecuted or punished for any political offence prior to the extradition, nor for any act connected to any similar offence, nor for any crime or offence not provided for by the present law; otherwise, any extradition and provisional arrest shall be prohibited.
2. An assault against the head of a foreign government or against members of his family shall not be deemed as a political offence or linked to a similar offence when said assault consists of either murder, assassination, or poisoning. The constitutive act of an offence as defined by an international instrument with regard to terrorism or referred to by an international instrument concerning international humanitarian law, shall no longer be deemed a political offence, nor be linked to a similar act, when the extradition is requested on the basis of this instrument and when this involves Belgium and the requesting State Party and explicitly prohibits the refusal of the extradition for political offence, without the possibility of reservation under the law of the treaties.
3. By way of derogation of paragraph 1 of the present article, the government may, on a reciprocal basis, hand over to the governments of the countries associated with Belgium during a war against a common enemy, any foreigner that is, within the aforementioned countries, prosecuted or condemned for a crime or offence against the external security of the State, committed at the time of this war.
4. Nevertheless, it shall be stipulated in these extradition treaties concluded under the previous paragraph, that the extradited individual may not be prosecuted in the requesting State Party due to a political action undertaken for the benefit of the requesting State Party.
5. Likewise, the government may hand over to the governments of the countries referred to in paragraph 3 of the present article, with the purpose of being judged or of serving their sentence, any foreigner prosecuted or condemned for war crimes by the authorities of the aforementioned countries.
6. The government regulates the forms and terms of the extraditions agreed to under paragraphs 3 to 5.

(b) Observations on the implementation of the article

524. In line with article 6 of the 1833 Extradition Act, the Convention offences are not considered political offences in Belgium. Belgium is in compliance with the provision under review.

Paragraph 5 of article 44

5. *If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

(a) Summary of information relevant to reviewing the implementation of the article

525. Belgium indicated that it has implemented this provision of the Convention. Belgium considers the Convention as the legal basis for extradition in respect to corruption offences.

Extradition Act of 15 March 1874

Article 1

The Government may, for the execution of treaties concluded with foreign States on the basis of reciprocity, agree on the extradition of any foreigner who, as perpetrator, co-perpetrator or accomplice, is prosecuted for an offence to criminal laws or is sought in order to enforce a sentence or a detention order by the judicial authorities of the foreign State.

526. According to the cited provision of the Extradition Act, Belgium makes extradition conditional on the existence of a treaty. However, in the absence of applicable treaties or where bilateral treaties date back to 19th or 20th century and do not include modern types of crime (such as corruption, organized crime or money-laundering), the Convention can serve as a subsidiary or autonomous legal basis for extradition. Usually (or when required by the requested State), an ad hoc diplomatic assurance of reciprocity is also added.

527. As of mid-2017, Belgium has not yet sent or received an extradition request based on the Convention against Corruption. However, Belgium shared some experience with requests based on the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Convention on Transnational Organized Crime. Belgium has accepted (in a “passive” sense) and formulated (in an “active” sense) requests for extradition from/to countries with which no “specific” extradition treaty, whether bilateral or multilateral, has been concluded. In these cases, a UN treaty, has served as an adequate conventional “subsidiary” basis. Belgium does not require a specific internal legislation which permits accepting or basing extradition requests only on the UN treaty, such as the Convention against Corruption. In the “active” sense, Belgium has encountered problems with some States who do not accept, according to their internal law, a UN instrument as sufficient basis for an extradition request. In such cases, the country in question has not (yet) taken internal legislative measures that permit the acceptance of extradition requests which are based only on a UN instrument. In other cases, Belgium was unable to request the extradition given the lack of accession or ratification by certain countries of the Convention against Transnational Organized Crime, in particular with regard to Belgian extradition requests in cases of human trafficking.

528. Belgium summarized that there were four possibilities with regard to the plan of the conventional basis of an extradition request.

a. The request is based on a bilateral or multilateral treaty or convention—in particular the

European Convention on extradition and its protocols.

b. The request is based on a bilateral treaty or convention that still includes a restrictive list of offences for which extradition may be requested and, *mutatis mutandis*, be agreed to. Insofar that this list is not updated and does not include modern offences such as the participation in a criminal organization, human trafficking or, as the case may be, any form of bribery, a UN instrument may amend the bilateral list. If need be, a statement of reciprocity *ad hoc* may be annexed.

c. In case there is no extradition document, the request may be based solely on a UN instrument. The convention basis for the extradition is therefore purely of a subsidiary character. If need be, a statement of reciprocity *ad hoc* may be annexed. For example: if China would request the extradition of a person sought who is located in Belgium – and is not a Belgian national – for international drug trafficking, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 or the older Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol are considered a sufficient Treaty basis to allow extradition, even in the absence of a bi- or multilateral extradition Treaty or Convention that binds Belgium and China. Contrary to some UN-Treaty parties, Belgium does not require any specific legal provisions to allow any of the UN instruments to serve as an autonomous yet subsidiary basis for extradition.

d. If no conventional basis is available—particularly if the acts are not qualified as a regular offence by a UN instrument and there is no bilateral convention signed or ratified—Belgium being the requesting State may of course still request the extradition. In those rare cases, the acceptance of the extradition request relies solely on the domestic legislation of the requested State. If the latter would be able to accept the extradition request, yet would require a (diplomatic) reciprocity assurance, Belgium would not be able to comply since a Treaty basis is always required in case the requested State would be the requesting State *vis-à-vis* Belgium in a future, similar case.

(b) Observations on the implementation of the article

529. Belgium makes extradition conditional on the existence of a treaty (article 1 of the Extradition Act). However, the treaty requirement is applied in a broad sense and the Convention against Corruption can serve as a legal basis for extradition in the absence of applicable treaties or where bilateral treaties have become inadequate in terms of extraditable offences.

530. Belgium is a party to the Council of Europe European Convention on Extradition (1957) and its first two supplementary protocols (1975 and 1978). At the European Union level, the Council Framework Decision on the European Arrest Warrant is applicable. Belgium has also concluded bilateral extradition treaties with 41 States, although some are obsolete which limits the scope and legal basis notably outside of EU.

531. Reciprocity alone, without a treaty basis, is insufficient to grant extradition.

532. Belgium is in compliance with the provision under review.

Paragraph 6 of article 44

6. *A State Party that makes extradition conditional on the existence of a treaty shall:*

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

533. Belgium informed that it has implemented the provision under review. Belgium referred to its response under paragraph 5 of article 44 of the Convention, stating that it takes the Convention against Corruption as the legal basis for cooperation on extradition. Belgium has notified the Secretary-General in this regard. As stated above, it is sufficient to have a signed and duly ratified international (UN) instrument in order to be able to apply the instrument to the fullest extent, i.e. including its application as the (sole) Treaty basis for extradition.

(b) Observations on the implementation of the article

534. Belgium is in compliance with the provision under review.

Paragraph 7 of article 44

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

535. Belgium referred to its response under previous paragraphs of article 44 of the Convention, in particular article 1 of the Extradition Act 1874 and the fact that Belgian law requires (Belgium being the requested State) a conventional basis for extradition. Reciprocity alone (ad hoc) is not sufficient for granting extradition.

(b) Observations on the implementation of the article

536. Belgium is in compliance with the provision under review.

Paragraph 8 of article 44

8. Extradition shall be subject to the conditions provided for by the domestic law of the

requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

537. Belgium indicated that it has implemented the provision under review. The conditions for extradition and the exceptions to extradition are referred to in the Extradition Act 1874, particularly in articles 1 (conventional basis, national exceptions, dual criminality, level of the sentence), 2 (extraterritoriality), and 2bis (fundamental rights and death penalty) and article 7 (statute of limitations).

Extradition Act 1874

Article 1

§ 1. The Government may, for the execution of treaties concluded with foreign States on the basis of reciprocity, agree on the extradition of any foreigner who, as perpetrator, co-perpetrator or accomplice, is prosecuted for an offence of the criminal laws or is sought in order to enforce a sentence or a detention order by the judicial authorities of the foreign State.

A detention order, within the current law, shall be understood as all measures of deprivation of liberty which are ordered in addition or substitution of a sentence, by decision of a criminal court.

§ 2. Only acts punishable, under the terms of the Belgian and foreign law, by a sentence of deprivation of liberty where the maximum term exceeds a year, may give rise to an extradition.

When the extradition is required for the enforcement of a sentence, the sentence must be equal to a period of at least one year of imprisonment. In the case of the enforcement of a detention order, the deprivation of liberty ordered must be of an indeterminate duration or be of at least four months.

(Revoked paragraph 3) § 3. If the request for extradition includes various different acts, each punishable, under the terms of the Belgian and foreign law, by a sentence of deprivation of liberty but where certain of them do not fulfill certain conditions with regard to the level of the sentence, the extradition may also be agreed to for these acts even if they are solely sanctioned with fines.

Article 2

Nevertheless, when the crime or offence that gives rise to the request of extradition was committed outside of the territory of the requesting party, the Government may only free, on the basis of reciprocity, the prosecuted or condemned foreigner in the cases where the Belgian law authorizes the prosecution of the same offences committed outside of the Kingdom.

Article 2bis

The extradition may not be agreed to if there exist serious reasons to believe that the request was presented with the purpose of prosecuting or punishing a person on the basis of their race, religion, nationality or political opinions, or that the situation of this person runs the risk of being worsened by one or more of these reasons.

The extradition may not be agreed to, with all the more reason, if there exists serious risk that the person, should they be extradited, will be subjected in the requesting State Party to a flagrant denial of justice, to acts of torture or inhumane and degrading treatments.

When the offence for which the extradition is required is punishable by death penalty in the requesting State Party, the government may only agree to the extradition if the requesting State Party gives its formal assurance that the death penalty will not be enforced.

Article 7

The extradition cannot take place if, after the imputed act, the prosecutions or the condemnation, the statute of limitations for the action or the sentence enters into force under the laws of Belgium.

538. The (non-) statute of limitations for public action or for (the enforcement of) the sentence is a condition that sometimes causes problems. The extradition conventions and treaties (see for example article 10 of the European Extradition Convention – 1957) as well as the internal law (see article 7, Law of 1874) requires that the public action of the sentence is not subjected to a statute of limitations according to the law of the requested State Party and according to the requesting State Party. The moment of the extraditable decision is the point of reference. Just as the condition of dual criminality, the “dual” statute of limitations is also evaluated in abstracto (e.g. can the facts that are an offence in both States still be prosecuted in both States? Can the imposed sentence for the facts that are offences in both States still be executed in both States?). This means that if the facts are requalified under Belgian law as a ‘crime’ (the most serious category of an offence), Belgium applies the longer statute of limitations, even if the same ‘crime’, if committed in Belgium, would not be prosecuted as ‘crime’ and for which shorter statute of limitations would apply. For example, the acts are re-qualified as a crime according to Belgian law (having a maximum sentence of at least 5 years of imprisonment), the 10-year period of the statute of limitations for public action is applicable (15 years in the case of murder) and not the statute of limitations period for the correctional offence in the case where the crime will be automatically subjected to a correctional court according to Belgian law. For example: theft qualifies as a crime according to the Belgian criminal code, however, at the national level this crime is always subjected to a correctional court. In the extradition context, this offence remains as a crime, and the statute of limitations remains as the “criminal” period of 10 years.

539. In the context of extradition, problems can have effects on the possibility of agreeing to extradition, in particular if Belgium is the requested State Party. The Belgian legislation with regard to the statute of limitations for public action includes relatively restrictive periods, and at the same time the law includes a non-restrictive list of interruptive and suspensive acts. Basically, each act of proceedings or instructions has, in principle, an interruptive effect. According to the jurisprudence of the Court of Cassation, Belgium may recognize foreign acts that have a similar effect (that is: interruptive or suspensive). In some cases, this will require Belgium to request supplemental information with respect to intervening acts of either prosecution and / or investigation that have a suspending or interrupting effect to lapse of time in accordance with Belgian criminal (procedure) law. The foreign intervening acts usually have similar suspending or interrupting effect in Belgium and are taken into account accordingly. As

a consequence, Belgium has a wide range of possibilities to avoid a refusal extradition for the sole reason of lapse of time. Insofar as the acts (the alleged offences) were committed in the past, in general more than 10 years ago, it is necessary to request before the requesting State Party additional information that allows for the identification of similar acts and for the reevaluation of the statute of limitations according to Belgian law.

540. In what concerns the statute of limitations of the sentence, this problem is less apparent. On the other hand, if the extradition is based on a condemnation that dates more than 10 years (correctional offences where the sentence exceeds 3 years of imprisonment) or more than 15 years (crimes, the sentence exceeds 5 years of imprisonment), the only manner of “saving” the statute of limitations in Belgian law is arrest—likewise, with the purpose of extradition. Only the arrest of the requested person interrupts the statute of limitations.

541. Belgium noted the importance of signing and ratifying the 4th additional Protocol to the European Extradition Convention (1957) dated September 20, 2012. Article 1 of this Protocol replaces article 10 of the “mother” Convention:

Article 1 – Statute of Limitations

Article 10 of the Convention is replaced by the following provisions:

“Statute of Limitations

1 The extradition shall not be agreed to when the statute of limitations for the action or sentence enters into force under the legislation of the requesting Party.

2 The extradition shall not be refused by reason that the statute of limitations for the action or sentence will enter into force under the legislation of the requested Party.

3 Any State Party may, at the time of signing or upon delivery of its document of ratification, acceptance, approval or adhesion, state that it reserves the right to not implement paragraph 2:

a) When a request for extradition is based on offences for which this State Party is competent under its own criminal law; and/or

b) If its internal legislation expressly prohibits extradition when the statute of limitations of the action or sentence will enter into force under its legislation.

4 With the purpose of determining if the statute of limitations for the action or sentence may enter into force under its legislation, any Party which has made a reservation under paragraph 3 of the article hereto shall take into consideration, in accordance with its legislation, any act or fact that intervened with the requesting Party, insofar that the acts or facts of the same nature have by effect the interruption or suspension of the prescription in the requested Party.”

542. During the ratification, it is important not to make a reservation such as it is provided by paragraph 3, which excludes the application of paragraph 2. This latter restricts the reason for refusal of the statute of limitations for the public action or sentence according to the law of the requesting State Party. As in the EAW system, the prescription according to the law of the requested State Party is no longer a reason for refusal.

543. Belgium does not extradite its nationals (article 1, law of 1874). If, as the case may be, the sought or requested person has obtained Belgian nationality or has dual nationality (also having Belgian nationality), the requesting State Party is always invited

to denounce the acts with the purpose of prosecuting them in Belgium under the general principle of international law “aut dedere, aut judicare”, or to transfer the enforcement of the sentence (“aut dedere, aut exequie”). Nevertheless, this latter alternative to extradition requires a conventional basis.

544. An important reason for refusal—which is however not applicable in all cases—is based on fundamental rights, such as article 3 and 6 as well as article 14 (nondiscrimination clause) of the Convention of human rights—see article 2bis on the law on extradition of 1874.
545. Insofar that the sought person invokes one such reason, an analysis is carried out based on the request for extradition and the evidence, and as the case may be, it shall be likewise performed on the basis of additional information requested. In very rare cases, clear and concrete diplomatic guarantees are solicited from the requesting party. The analysis is always carried out in the framework of the jurisprudence of the applicable ECHR with regard to the case at hand, as well as the national jurisprudence in this context. The reports made by governmental institutions (US State Department, etc.), international organizations (UN, CPT, etc.) as well as ONG take part in the in-depth analysis.
546. In the case of terrorism, the extradition to Morocco has been highly problematic under article 3 of the Convention on Human Rights. Some extradition requests have been refused under this basis.
547. Belgium also reminded of article 6 of the 1833 Extradition Act as applicable (*cited above*). Belgium explained that article 6 is the only article of the first Belgian law on extradition that remains in force. The article only includes the classic exception of political offences. The article has been amended—the implementation of this exception is greatly limited by the exclusion of certain types of international offences under the applicable international documents.
548. Belgium regulates the forms and terms of the extraditions agreed to under paragraphs 3 to 5. The rogatory notices issued by the competent authority of the countries referred to in paragraph 3 and concerning the offences indicated there may be enforced in Belgium. When they tend to proceed with either a house search, a seizure of the corpus delicti or of evidence, the council chamber of the court of first instance of the place where the search and the seizure is carried out, shall decide if there is reason or not to hand over, in whole or in part, the documents and other seized objects to the requesting government. The last paragraph of article 11 of the law of March 15, 1874, is, in this case, applicable.
549. Regarding the question of whether the double jeopardy may also be a refusal ground, Belgium responded that with the exception of extradition requested to and from the United States of America, ‘double jeopardy’ does not apply. Instead the principle of ‘ne bis in idem’ applies. Under the latter, the identity of facts or acts is needed, while under ‘double jeopardy’, the offences must be identical. Double jeopardy does offers a lesser level of protection than the European concept of ne or non bis in idem. Article 5(§1) of the bilateral extradition Treaty between Belgium and the US contains the ‘offence’-based principle of ‘double jeopardy’ as a potential ground for refusal of extradition – the sole exception to the ne bis in idem principle contained in all other bi- and multilateral extradition instruments and in the Extradition Act (1874). For a discussion of double

jeopardy and its comparison to ne bis in idem, see: Michael ABBELL, Extradition to and from the United States, Leiden-Boston, Martinus Nijhoff-Brill, loose leaf, 52-58 et M. Cherif BASSIOUNI, International Extradition. United States Law and Practise, New York, Oxford University Press-Oceana, 5th edition, 2007, p. 749.

550. Belgium explained that this is both the minister of justice and the court who decides on the refusal grounds, yet in the end the Government, being in practise the Minister of Justice, decides to grant extradition (or not, or in part). In case extradition is requested for the (sole) purpose of prosecution, a preliminary exequatur is required in order to create a new basis for the – continued arrest / detention – of the person sought. The court's role is to perform a prima facie verification of the conditions and the possible occurrence of exceptions to extradition. Belgium referred to the general overview of the Belgian extradition process inserted above.

(b) Observations on the implementation of the article

551. Belgium regulates the conditions for extradition in the Extradition Act 1874 and article 6 of the Extradition Act 1833. Belgian extradition law relies on the principles of dual criminality, reciprocity, the minimum penalty requirement of twelve months and non-extradition of nationals.

Paragraph 9 of article 44

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

552. Belgium indicated that it has implemented the provision under review. While the Belgian Extradition Act 1874 does not include provisions that regulate the simplified extradition procedure, this procedure is provided for in five ministerial circulars dated at the end of the 19th century and the start of the 20th century. These circulars have been removed and replaced by the Global Ministerial Circular on Extradition of 2005 (a new version will be issued in 2017).

553. The Circular on Extradition provides for simplified proceedings in cases where the person, whose extradition is sought, gives their consent. It involves an informed consent which is to be given before the prosecutor and in presence of a lawyer and an interpreter. Following this consent, the procedure will be shortened; at the same time the extradition specialty is no longer applicable.

554. Belgium has not yet ratified the 3rd additional Protocol to the European Extradition Convention (1957) which regulates in detail the simplified procedure. The Protocol allows for an even further simplified procedure – that no longer requires an extradition request insofar that the individual consents to their extradition during the period of provisional arrest.

555. Belgium clarified that it is exceptional that a sought or requested individual gives their consent for their extradition. In any case, an extradition request is necessary. Every person sought is interrogated by the prosecutor with respect to the eventual consent to the simplified extradition procedure. The person sought is informed of this option in the presence of his / her lawyer and an interpreter (if needed).

(b) Observations on the implementation of the article

556. The Global Ministerial Circular on Extradition (2005) provides for simplified proceedings in cases where the person, whose extradition is sought, gives their consent. The planned ratification of the third Protocol to the CoE European Extradition Convention will allow for further expediting of extradition proceedings.

557. Belgium is in compliance with the provision under review.

Paragraph 10 of article 44

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

558. Belgium indicated that it has implemented the provision under review and referred to art. 5 (provisional arrest) and 3 (the extraditable detention per se, following the arrival of the extradition request) of the 1874 Extradition Act regulating the extraditable detention.

Extradition Act 1874

Article 3

The extradition will be agreed to on either the submittal of the judgment or the sentence of condemnation, the ruling of the council chamber, the decision of the indictment division or the certificate of the criminal procedure, issued by the competent judge, formally decreeing or operating in its full right the dismissal of the defendant or of the accused before the repressive jurisdiction, delivered in its original or a certified copy.

Likewise, it will be agreed to on the submittal of the arrest warrant or of any other certificate with the same force, conferred by the competent foreign authority, provided that these certificates make reference to the exact act for which they are delivered and that they are made executory by the council chamber of the court of first instance of the place of residence of the foreigner in Belgium or of the place where he can be found.

The documents referred to in the first and second paragraphs can be produced in facsimile in the case where an international convention expressly provides it and

under the certification conditions established by it.

As soon as the foreigner has been imprisoned in the enforcement of one of the documents mentioned above, of which he will be duly informed, the government shall take the notice of the indictment division of the court of appeal to the jurisdiction where said foreigner has been detained.

Article 5

In case of emergency, the foreigner may be provisionally arrested in Belgium, for one of the acts mentioned in article 1, by presenting an arrest warrant issued by the instruction judge of the place of residence of the individual or the place where he may be found, and justified by means of an official notice given to the Belgian authorities by the authorities of the country where the foreigner will be condemned or prosecuted.

In this case, they will always be released if, during the period of forty days from the date of his arrest, he does not receive communication on the arrest warrant issued by the competent foreign authority.

(Revoked paragraph) After the arrest order, the instruction judge is authorized to proceed following the rules prescribed by articles 87 to 90 of the code of criminal procedure.

The foreigner may request parole in the cases where a Belgian enjoys this right and under the same conditions. The request shall be submitted to the council chamber.

(...)

559. Belgium explained that provisional arrest is a “routine” measure which is applicable on a case by case basis to each sought fugitive or individual. An Interpol Red notice is a sufficient basis for provisional arrests because it is considered as a provisional arrest warrant. The only criterion is the existence of urgency, where there is an immediate risk of escape.
560. Belgium clarified that extraditable detention is the rule, being released (under terms and conditions) is the exception – also see: ECHR, *Sanchez-Reisse c. Switzerland*, req. no. 9862/82, decision of October 1986, §§ 56-57. In the case where the individual is released, the duration of the arrest has been excessive (due to a procedure of parallel asylum and/or the application of a “provisional measure, which prevents the submission of the ECHR.) Also in these cases, the requested release may be contested given the existence of a risk of escape.
561. Extraditable arrest is the prerequisite for extradition. Each procedure of extradition starts with the arrest, whether it is the provisional arrest that precedes the extraditable arrest per se. It is exceptional for the individual being searched for to be released; as the case may be, a bail and certain conditions, particularly the seizure of their passport and an obligation of submitting to regular police monitoring, will be imposed. In some cases, these restrictive measures have unfortunately not prevented escape, thus resulting in a new evasion of the individual (having escaped the requesting State Party). In these rare cases, the prosecution and the federal police are immediately in charge of denouncing the person at national level and of carrying out investigative activities. In some cases, the individual has been found and arrested once more.

562. Typical conditions for provisional release – apart from posting bail – are a periodical visit & registration to / at the local police office, seizure of travel documents and the registration at a fixed residence (address) as well as the standard obligation to remain in the designated area, excluding any travel. Belgium clarified that any foreigner, subject to a provisional arrest request – usually a valid Interpol Red Notice – or to a (subsequent) extradition request and who is either provisionally arrested or (subsequently) detained for the purpose of extradition may request his or her provisional release to the first instance tribunal’s chamber. That decision may be appealed by either the wanted person / the person sought or by the prosecutor. A final supreme court appeal may be launched against the Court of Appeals’ chamber’s decision. The legal basis for requests for provisional release is article 5 paragraph 4 of the Extradition Act (1874) and article 5§1 f) j° 5§4 of the ECHR. As such there are no conditions to filing a request for provisional release. However, it is obvious that such a request during the provisional arrest stage – which is limited in time anyway – is baseless unless a clear lack of an imminent threat of (re-)flight can be shown. After the provisional arrest stage, a perceived excessive length of the detention for the (sole) purpose of extradition will not be sufficient if the length of the proceedings and thus the length of the detention is at least partially attributed to the person sought. The Belgian Supreme Court has also stated that when deciding upon the ‘merits’ of a provisional release request, the courts may not rely on future, speculative events or submissions such as the alleged long duration of the continued detention for instance caused by a provisional measure imposed by the ECtHR. Also the lack of any previous request for provisional release or the overtly long period of time between two requests will lead to the dismissal of the request - all in accordance with standing case law of the ECtHR. Along the lines of *Sanchez-Reisse v. Switzerland*, detention (for the purpose of extradition) is the rule, release the exception. That applies to Belgium as well. Even if conditions and / or bail is offered, release is generally denied since conditions and / or bail have proven not to be adequate to avoid flight.

(b) Observations on the implementation of the article

563. Provisional arrest of a person sought can be ordered on a case by case basis, in accordance with articles 3 and 5 of the Extradition Act. An Interpol Red Notice can serve as a sufficient basis for provisional arrests. In exceptional cases it is possible to order the release on bail or to take other alternative measures, such as passport confiscation or regular police monitoring.

564. Belgium is in compliance with the provision under review.

Paragraph 11 of article 44

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the

efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

565. Belgium indicated that it has implemented the provision under review. It explained that while the Extradition Act 1874 does not include the principle of “aut dedere, aut judicare”, the application of this principle (linked to the exception for extradition because of the nationality of the person) is explicitly provided for in article 6§2 of the European Convention on Extradition. This provision is directly applicable in Belgium as the Party to the Convention.

Extradition Act 1874

Art. 6, §2

If the requested Party does not extradite its citizen, it must, at the request of the requesting party, submit the case to the competent authorities with the purpose that judicial proceedings can be enforced if applicable. To this effect, the records, information and objects related to the offence will be sent free of charge by the means provided in paragraph 1 of article 12. The requesting Party shall be informed of the result of its request.

566. Because the principle of “aut dedere, aut judicare” is a general principle of the international law, Belgium implements it in all the cases where the extradition is refused, which is to say, also outside of cases in which the (Belgian) nationality of the individual being sought prevents the extradition. As soon as the decision has been taken to refuse the extradition, the requesting State Party is informed and simultaneously invited to denounce the acts and transmit all usable elements (the case file) for the purpose of prosecuting the acts in Belgium. It is emphasized that the principle of “aut dedere, aut judicare” does not demand, in the case where the extradition is refused, the prosecution of the case in the requested State Party: the principle is restricted to the obligation of evaluating the possibilities (in concreto) of prosecuting the case. It is evident that, in the case where the extradition is refused due to the lack of dual criminality (the acts are not punishable in Belgium) or after verifying the statute of limitations of the public action according to Belgian law, the application of the principle of “aut dedere, aut judicare” will be excluded: if the condition of dual criminality in abstracto is not fulfilled or if the public action has already lapsed in abstracto, even after having taken into account causes for the interruption or suspension of the statute of limitations – it is thus self-evident that Belgium is not in a position to prosecute the acts. The exercise of territorial or extraterritorial jurisdiction implies that the facts are punishable according to Belgian law and that the public action can be enforced – that is to say: the public action has not lapsed– in concreto.

567. With regard to examples of implementation, in an important case of terrorism, the extradition was refused due to reasons linked to the fundamental rights of the person being searched for. Currently, the Belgian public action is being exercised: the individual in question shall be judged before a Belgian court of assize in 2015. It must be emphasized that the preparation of the case required the opening of an instruction and the exchange of a great number of requests of mutual legal assistance, including multiple displacements of magistrates and police officers. Basically, the instruction and the foreign prosecutions were redone due to the demands of the Belgian procedure and with

the purpose of assuring the acceptability of evidence. In other cases of terrorism (and financing of terrorism and money laundering), the persons being sought after have obtained the status of refugee with regard to their country of origin, at the same time the requesting State Party. Under the principle of non-refoulement (art. 33 Convention of refugees, Vienna, 1951), the extradition is therefore not possible. In four similar cases, the persons concerned are the object of prosecutions in Belgium. In these cases, it is therefore possible, through mutual assistance, to include the foreign case files in the Belgian case file. There are no examples linked to cases of bribery.

568. Belgium explained that the application of the principle of “aut dedere, aut judicare” is rare. Belgium always gives priority to its conventional obligations to extradite persons being searched for. In exceptional cases, Belgium requests from the requesting State Party the transference of any usable element which allows the evaluation of prosecutions in Belgium.

569. The practical application of the principle poses quite a few problems, except with regard to jurisdiction (extraterritorial) issues and the requirements “in concreto” in the plan of dual criminality and specially at the level of the statute of limitations for the public action, it is difficult to simply “retake” a foreign case file, sometimes very large and complex. The evidence is gathered according to the procedure and on the basis of foreign practices, the entirety of the evidence is not in one official language, the translation takes time and money, additional tasks are necessary, ...

570. Belgium has not concluded a convention for the transference of proceedings and has not yet ratified the European Convention (1972) of the Council of Europe. Therefore, there is no basis that allows in a mandatory manner—if all the conditions are met—the transference of proceedings and ensuring a proper result to such a transfer.

(b) Observations on the implementation of the article

571. Belgium does not extradite its nationals. In cases involving its nationals, the requesting State Party is informed and simultaneously invited to denounce the acts and transmit all usable elements (the case file) with the purpose to initiate domestic prosecution against them in Belgium, in line with the principle aut dedere, aut judicare. The only exception is the scheme of European arrest warrants, which allows for the extradition of Belgian nationals to other EU member States as long as the prescribed conditions are met.

572. Belgium clarified that extradition has never been refused because of the nationality of the person sought. In all cases and in the rare case of doubt, the Belgian nationality was established either before the provisional arrest is made – by the investigating judge – or during the provisional arrest stage. All these cases did not even reach the stage(s) beyond the arrival of the extradition request, mutatis mutandis, a final decision re. the extradition. The requesting State is always invited to apply aut dedere, aut judicare and if possible aut dedere, aut exequie if a proper Treaty basis exists. In practice, States do not seem to be eager to let Belgium try ‘their’ case. Recently Belgium applied the same vis-à-vis Albania and Albania is actually prosecuting the wanted person – an Albanian national for the murder he allegedly committed in Brussels. It should be underlined that requesting another state to prosecute one’s own cases raises a broad range of practical hurdles: a voluminous case file needs to be translated and there is always the question

whether the other side is willing to invest time, effort and money in a foreign case.

573. Regarding the question of whether Belgium is planning to ratify the European Convention (EVOS), Belgium explained that the 1972 Convention is on the short list of to be ratified Convention. The ratification will not be sufficient: measures need to be taken to ‘implement’ the instrument and to facilitate prosecution on the basis of a foreign case file. We expect starting the ratification process during the second half of 2016.

Paragraph 12 of article 44

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

574. Belgium indicated that it has not implemented the provision under review since it does not extradite its nationals, not even under the application of “a guarantee of return” (a transfer after having been definitively condemned.)

575. The handover of nationals is possible within the European Union, on the basis of the European arrest warrant. The framework decision provides for the opinion of imposing a “guarantee of return” at the moment of the (final) decision of handing over a national or a foreigner that is a habitual legal resident for the purpose of proceedings. If the handover is requested with the purpose of enforcing a (definitive) sentence, the Framework Decision and the law on the EAW permit refusing to the enforcement of the EAW (thus the handover) of a national or a foreigner who has a fixed residence in Belgium and enforcing the sentence as an alternative.

576. Under the extradition-scheme, Belgium does not extradite its nationals, nor for the purpose of prosecution (under the condition of ‘return’ in order to serve the foreign sentence in Belgium – the so-called ‘Dutch Clause’), neither for the purpose of the execution of a sentence or measure involving deprivation of liberty. Under the EAW-scheme, the provisions of the Framework Decision are strictly followed, which means that as far as Belgian nationals and legal residents are concerned, the surrender is possible under the condition of ‘return’ in case the surrender serves prosecution or, in case surrender is not granted, that the sentence will be executed in Belgium, i.e. a mandatory “aut dedere, aut exequie” applies.

(b) Observations on the implementation of the article

577. Belgium does not extradite its nationals. In cases involving its nationals, the requesting State Party is informed and simultaneously invited to denounce the acts and transmit all usable elements (the case file) with the purpose to initiate domestic

prosecution against them in Belgium, in line with the principle *aut dedere, aut judicare*. The only exception is the scheme of European arrest warrants, which allows for the extradition of Belgian nationals to other EU member States as long as the prescribed conditions are met.

Paragraph 13 of article 44

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

578. Belgium indicated that it has implemented the provision under review.

579. The application of the principle of “*aut dedere, aut exequie*” requires a conventional basis that permits the enforcement of a foreign sentence (deprivation of liberty)—being inversely abroad. This transfer of the enforcement of the sentence may be a valid alternative for cases where extradition is excluded.

580. As a conventional basis, Belgium referred to article 68 of the Convention implementing the Agreement of Schengen. This provision permits, at the level of the Schengen Area, the transfer of the enforcement of sentences of deprivation of liberty in the case where the sentenced person is a fugitive, that is to say, they avoided the enforcement of the sentence.

581. A similar provision is provided for in the additional Protocol to the Convention of transference of sentenced persons of the Council of Europe (1983), dated December 18, 1997 (article 2). In addition, Belgium has ratified the Convention on the International Validity of Criminal Judgments of May 28, 1970, which permits the transfer of the enforcement of pecuniary sentences such as fines, confiscations and forfeitures.

582. Belgium provided examples of implementation. In one case, Belgium had requested the extradition of an Israeli immigrant for their participation in a VAT carousel fraud. The individual was condemned definitely to a sentence of deprivation of liberty of 7 years. Israel extradites its nationals, in principle even without conditions. Given the fact that the requested individual was later prosecuted in Israel for similar acts, Belgium and Israel have agreed to transfer the Belgian sentence. Subsequently, the Court at Jerusalem imposed a sentence of 7 years for the entirety of the acts. The transfer was therefore an excellent alternative to the extradition (Accurately: the handover), which would have likely been postponed for a long time. At the same time, the Israeli interests at the level of the public action and the enforcement of the sentence have been safeguarded.

583. In another case (being prepared), Belgium seeks to obtain the full enforcement of sentence (sentence of deprivation of liberty, fine and seizure) from Albania based on the 1970 Convention. The sentenced person is an Albanian immigrant, a fact which prohibits

extradition. In this case, the principle of “aut dedere, aut exequie” will be applicable in-depth and as a real alternative to the extradition.

584. Belgium noted that the aforementioned examples were rather rare, or even almost unique. However, Belgium also noted that if this possibility was used more often, this could lead to having a better overview of people who commit crimes of the same nature in different countries (and could also probably be stopped earlier) and to enhancing international cooperation. It could also be more cost efficient not to extradite immediately.

585. In some other cases, the transfer of the sentenced person—which implies the transference of the enforcement of the sentence of deprivation of liberty—has been the alternative to extradition; including the adjourned remission, namely the adjourned remission based on a European arrest warrant. This is a voluntary alternative given that the condemned individual requested his transference. Outside the context of an extradition or a remission (EAW), there have been other cases for the implementation of article 68 Schengen or article 2 of the Additional Protocol (1997) or of the 1970 Convention. This solely concerns sentences of deprivation of liberty.

(b) Observations on the implementation of the article

586. Enforcement of foreign sentences in cases where extradition is refused is possible under the Convention on the International Validity of Criminal Judgments (1970), the Protocol to the 1983 CoE Convention of Transference of Sentenced Persons (1997) and the Convention implementing the Agreement of Schengen.

Paragraph 14 of article 44

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

587. Belgium indicated that it has implemented the provision under review.

588. Belgium noted that since this paragraph makes reference to the extradition procedure, it must be emphasized that such procedure is in itself not a procedure according to article 6 of the European Convention on Human Rights. The extradition does not have as an objective establishing the “(...) legitimacy of any accusation in criminal matters conducted against (the individual...)”. This principle is confirmed by the jurisprudence of the ECHR and the Belgian Court of Cassation, as well as other jurisprudences that intervene in the extradition procedure.

589. Nevertheless, the requested individuals are, at the time of the provisional arrest, informed of the reasons for the deprivation of their liberty—for the purpose of extradition, they have access to a lawyer (pro deo, if necessary) and an interpreter during each step of the procedure. The decision for extradition is justified by and can be the

object of a final administrative recourse.

590. With regard to proceedings in Belgium for corruption offences, the general principles of the Criminal Procedure Code are applicable. Article 6 of the European Convention will also be applicable. These principles are in fact the same for general public action (regardless of the crime).

(b) Observations on the implementation of the article

591. Fair treatment of the persons whose extradition is sought is ensured through the general provisions of the Belgian Criminal Procedure Code. Article 6 of the European Convention on Human Rights is also applicable in all court proceedings. Belgium is in compliance with the provision under review.

Paragraph 15 of article 44

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's gender, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

592. Belgium indicated that it has implemented the provision under review and cited the following national provisions as applicable.

Extradition Act 1874

Article 2bis

The extradition cannot be agreed to if there exists serious reasons to believe that the request has been submitted with the purpose of prosecuting or punishing an individual for considerations of race, religion, nationality or political opinions, or that the situation of this person runs the risk of being aggravated by one of these reasons.

The extradition cannot be agreed to, with all the more reason, if there exists serious risk that the individual, should they be extradited, will be submitted in the requesting State Party to a flagrant denial of justice, torture or inhuman and degrading treatment.

When the offence for which the extradition is requested is punishable by death penalty in the requesting State Party, the government will not agree to extradition unless the requesting State Party gives its formal assurances that the death penalty will not be enforced.

593. Belgium explained that it is rather rare that an extradition is refused based on the principle of non-discrimination. Article 2bis with regard to this (article 14 European Convention of Human Rights) is often called upon in combination with other fundamental rights cited in article 2bis, such as article 3 and/or 6 and/or 8 (via family) of

the European Convention on Human Rights (ECHR).

594. Belgium noted that extradition requests coming from certain countries (Russia, Turkey), in particular in the case of terrorism, are systematically the object of objections based on article 2bis of the Law. In these cases, a meticulous analysis based on the entirety of the available elements, and/or obtained at a later point (by means of additional requests for information) is carried out. As indicated above, the ministerial order is justified in accordance to the raised arguments and taking into account the applicable Belgian and European jurisprudence.

595. Recently in 2014, an extradition with regard to terrorism was refused in Morocco, based on the existence of a serious risk of a violation of article 3 ECHR. Belgium explained that in three terrorism cases, the extradition procedure was pursued until ‘the bitter end’: in all three interconnected cases, the extradition was actually granted except for a set of facts that were the subject of a definitive conviction in Belgium (ne bis in idem). However, subsequent appeals to the administrative court – the State’s Council – either suspended or eventually cancelled the Extradition Orders for reason of insufficient motivation as to the alleged risks to violations of article 3 ECHR. Ultimately, the EctHR deemed the eventual extradition of one of the three contrary to article 3 *Ouabour c. Belgique*, n° 26417/10, judgment 2 June 2015. Similar to the matter of *Rafaa c. France*, n° 25393/10, judgment 30 May 2013, the Court relied heavily on the UN Special Rapporteur’s Report re. the treatment of terrorism suspects and convicted persons in Morocco dated 11 March 2013 (A/HCR/22/53/Add.2) as well as reports from NGOs. The cases of two other suspects ended up in findings of a violation of article 6 (re. the Belgian trial) and article 6 (because of the use of evidence obtained from Morocco, obtained in Morocco via torture of other individuals): see *Hakimi c. Belgique*, n° 665/08, judgment 29 June 2010 and *El Haski c. Belgique*, n° 649/08, judgment 25 September 2012 respectively.

(b) Observations on the implementation of the article

596. The reasons for refusal of extradition include discrimination on the grounds of race, religion, nationality or political opinions (LoE art. 2bis; ECHR articles 3, 6, 8 and 14), but the grounds of ethnic origin and gender are not explicitly mentioned. Belgium is therefore recommended to enhance the scope of article 2bis of the 1874 LoE to include gender and ethnic origin among the grounds for refusal of extradition.

Paragraph 16 of article 44

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

597. Belgium indicated that it has implemented the provision under review and referred to the following convention as applicable.

Article 5 of the European Extradition Convention (1957) and in particular article

2 of the Second Protocol added to the European Extradition Convention (March 17, 1978) are applicable:

Fiscal Offences

1. With regard to fees and taxes, of customs and exchange, the extradition will be agreed to between the contracting Parties, according to the clauses of the Convention, for the acts that correspond, according to the law of the requested Party, to an offence of the same nature.

2. The extradition may not be refused by reason that the legislation of the requested Party does not impose the same type of fees or taxes, or does not include the same type of regulation with regard to fees and taxes, of customs and exchange as the requesting Party.

598. In line with the aforementioned framework, the exception for fiscal offences is not applicable. Belgium has requested and obtained and, inversely, also agreed to extradition, for example, in cases of acts that can be traced to VAT fraud or others cases of fiscal fraud, such as the non-payment of customs fees or fees linked to importation and exportation.

599. Belgium reminded that this subject is closely related to the issue of dual criminality, discussed above. As long as the (f)acts qualify as an offence which is sufficiently punishable, as required by the applicable extradition treaty or convention, the dual criminality requirement and the penalty threshold are fulfilled.

600. In practice, extradition cases, both incoming and outgoing that deal, inter alia, with fiscal offences are fairly exceptional. The most common are typical VAT-fraud cases ('VAT-carrousel') whereby 'common offences' also occur such as forgery and use of forged documents such as invoices and bank documents and the offence of money laundering. More recently, custom offences appear to be on the rise, such as cigarette smuggling (fraud related to duties) and even more recently smuggling-types of offences that deal with defence or dual use products. The latter cases do not have a 'fiscal' aspect since the cases thus far are limited to attempted fraudulent importation / exportation of strictly regulated materials or services. These cases boil down to forgery and use of forged documents, mainly end-user certificates as well as invoices and bank related documents and money laundering.

(b) Observations on the implementation of the article

601. The extradition is not refused by Belgium on the ground that the offence involves fiscal matters, based on the European Extradition Convention 1957 and its Second Protocol of 1978.

Paragraph 17 of article 44

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

602. Belgium indicated that it has implemented the provision under review.
603. Belgium explained that direct contacts, particularly by email, with the central authorities are routine, notably with European countries (Council of Europe such as Switzerland and the Balkan States), Israel and the United States.
604. The Expert Committee on the functioning of the European conventions regarding the cooperation in the criminal field (PC-OC) of the Council of Europe is a well-established platform (since 1980) that allows having biannual contact with the Member States and other (third) parties in conventions in the field of international cooperation in criminal matters. (See: www.coe.int/tcj)
605. Belgium has had—and continues having—bilateral consultations with the most important collaborators regarding the quantity and quality of the cooperation: in particular the United States, Israel, Russia and Turkey. These consultations are, in principle, organized once per year.
606. In particular, the complex preparation of extradition requests, and above all, to address the “common law” countries, is always made based on “model” versions that are sent by email. Belgium does this to give the countries more insight as to what information is needed to make the process run smoothly. The countries are not obliged to use this exact format; however, the model versions have proven to be very useful. In addition, the follow-up and the eventual requests for additional information of either side are always carried out in this manner. This proactive manner of working allows to save a lot of time and to ensure an optimal follow-up and a high level of success.

(b) Observations on the implementation of the article

607. Belgium consults with the requesting States before refusing their extradition requests. The reviewing experts welcomed the proactive manner of working, which allows to save time and ensure an optimal follow-up and high level of success. Belgium is in compliance with the provision under review.

Paragraph 18 of article 44

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

608. Belgium indicated that it has implemented the provision under review and referred to the introduction under paragraph 1 of Article 44. Belgium has at its disposal a network of bilateral conventions and treaties on extradition.
609. Between the Belgian and Turkish ministries of justice, an agreement (MOU) was signed in January 2014, which allows for direct communication by email. The agreement operates within the limits of the applicable conventions of the Council of Europe. Since the aforementioned agreement, the direct contacts have contributed to the betterment of

the cooperation with Turkey.

(b) Observations on the implementation of the article

610. Belgium is in compliance with the provision under review. Belgium has concluded bilateral extradition treaties with 41 States and is also a party to several multilateral conventions concerning extradition. However, Belgium is recommended to continue broadening Belgium's treaty-basis to further enhance the Convention's scope of application in the area of extradition, for instance by ratifying the third and fourth Protocol to the European Convention on Extradition.

Article 45. Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

611. Belgium indicated that it has implemented the provision under review.

612. Belgium cited as applicable the **Law from May 23, 1990 on the transfer between States of sentenced persons, the recovery and surveillance of conditionally sentenced or released persons, as well as the recovery and the transfer of the enforcement of penalties and of precautionary measures.**

Article 1 on the conditions of the transfer:

The Government may, under the conventions and treaties signed with foreign States on the basis of reciprocity, grant the transfer of any person who has been sentenced and detained in Belgium to the foreign State of which he is a national or accept the transfer to Belgium of any Belgian national sentenced and detained abroad, provided, however:

- 1) That the conviction has become final;
- 2) That the facts underlying the conviction constitute an offence under both Belgian law and under the foreign law;
- 3) That the detainee has consented to the transfer.

Under this law, the term "conviction" includes any penalty or any precautionary measure pronounced by a criminal jurisdiction in complement or in substitution of a penalty.

613. In addition to the Belgian legislation on transfer of sentenced persons, transfer in the EU countries is possible under the Council of Europe Convention (Framework Decision 2008/909/JHA). In addition, Belgium provided the list of other conventions that are relevant in this matter:

A. Convention on the Transfer of Sentenced Persons, concluded in Strasbourg on 21 March 1983

B. Additional Protocol to the Convention on the Transfer of Sentenced Persons, concluded in Strasbourg on 18 December 1997.

C. Bilateral treaties

C.1. Morocco

- Convention between the Kingdom of Belgium and the Kingdom of Morocco on assistance to detained persons and on the transfer of sentenced persons, signed in Brussels on 7 July 1997. (MB 06.07.1999 – entry into force 01.06.1999): only voluntary transfer + The person cannot have dual nationality.

- Additional Protocol to the Convention between the Kingdom of Belgium and the Kingdom of Morocco on assistance to detained persons and the transfer of sentenced persons, signed in Rabat on 19 March 2007, (BG 21.04. 2011 – entry into force 01.05.2011): made involuntary transfer possible, but the person cannot have dual nationality - also possible for persons living illegally in Belgium (the goal of this protocol is to reduce Moroccan prisoners).

C.2. Hongkong

Agreement between the Government of the Kingdom of Belgium and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the Transfer of Sentenced Persons, signed in Brussels on 8 November 2006 (MB 15.04.2009 – entry into force 15.04.2009): voluntary transfer

C.3. Thailand

Convention between the Kingdom of Belgium and the Kingdom of Thailand on the Transfer of Sentenced Persons and on Cooperation in the Enforcement of Sentences, signed in Bangkok on 12 November 2005 (MB 13.07.2010 – entry into force 23.07.2010) : voluntary transfer

C.4. Dominican Republic

Convention between the Kingdom of Belgium and the Dominican Republic on the Transfer of Sentenced Persons, signed in Santo Domingo on 5 May 2009 (MB 09.03.2015 – entry into force 01.06.2014): voluntary transfer

C.5. Albania

Agreement between the Kingdom of Belgium and the Republic of Albania on the transfer of sentenced persons, signed in Brussels on 29 July 2010 (MB 02.03.2016 – entry into force 01.12.2013): only involuntary transfer (voluntary transfer possible based on CoE Convention)

D. Decision 2008/909 / JAI (27.11.2008) - Application of the principle of mutual recognition to judgments in criminal matters imposing sentences or deprivation of liberty for the purposes of their enforcement in the European Union. European System of Mutual Recognition - Prison Sentences and Transfer of Prisoners - Implemented in Belgium by the law of 15th of May 2012 (MB 08.06.2012)

Most of the transfers considered drugs related cases. Only 1 case of corruption is known, with Morocco. It has not been closed yet, so more information is not available.

(b) Observations on the implementation of the article

614. Transfer of sentenced persons is possible under the Law on the Transfer between

States of Sentenced Persons (1990), the CoE Convention on the Transfer of Sentenced Persons (1983), the EU Council Framework Decision on the Application of the Principle of Mutual Recognition to Judgments in Criminal Matters (2008) and bilateral treaties. Dual criminality and the person's consent are required for the transfer.

Article 46. Mutual legal assistance

Paragraph 1 of article 46

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

615. Belgium indicated that it has implemented the provision under review.

616. International mutual legal assistance in criminal matters is governed by the Law on international police transmission of personal information and information with legal purposes, international mutual legal assistance on criminal matters which amends article 90ter of the Code of criminal procedures (**Law on Mutual Legal Assistance, LMLA**) (December 9, 2004) (Belgian Official Gazette 24.12.2004).

617. This Law gives no definition of the concept and scope of "assistance":

Article 3

Legal Belgian authorities agree to provide mutual legal assistance on criminal matters in the broadest of terms possible respecting this law and the applicable rules of international rights.

618. Article 6 § , of the LMLA states the following:

“Requests for mutual legal assistance from the competent foreign authorities are implemented in accordance with Belgian law and, where appropriate, in accordance with applicable international legal instruments that the requesting State and Belgium are parties to”.

619. Belgium noted that the treatment of individual MLA requests is usually governed by international conventions that cover such assistance, since the national law cannot derogate from obligations arising from the signed bilateral or multilateral treaties. Such treaties may impose new conditions on the implementation of this assistance.

620. Belgium can always send a request for legal assistance to any foreign State, even if there is no applicable treaty in place. Article 4 paragraph 1 of the LMLA also provides for the possibility of providing mutual legal assistance on the sole basis of reciprocity. Belgium can execute any form of assistance, requested by a foreign state, if prior to this assistance there is an agreement of both parties that this assistance will be conducted in good faith and cooperation. This expression, taken from art. 4 means that the foreign

state in a solemn manner has confirmed its wish to exchange mutual assistance in criminal matters with Belgium. Of course, this commitment will be deemed to exist as a classical bilateral mutual legal assistance treaty binds us to that state. The existence of a clause on mutual assistance in another treaty (such as an extradition treaty) also meets this requirement.

621. Article 4, § 2, of the LMLA provides four general grounds for refusal of mutual legal assistance. Those grounds may be invoked only against foreign States, insofar as they correspond and are compatible with the specific grounds for refusal in the treaty that specifically applies to the form of assistance concerned. However, they are immediately applicable to countries with which Belgium is linked by any such agreement. At the conclusion of any future legal assistance treaty with a State should take into account these grounds for refusal.
622. Grounds of refusal are not only found in the LMLA, but also in international conventions (Multilateral Conventions as the Convention against Corruption or the European Convention of mutual legal assistance on criminal matters (April 20, 1959) and bilateral treaties governing mutual extradition and MLA).
623. With regard to the statistics provided by the service of international cooperation in criminal matters of the Ministry of Justice, this only concerns international rogatory letters to and from non-EU countries as Article 5, 1st paragraph of the LMLA provides that the judicial authorities of the EU countries can contact each other directly without the intervention of the Ministry of Justice (so there is not a general overview of statistics worldwide within the ministry of justice).
624. Belgium also referred to the following laws and treaties as applicable.

A. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Art. 1, The Contracting Parties commit to mutually agree, according to the provisions of this Convention, to the broadest possible legal assistance in any proceeding involving offences whose control is, at the time that the mutual assistance is requested, within the competence of the legal authorities of the requesting Party.

This Convention is not applicable either in the enforcement of arrest orders and sentences, nor with regard to military offences that do not constitute offences of the common law.

B. Bilateral agreements

B.1. Convention with regard to extradition and mutual legal assistance on criminal matters between the Kingdom of Belgium and the People's Democratic Republic of Algeria, and its annex, signed in Brussels on June 12, 1970.

Art. 18, The Contracting Parties commit to agree, according to the provisions of this Convention, to mutual legal assistance in the broadest possible terms within any criminal affair.

B.2. Treaty of mutual legal assistance on criminal matters between the Government of the

Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 1. Obligation to agree to mutual assistance.

(1) The contracting States agree, according to the provisions of this treaty, to mutual legal assistance on criminal matters in the broadest possible terms.

(2) Mutual legal assistance on criminal matters is understood as any assistance given by the requested State with regard to investigations and proceedings conducted within the requesting State in relation with an offence established by a law in full force within this State and whose control is of the competence of its judicial authorities.

(3) The mutual assistance shall include:

- a) the localisation of individuals and objects, including their identification;
- b) the submission of documents, including summons;
- c) the transmission of information, documents or other case files, including excerpts of criminal records, legal or governmental case files;
- d) the transmission of property, including the loan of evidence;
- e) the taking of testimonies and statements;
- f) the search and seizure;
- g) the assistance for the appearance of individuals detained or not, with the purpose that they testify or aid in the investigations;
- h) the measures with the purpose of localising, blocking or confiscating the proceeds of crime; and
- i) any other form of mutual assistance according to the objectives of this treaty.

B.3. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Article 1. Field of application

1. The contracting States agree, according to the provisions of this Convention, to the mutual legal assistance for anything that concerns the investigation, prosecution and control of offences.

2. Mutual legal assistance particularly applies to:

- a) the localization or identification of people;
- b) the submittal of documents;
- c) the communication of information and objects, including documents, case files and evidence;
- d) the hearing of witnesses and the production of documents;
- e) the enforcement of requests of search and seizure;
- f) the transference of detained individuals with to the purpose of their hearing as witnesses or other purposes;
- g) the localisation, search, immobilization, seizure and confiscation of all illicit gains; and to;
- h) the restitution of their property to victims of an offence.

3. Unless this Convention states otherwise, the mutual assistance is agreed for any offence controlled by the laws of the requesting State.

4. This Convention only applies to mutual legal assistance between the contracting States. It does not attribute any new right to particulars in that which concerns the obtaining, retention and exclusion of evidence; likewise, it does not allow them to oppose to the enforcement of a request.

B.4. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, the Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004.

ART I

1. The Parties mutually agree, according to the provisions of this Convention, to mutual legal assistance in the broadest possible terms within the framework of prevention, investigations and proceedings of criminal offences related to the jurisdiction of the requesting Party, and within the relevant procedures.

2. Mutual assistance is understood as:

- a) the identification and localization of individuals and objects;
- b) the submittal of documents;
- c) obtaining evidence, objects or documents;
- d) the enforcement of requests of search and seizure;
- e) the facilitation of the appearance in person of witnesses or experts;
- f) the provisional transference of detained individuals for the purpose that they are able to appear as witnesses or for other purposes;
- g) obtaining legal documents or other official documents;
- h) the search, immobilization, seizure and confiscation of proceeds and instruments of criminal activities;
- i) the communication of information, documents and case files, including criminal records;
- j) the submission of property, particularly the loan of evidence; and
- k) any other form of mutual assistance according to the objectives of this Convention and that is not in conflict with the legislation of the requested Party.

3. Mutual assistance under this Convention may be agreed to for criminal offences to the legislation with regard to taxes, to customs rights, to the control of foreign exchange transactions or other financial matters so long as the main objective of the investigation is not the establishment or the collection of taxes.

4. Mutual agreement under this Convention does not include:

- a) the detention of individuals with the purpose of their extradition;
- b) the enforcement, within the requested Party, of criminal sentences ordered within the requesting Party;
- c) the transference of prisoners for the purpose that they serve their sentence.

B.5. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997

Article 1. Obligation of mutual assistance

1° The contracting Parties commit to agree, according to the rules and under the terms determined by the following articles, to mutual legal assistance in any criminal affair.

2° The provisions of this convention also apply when the requested mutual legal

assistance deals with a controlling procedure on a fiscal matter (customs and excise, direct or indirect taxes or the control of currency).

3° This mutual assistance does not apply to the reciprocal enforcement of decisions on criminal matters [except on legal decisions on matters of seizure and confiscation of property for offences involving the financing of terrorism and bribery].

B.6. Convention between the Kingdom of Belgium and the Tunisian Republic with regard to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

Art. 20. Obligation of mutual assistance

(1) The High Contracting Parties commit to agree, according to the provisions of this Convention, to mutual legal assistance in the broadest terms possible on any criminal affair.

(2) This mutual assistance does not apply to the reciprocal enforcement of decisions on criminal matters.

B.7. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand with regard to mutual assistance on criminal affairs; signed in Bangkok on November 12, 2005

Article 1 Obligation of agreeing to mutual assistance

1. The State Parties agree, according to the provisions of this Convention, to the mutual legal assistance in the broadest terms possible regarding that which concerns investigations, prosecutions and other proceedings related to criminal offences where the sanction is under the jurisdiction of their courts at the time of the request. The competent authorities to request or provide mutual assistance are, for the Kingdom of Thailand, the judicial authorities and competent entities by virtue of the law to execute a request or request assistance; for the Kingdom of Belgium, it is the judicial authorities.

2. The provisions of this Convention likewise apply when the requested mutual assistance relates to a controlling proceeding on fiscal matters (customs and excise, direct or indirect taxes and currency control).

3. Mutual assistance includes, but is not limited to:

- a) the collection of testimonies and statements;
- b) the transmission of information, documents, case files and evidence;
- c) the presentation of documents;
- d) the enforcement of search and seizure requests;
- e) the transference of detained individuals or facilitating the appearance of other individuals within the requesting State for the purpose of testifying;
- f) the localisation of individuals or objects;
- g) the localisation, seizure and confiscation of proceeds and instruments of criminal activities; and
- h) any other form of mutual assistance compatible with the purpose of this Convention.

4. Mutual assistance shall be agreed to when the acts that are the object of the investigation, the prosecution or the proceedings within the requesting State either constitute or not an offence within the requested State or may give rise to proceedings by the requested State.

5. The information and evidence obtained under this Convention may only be revealed or utilized for the investigation, prosecution or other proceedings with regard

to acts as they are classified by the request; in the case of modification to this classification, this information or evidence may not be utilized without the prior consent of the requested State.

6. This Convention has as its sole objective the mutual assistance between the authorities of the State Parties responsible for the application of the criminal law; it does not have as an objective and has not been designed to provide assistance to private parties.

7. No private party may base itself on any provision of this Convention to prohibit the enforcement of a request, or dismiss or suppress evidence obtained according to the provisions of this Convention.

8. This Convention does not apply to the enforcement of arrest and sentencing orders, except in the case of confiscation. It is also not applicable to military offences that do not constitute offences of common law.

B.8. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, made in Brussels on January 17, 2007

Article 1 –

FIELD OF APPLICATION

1. The Parties commit to mutually agree, according to the provisions of this Convention, to assist in the broadest terms possible on any procedure on criminal matters involving offences whose control is, at the time the mutual assistance is requested, within the competence of the judicial authorities of the requesting Party. Under this Convention, it should be understood by “procedure” as all aspects of the procedure on criminal matters, including inquiries, prosecutions and judicial investigations.

2. Criminal matters include offences with regard to the legislation related to taxes, customs rights, control of foreign exchange operations or any other matter linked to money, so long as the main objective of the procedure does not include the establishment or collection of taxes.

3. Mutual assistance includes:

- (a) the collection of testimonies or statements;
- (b) the communication of information, documents, case files or evidence;
- (c) the localisation or identification of persons or objects;
- (d) the submission of documents;
- (e) the enforcement of search and seizure requests;
- (f) the assistance to make detained individuals or others available for the purpose of testifying or assisting in inquiries;
- (g) the measures to assist in the recovery of proceeds of criminal activities; and
- (h) any other form of assistance compatible with the objective of this Convention and that is not prohibited by the legislation of the requested Party.

4. This Convention does not apply to:

- (a) the extradition of individuals;
- (b) the enforcement, within the requested Party, of sentences on criminal matters decreed within the requesting Party, except within the limits authorized by the legislation of the requested Party and this Convention;
- (c) the transference of detained individuals for the purpose of enforcing a sentence; and
- (d) the transfer of prosecutions on criminal matters.

625. Belgium provided statistical data. Please refer to Annex 2.

(b) Observations on the implementation of the article

626. Mutual legal assistance is provided on the basis of the Law on MLA (LMLA, 2004), the European Convention on MLA in criminal matters (1959) and several bilateral MLA treaties. MLA can also be granted on the basis of reciprocity (article 4 paragraph 1 LMLA). In addition, the Convention can serve as a legal basis for MLA. Belgian authorities render MLA on the basis of dual criminality. The only exception exists for the EU, CoE and several States that Belgium has bilateral MLA treaties with, where Belgium may provide non-coercive MLA in the absence of dual criminality.

627. Belgium is in compliance with the provision under review.

Paragraph 2 of article 46

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

628. Belgium indicated that it has implemented the provision under review. It referred to its response for article 46, §1, in particular to article 3 of the Law on Mutual Legal Assistance which states that MLA is to be provided in the “broadest possible terms”. There is no distinction between legal and natural persons, and Belgium referred to article 5 CC on criminal liability for legal persons – see chapter III for more details.

629. Belgium also noted the relevance of the **Second additional protocol to the European convention of mutual legal assistance on criminal matters** (November 08, 2001)

Article 1 – Field of application

Article 1 of the Convention is replaced by the following provisions:

“1 The Parties commit to mutually agree, according to this Convention and as soon as possible, to the mutual legal assistance on the broadest terms possible on every procedure involving offences whose control is, at the time when the mutual assistance is requested, within the competence of the judicial authorities of the requesting Party.

2 This Convention does not apply neither to the enforcement of arrest and sentencing orders nor to military offences that do not constitute offences of common law.

3 Mutual legal assistance may likewise be agreed to in procedures for acts that are punishable according to the national law of the requesting Party or of the requested Party, under offences to regulations pursued by the administrative

authorities where the decision may give rise to a plea before a competent jurisdiction, particularly with regard to criminal matters.

4 Mutual legal assistance shall not be refused on the sole motive that the acts in question may hold liable a legal person within the requesting Party.”

(b) Observations on the implementation of the article

630. Belgium provides mutual legal assistance with regard to offences involving legal persons and is therefore in compliance with the provision under review.

Subparagraphs 3 (a) to 3 (i) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

631. Belgium indicated that it has implemented the provision under review.

632. Belgium explained that it always provides “assistance in the broadest terms possible” (article 3 of LMLA).

The Belgian judicial authorities shall grant mutual legal assistance in criminal matters as widely as possible in compliance with this law and the applicable rules of international law.

633. The scope of mutual legal assistance is not defined by the LMLA, but all purposes listed in the Convention can be encompassed by the Law. Belgium noted that given the broad scope of article 3, there can be a legal request made for ‘anything’. Belgium also referred to the ministerial guidelines, of the COL 5/2005 (http://www.ommp.be/omzendbrief/4016803/omzendbrief_col_5_d_d__10_02_2005.html), as well as to its response on article 46, §1.

634. Apart from the framework of the existing treaties, any request for legal assistance may be conducted on the basis of Belgium's wish to maintain general relations of good mutual cooperation (reciprocity) with another country. The following example was

given: although there is no treaty in place with Cambodia, Belgium would do a house search if they requested so. Belgium also provided MLA to China, with whom it did not have a bilateral treaty at the time.

635. Belgium referred to the following existing legal framework:

A. European convention of mutual legal assistance on criminal matters (April 20, 1959)
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1959042030&table_name=loi

(Article 1, 3, 10 and 13.)

B. Bilateral conventions: Algeria, Canada, USA, Hong Kong, Morocco, Tunisia, Thailand, Korea

B.1. Convention regarding extradition and mutual legal assistance on criminal matters between the Kingdom of Belgium and the People's Democratic Republic of Algeria, and annex, signed in Brussels on June 12, 1970

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1970061232&table_name=loi

(Art. 18, 21, 22, 26, 28)

B.2. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1996011148&table_name=loi

(Art. 1)

B.3. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1988012837&table_name=loi

(Art. 1)

B.4. Convention on mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004092032&table_name=loi

(Art. 1)

B.5. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1997070758&table_name=loi

(Art. 1, 4, 6, 7, 8, 12, 12 bis)

B.6. Convention between the Kingdom of Belgium and the Tunisian Republic with regard to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1989042732&table_name=loi

(Art. 20, 22, 23, 25, 26, 28)

B.7. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters, signed in Bangkok on November 12, 2005

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005111201&table_name=loi

(art. 1)

B.8. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007011741&table_name=loi

(art. 1)

(b) Observations on the implementation of the article

636. Article 3 of the Law on Mutual Legal Assistance states that MLA is to be provided in the “broadest terms possible”, and can encompass all the purposes listed in the Convention’s subparagraph 3 a-i of article 46. Belgium is in compliance with the provision under review.

Subparagraphs 3 (j) and 3 (k) of article 46

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

...

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

637. Belgium indicated that it has implemented the provision under review. The cooperation is the broadest possible (article 3 of the Law on Mutual Legal Assistance), which is also included in points j) and k). In addition, it referred to the following treaties:

A. European convention of mutual legal assistance on criminal matters. (APRIL 20, 1959)

(Article 1 and 5)

B. Bilateral conventions: Algeria, Canada, USA, Hong Kong, Morocco, Tunisia, Thailand, Korea

B.1 Convention with regard to extradition and mutual legal assistance on criminal matters between the Kingdom of Belgium and the People’s Democratic Republic of Algeria, and annex, signed in Brussels on June 12, 1970.

(Art. 18 and 22)

B.2. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996.

(Art. 1, 4, 10, 13)

B.3. Convention of JANUARY 28, 1998, concerning mutual legal assistance on criminal matters between Belgium and the USA

(Art. 1)

B.4. AUGUST 5, 2006. – Law approving the Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People’s Republic of China, signed in Brussels on September 20, 2004.

(Art. 1)

B.5. Convention between the Kingdom of Belgium and the Kingdom of Morocco with regard to mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997.

(Art. 1 and 6)

B.6. Convention between the Kingdom of Belgium and the Tunisian Republic regarding extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

(Art. 20 and 23)

B.7. Convention between the Government of the Kingdom of Belgium and Government of the Kingdom of Thailand with regard to mutual assistance on criminal matters, signed in Bangkok on November 12, 2005

(art. 1, 19, 21, 23)

B.8. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007.

(art. 1, 11, 12)

(b) Observations on the implementation of the article

638. Article 3 of the Law on Mutual Legal Assistance states that MLA is to be provided in the “broadest terms possible”, and can encompass all the purposes listed in the Convention’s subparagraph 3 j-k of article 46.

Paragraph 4 of article 46

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

639. Belgium indicated that it has implemented the provision under review. The cooperation in all the treaties is always provided in the broadest terms possible.
640. Belgium indicated that spontaneous transmission of information is regulated and is subject to confidentiality:

Law on Mutual Legal Assistance

Article 2 paragraph 7

Notwithstanding article 2/6, the competent police services shall communicate, without the request having made to them, to a police service of another Member State or of a country associated to Schengen, personal data and information, when it believes, due to factual reasons, that they may contribute to the tracing or the prevention of the offences described in article 5, § 2, of the law from December 19, 2003 on the European arrest warrant, or for the investigation of said offences.

(http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004120940&table_name=loi)

641. The council act of of 29 May 2000, establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union also includes an article on spontaneous exchange of information. Its article 7 says the following:
1. Within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences and the infringements of rules of law referred to in Article 3(1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.
 2. The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.
 3. The receiving authority shall be bound by those conditions
642. **Second additional protocol to the European Convention of mutual legal assistance on criminal matters** (November 08, 2001) also touches upon spontaneous transmission of information:

Article 11 – Spontaneous transmission of information

1 Without prejudice to their own investigations or procedures, the competent authorities of a Party may, without prior request, transmit to the competent authorities of another Party information gathered within the framework of their own inquiry when they estimate that the communication of this information may aid the receiving Party to begin or carry out investigations or procedures, or when this information may result in a request formulated by a Party under the Convention or its protocols.

2 The Party that provides the information may, according to its national law, submit to certain conditions its utilization by the receiving party.

3 The receiving Party is bound to respect these conditions.

4 Nevertheless, any contracting State may, at any time, through a statement addressed to the Secretary General of the Council of Europe, state that it reserves the right to not submit to the conditions imposed under the provisions of paragraph 2 of

this article by the Party that provides the information, unless it receives prior notice on the nature of the information to be provided and accepts for this latter to be transmitted.

643. Belgium also referred to the bilateral Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004, which states that:

Article 19

Without prejudice to their own inquiries or procedures, a Party may, without prior request, communicate to the other Party information regarding the commission of criminal offences when it considers that such information might assist the receiving Party in its inquiries or procedures or cause a request for legal cooperation of this Party according to this Convention.

(b) Observations on the implementation of the article

644. Spontaneous transmission of information is possible (article 2 paragraph 7 of the LMLA) and the second Protocol to the ECMLA). Belgium informed that such transmissions occur as a matter of routine on a daily basis. Belgium is in compliance with the provision under review.

(c) Successes and good practices

645. Belgium systematically transmits information relating to criminal matters to other States, even when there has been no prior request. This was seen by the reviewing States as a good practice.

Paragraph 5 of article 46

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

646. Belgium indicated that it has implemented the provision under review. Belgium agrees to all requests to that effect. Belgium referred to article 2 of the Law on Mutual Legal Assistance and also to the previous answer under paragraph 4 of article 46.

647. According to national law, any information provided in a request for mutual legal assistance by the requesting competent authority may be used in a Belgian judicial proceeding of an ongoing case or may lead to the opening of a new case. There is only one exception: the requesting authority imposes a use limitation. However, there is a good practice that the Belgian magistrates addresses the (former) requesting authority for prior consent before making use of the information in a Belgian procedure, even when there is no use limitation (for instance to avoid interference between the two cases).

648. The following case, as an example, illustrates the way of proceeding. The Dutch authorities were investigating on a Chinese organized crime group, based in Rotterdam, but criminally active on an international scale. The members of the criminal group were involved in migrant smuggling, trafficking in human beings, racketeering, counterfeiting goods and trafficking of drugs. Because of the strong criminal collaboration in the Antwerp area (especially in the field of people smuggling and THB), Belgium received a high number of judicial requests. In these requests the Dutch authorities provided a lot of interesting information on the involved targets, the organizational structure, their *modi operandi*, including pictures of the suspects. Some time later, the Brussels crime squad started an investigation on the murder of a Chinese person, whose body was found in a parking area near the highway between Brussels and Antwerp. After a while, it became clear that the investigators were dealing with a criminal liquidation and they found links to the Chinese organized criminal group in Rotterdam. The investigators wanted to present a photo album of this criminal network (mainly received via the request for MLA by the Netherlands) to a number of witnesses. Although this information might be used immediately in the Belgian procedure (without consent of a Dutch magistrate), the Belgian competent judicial authority decided to launch a formal request.

(b) Observations on the implementation of the article

649. Spontaneous transmission of information is subject to confidentiality. Belgium is in compliance with the provision under review.

Paragraph 8 of article 46

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

650. Belgium indicated that it has implemented the provision under review. Belgium explained that there is no bank secrecy in Belgium under article 46quater of the Criminal Procedure Code. Belgium also referred to its responses under chapter III which include more information on this issue.

651. Belgium cited the following provisions of the LMLA as applicable:

Law on Mutual Legal Assistance

Article 4. § 1

The requests of mutual legal assistance on criminal matters that do not fall within

the framework of an instrument of international law on mutual legal assistance linking Belgium and the requesting State are only executed by means of a reciprocal commitment of cooperation in good faith.

§ 2. The execution of a request referred to in § 1 is refused if:

1° the execution may threaten the sovereignty, security, public order or other essential interests of Belgium;

2° the request concerns acts that, in Belgium, constitute political offences or are connected to such offences;

3° the procedure which this request falls within is motivated by reasons allegedly linked to race, gender, colour, ethnic or social origins, genetic characteristics, language, religion or convictions, political opinions or any other opinion, affiliation with a national minority, wealth, birth, handicap, age or sexual orientation;

4° the request is related to an offence punishable by death penalty in the requesting State, unless that:

- it can be reasonably assumed that the execution is likely to reduce the risk of a sentence of the death penalty;

- this request was the result of a request by the accused or the defendant himself;

- the requesting State gives sufficient guaranties that the death penalty shall not be passed or, if it is passed, that it shall not be executed.

Article 5 – REFUSAL OF MUTUAL ASSISTANCE

1. Mutual assistance may be refused when the legislation of the requested Party imposes it, and in particular:

(a) if the request concerns offences considered by the requested Party:

- either as political offences, or offences connected to political offences;

- either as military offences that do not constitute offences of common law;

(b) if the requested Party considers that the execution of a request may threaten the sovereignty, security, public order or other essential interests of its country. The requested Party may not, however, invoke bank secrecy as an essential interest of its country under this provision in order to refuse mutual assistance;

(c) if the case that is object of the criminal procedures in the requesting Party does not constitute an offence under the terms of the legislation of the requested Party, when the case is under the jurisdiction of the requested Party;

(d) if the procedure which the request falls within is justified by reasons allegedly linked to race, gender, colour, ethnic or social origins, genetic characteristics, language, religion or convictions, political opinions or any other opinion, affiliation with a national minority, wealth, birth, handicap, age or sexual orientation;

(e) if the request concerns an offence punishable by the death penalty under the legislation of the requesting Party, unless

- it can be reasonably assumed that the execution is likely to reduce the risk of a sentence to the death penalty;

- this request is the follow-up to a request by the accused or the defendant himself;

- the requesting Party gives sufficient guaranties that the death penalty shall not be delivered or, if it is, that it shall not be enforced;

(f) if the request of mutual assistance seeks to prosecute an individual by reason of

an offence for which this individual has already been judged and is the object of a definite sentence or has been acquitted or been granted definitive amnesty within the requested Party;

(g) if the requesting party is not able to fulfil the conditions established by the requested Party on matters of confidentiality or restriction in the utilisation of provided documents, as provided by article 20 of this Convention.

2. The requested Party may defer the mutual assistance if the execution of the request is likely to threaten an ongoing procedure within the requested Party. In such cases, the requesting Party is notified, stating the likely period in which the request may be resolved.

3. Before the refusal of mutual assistance according to this article, the requested Party, by means of its central authority, must reasonably inform the requesting Party of the existing reasons for considering the refusal, indicating, as the case may be, the conditions in which this execution may be carried out.

4. If the requested Party refuses or adjourns the mutual assistance, it must inform the requesting Party of the reasons for this refusal or adjournment.

652. The requests for mutual legal assistance may only be refused based on the grounds outlined in the relevant treaties, and Belgium cited the following treaties in this regard:

A. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Art. 2

Mutual legal assistance may be refused:

(a) if the request concerns offences considered by the requested Party either as political offences, offences connected to political offences, or fiscal offences;

(b) if the requested Party estimates that the enforcement of the request is likely to threaten the sovereignty, the security, the public order or other essential interests of its country.

B. Bilateral Conventions:

B.1. Convention regarding extradition and mutual legal assistance on criminal matters between the Kingdom of Belgium and the People's Democratic Republic of Algeria, and annex, signed in Brussels on June 12, 1970.

Art. 20

(1) Mutual legal assistance may be refused:

(a) if the request concerns offences considered by the requested State either as political offences, or as offences connected to political offences;

b) if the requested State estimates that the execution of the request may threaten the sovereignty, security, public order or other essential interest of its country.

(2) Any justified refusal to mutual assistance.

B.2. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996.

Art. 3.

B.3. Convention of January 28, 1988, concerning the mutual legal assistance on criminal matters between Belgium and the USA
Art. 13. Limits of the mutual assistance

B.4. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004
ARTICLE IV

B.5. Convention between the Kingdom of Belgium and the Kingdom of Morocco on the mutual legal assistance on criminal matters, signed in Brussels on July 7, 1977
Art. 2

B.6. Convention between the Kingdom of Belgium and the Tunisian Republic relative to the extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989
Art. 21 – Case of refusal

B.7. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters; signed in Bangkok on November 12, 2005
Article 2 – Reason of refusal or adjournment

B.8. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

653. Belgium noted that it has never refused a request for mutual assistance by invoking bank secrecy. Specific examples were not provided.

(b) Observations on the implementation of the article

654. Bank secrecy is not a ground for refusing MLA requests according to article 46quater of the Criminal Procedure Code. Belgium is in compliance with the provision under review.

Subparagraph 9 (a) of article 46

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(a) Summary of information relevant to reviewing the implementation of the article

655. Belgium indicated that it has implemented the provision under review.

656. Belgium noted that the requests for mutual assistance are refused only based on the reasons listed in the law or applicable treaties. If the legal assistance request is made by a State with which Belgium is bound by a multilateral treaty or bilateral agreement on MLA, the refusal grounds (mandatory or voluntary) are contained in that instrument. Article 4 of the MLA law governs the enforcement in Belgium of the requests coming from a State with which Belgium is not bound by an international instrument. (See

response under paragraph 8 of article 46 for more information).

657. Belgium explained that the ministerial guidelines in the COL 5/2005 (see above) state that there is a fundamental obligation to provide the assistance requested.

658. Mutual legal assistance is provided on the basis of dual criminality. However, the principle of dual criminality is seen to the facts and not to the qualification. The principle of dual criminality is only applicable in the assumption that the restrictive measures (for example searches, seizures, wiretapping, etc.) are requested.

(b) Observations on the implementation of the article

659. While the LMLA does not include the lack of dual criminality among the grounds for refusal of MLA (article 4 paragraph 2), several bilateral MLA treaties include it among mandatory or optional grounds for refusal. Dual criminality remains a fundamental principle in Belgian international cooperation and in the context of MLA as well as extradition, it is the underlying conduct and not the classification of the offence or the coercive measures requested that is considered.

Subparagraph 9 (b) of article 46

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

660. Belgium indicated that it has implemented the provision under review. It reminded that, in principle, dual criminality is a condition for mutual legal assistance, but not at the level of cooperation of Benelux, the European Union (including Schengen), the Council of Europe, and certain bilateral criminal conventions of mutual assistance (for example, that which links Belgium with the United States). At these levels and in the cases where Belgium is the requested State, the principle of dual criminality is only applicable in the assumption that the restrictive measures (for example searches, seizures, wiretapping, etc.) are requested.

(b) Observations on the implementation of the article

661. While Belgium renders MLA on the basis of dual criminality, the exception exists for the EU, CoE and several States that Belgium has bilateral MLA treaties with, where Belgium may provide non-coercive MLA in the absence of dual criminality.

Subparagraph 9 (c) of article 46

(c) Each State Party may consider adopting such measures as may be necessary to enable

it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

662. Belgium indicated that it has implemented the provision under review and referred to its responses under the previous subparagraphs. Belgium noted that to date it has not come across cases involving the absence of dual criminality on corruption.

(b) Observations on the implementation of the article

663. Dual criminality remains a fundamental principle in Belgian international cooperation. Belgium is recommended to consider adopting such measures as may be necessary to enable the provision of a wider scope of assistance pursuant to article 46 in the absence of dual criminality.

Paragraph 10 of article 46

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;*
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

(a) Summary of information relevant to reviewing the implementation of the article

664. Belgium indicated that it has implemented the provision under review and cited the following conventions and treaties as applicable:

A. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Article 11

1. Any detained person whose personal appearance as a witness or for the purpose of witness confrontation is requested by the requesting Party, shall be provisionally transferred to the territory where the hearing shall take place, under the condition of their return within the period indicated by the requested Party, and subject to the provisions of article 12 insofar as they may apply.

The transference may be refused:

- (a) if the detained person does not consent to it;
- (b) if their presence is necessary in an ongoing criminal procedure in the territory of the requested Party;
- (c) if their transference is likely to prolong their detention; or

(d) if other pressing considerations object to their transfer to the territory of the requesting Party.

2. In the case described in the previous paragraph and subject to the provisions of article 2, the transit of a detained person through the territory of a third State, Party to this Convention, shall be agreed to on a request accompanied by all required documents and addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party requested to allow the transit.

Any Contracting Party may refuse to agree to the transit of its nationals.

3. The transferred person shall remain in custody in the territory of the requesting Party and, as the case may be, in the territory of the Party requested for the transit, unless the Party requested for the transfer requests their release.

B. Bilateral agreements

B.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 11 – Transference to the requesting State of detained individuals for the purpose of testifying or assisting in an investigation in the requesting State.

(1) At the request of the requesting State, a detained individual in the requested State may be provisionally transferred to the requesting State in order to assist in its inquiries or to testify in its procedures, provided that the individual consents to it.

(2) So long as the transferred person must remain in custody under the terms of law of the requested State, the requesting State shall guard this person in custody and return them to the requested State following the execution of the request.

(3) If the sentence imposed on the transferred person finalizes or if the requested State informs the requesting State that this person is no longer detained, they shall be released and considered as a person whose presence has been obtained in the requesting State following a request to this effect.

B.2. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 9. Transference to the requesting State of persons detained within the requested State

1. Any individual in custody within the requested State and whose presence is necessary in the requesting State for the purpose of mutual assistance as provided for by this Convention, shall be transferred to the requesting State on the condition that they consent to it and that the requested State does not have any reason to refuse to this transference.

2. The requested State may defer the execution of the request so long as the presence of this individual is necessary in this State for the purpose of an investigation or procedure.

3. The requesting State has the power and the obligation to guard the person in custody, except if the requested State has ordered their release.

4. As soon as the circumstances so permit, unless otherwise agreed, the requesting State shall return any individual that is not released in application of § 3 to the custody of the requested State.

The requesting State cannot refuse to return a transferred individual by reason that this individual is a national of this State.

Art. 10. Transference to the requested State of persons in custody in the requesting State

1. For the purposes of mutual assistance provided for by this Convention, the requesting State may request that an individual in its custody be transferred to the requested State on the condition that this individual consents to it and that the requested party does not have reason to refuse to this transfer.

2. The requested State has the power and the obligation to guard this person in custody, except if the requesting State has ordered their release.

3. As soon as the circumstances so permit, unless otherwise agreed, the requested State shall return any person that has not been released in application of § 2 to the custody of the requesting State. The requested State may not refuse to return the transferred person by reason that this person is a national of this State.

Art. 11. Application of articles 9 and 10

1. In the case of the application of articles 9 and 10:

a) the detention served in the State to which the person has been transferred shall be considered within the remaining duration of the deprivation of liberty sentence to be served in the other State;

b) the transferred person cannot be prosecuted, detained or subjected to any other restriction of their individual liberty in the State to which they have been transferred for acts or sentences prior to their transference;

c) the immunity described in letter b) of this article shall cease when the transferred person:
(i) having had the possibility, for fifteen consecutive days, of leaving the State to which they had been transferred, they remained; or
(ii) after having left, they returned.

2. In case that the transferred person escapes, the State to which this person has been transferred shall take any measures in order to arrest them.

3. Any person transferred under articles 9 or 10 shall be taken back without any need to resort to the procedure of extradition.

B.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE XIV – Transference of persons in custody

1. Any person in custody in the requested Party whose presence in the requesting Party is demanded for purposes of mutual assistance according to this Convention, shall be transferred by the requested Party to the requesting Party, on the condition that the requested Party and the concerned individual consent to it and that the requesting Party guarantees to maintain this individual in custody and to subsequently return him to the requested Party.

2. If the prison sentence of a person transferred under this article expires at the time that this individual is in the requesting Party, the requested Party shall notify to the requesting Party, who is keeping watch over them, about the release of the aforementioned person.

3. The time passed in custody in the requesting Party shall count as part of the sentence to be served in the requested Party.

B.4. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1977

Art. 10 – Appearance of witnesses in custody

1° Any person in custody, whose personal appearance as a witness or for the purpose of witness confrontation is requested by the requesting State, shall be provisionally transferred to the territory where the hearing shall take place under condition of their return within the period indicated by the requested State, and subject to the provisions of article 11 insofar as they apply.

2° The transference may be refused:

- a) If the person in custody does not consent to it.
- b) If their presence is necessary in an ongoing criminal procedure in the territory of the requested State.
- c) If their transference is likely to prolong their detention or if other pressing considerations object to their transfer to the territory of the requesting State.

3° The person transferred must remain in custody in the territory of the requesting State, unless the requested State who agreed to their transference requests their release.

B.5. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 20 – Transference of detained individuals with the purpose of appearing as a witness

1. Any person in custody in the requested State summoned to appear as a witness in the requesting State shall be transferred to this State if this person and the requested State consent to it.

2. For the purposes of this article:

- (a) the requesting State has the authority for and the obligation to maintain the transferred person in custody, unless otherwise provided by the requested State;
- (b) as soon as the request has been executed, the requesting State shall return the transferred person to the custody of the requested State;
- (c) when the sentence imposed expires or the requested State notifies the requesting State that the transferred person must no longer be kept in custody, this person shall be released.

3. Detention in the territory of the requesting State shall be considered within the duration of the deprivation of liberty sentence that the transferred person must serve in the territory of the requested State.

B.6. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 15 – PROVISIONAL TRANSFERENCE OF PERSONS IN CUSTODY

1. Any person in custody whose personal appearance is requested by the requesting Party for the purpose of collaborating in a criminal procedure shall be provisionally transferred to the territory where the hearing shall take place, under the condition of their return within the period indicated by the requested Party and subject to the provisions of article 14 or article 17, insofar as these may be applicable.

The transference may be refused:

- (a) if the person in custody does not consent to it;
- (b) if their presence is necessary in an ongoing criminal procedure in the territory of the requested Party;
- (c) if their transference is likely to prolong their detention; or

(d) if other pressing considerations object to their transference to the territory of the requesting Party.

2. When the transferred person must remain in custody according to the laws of the requested Party, the requesting Party is required to guard this person in custody and to return them in custody at the end of the execution of the request.

3. When the requested Party notifies the requesting Party that the transferred person must no longer be held in custody, this person shall be released and treated according to article 14 of this Convention.

4. A person transferred according to this article shall have the duration of their detainment served in the requesting Party deducted from the duration of the sentence that is imposed on them in the requested Party.

(b) Observations on the implementation of the article

665. Transfer of detainees for the purpose of providing MLA is possible under the ECMLA and several bilateral treaties. Belgium clarified that it does not occur frequently that detained persons are transferred from Belgium as more and more Belgium uses videoconference. With regard to statistics, there has been one transfer in 2013 (not concerning corruption), none for 2014 and 2015. In case of corruption, there has been no transfer. Belgium is in compliance with the provision under review.

Paragraph 11 of article 46

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

666. Belgium indicated that it has implemented the provision under review and referred to its responses under paragraph 10 of article 46.

(b) Observations on the implementation of the article

667. Transfer of detainees for the purpose of providing MLA is possible under the ECMLA and several bilateral treaties. Belgium clarified that it does not occur frequently that detained persons are transferred from Belgium as more and more Belgium uses videoconference. With regard to statistics, there has been one transfer in 2013 (not concerning corruption), none for 2014 and 2015. In case of corruption, there has been no transfer. Belgium is in compliance with the provision under review.

Paragraph 12 of article 46

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

668. Belgium indicated that it has implemented the provision under review and cited the following legal framework as relevant.

A. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Article 12

1. No witness or expert, whatever their nationality, who, following a summons, appears before the legal authorities of the requesting Party, may be either prosecuted, detained, or subjected to any other restriction of their individual liberty in the territory of this Party for acts or sentences prior to their departure from the territory of the requested Party.

2. No person, whatever their nationality, summoned before the legal authorities of the requesting Party in order to account for acts for which they are object of prosecution, may be either prosecuted, detained, or subjected to any restriction of their individual liberty for acts or sentences prior to their departure from the territory of the requested Party and not specified in the summons.

3. The immunity provided for in this Article shall cease when the witness, expert or prosecuted person, having had the possibility to leave the territory of the requesting Party during fifteen consecutive days, after their presence is no longer required by the judicial authorities, remains, nevertheless, in their territory or returns after having left.

B. Bilateral agreements

B.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 12. Safe Conduct

(1) Except for the detention provided for in article 11 (2), any person travelling to the requesting State following a request to this effect under the terms of articles 9 or 11, cannot be prosecuted, detained, nor subjected to any restriction of their individual liberty in this State for acts or sentences prior to their departure from the requested State, nor be required to testify in any procedure other than that which concerns the request.

(2) Paragraph (1) of this article shall cease to apply when the person, free to leave, does not leave the requesting State within 30 days after having been officially notified that their presence is no longer required or if, having left, they return of their own free will.

(3) Any person who fails to appear in the requesting State cannot be subjected to any fine or constraint measure in the requested State.

B.2. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 11. Application of articles 9 and 10 (see above)

B.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE XVI

1. Any person that consents to the transference according to articles XIV or XV cannot be prosecuted, detained or subjected to any other restriction of their individual liberty in the requesting Party for a criminal offence, nor be prosecuted on a civil affair for which they cannot be prosecuted if they are not within the requesting Party, for any act or omission prior to their departure from the requested Party.

2. Any person that consents to the transference according to articles XIV or XV cannot be prosecuted based on their testimony, except in the case of a false testimony.

3. A person who consents to the transference according to articles XIV or XV shall not be requested to testify in another procedure other than that referred to by the request.

4. Any person that does not consent to the transference according to articles XIV or XV cannot be subjected to any sentence or measure of constraint by the tribunals of the requesting Party or of the requested Party.

5. Any person who is the subject of a summons from the requesting Party for the purpose of answering for acts for which they are the object of prosecutions cannot be prosecuted, detained or subjected to any other deprivation of liberty in the requesting Party for acts or omissions prior to their departure from the requested Party and which are not mentioned in the summons.

6. Paragraphs 1 and 5 are not applicable if the person, being free to leave, does not leave the requesting Party within a period of 30 days after having been notified that their presence was no longer required, or if they return to the requesting Party after having left.

B.4. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997

Art. 11 – Immunity of witnesses and experts

1° No witness or expert, whatever their nationality, who, following a summons, appears before the legal authorities of the requesting State may be prosecuted, detained, nor subjected to any restriction of their individual liberty in the territory of this State for acts or sentences prior to their departure from the territory of the requested State.

2° No person, whatever their nationality, summoned before the legal authorities of the requesting State for the purpose of answering for acts for which they are the object of prosecution, may be prosecuted, detained, or subjected to any other restriction of their individual liberty for acts or sentences prior to their departure from the territory of the

requested State and not mentioned in the summons.

3° Immunity provided for in this article shall cease when the witness, expert or prosecuted person, having had the possibility to leave the territory of the requesting State during thirty consecutive days after their presence was no longer required by the legal authorities, nevertheless remains or returns after having left.

B.5. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on the mutual assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 25 - Immunity

1. Any person that is within the territory of the requesting State in order to testify or make a statement according to the provisions of this Convention, cannot be subject to a subpoena, be detained or subjected to any other restriction of their individual liberty by reason of acts or omissions prior to their departure from the territory of the requested State, nor be required to provide evidence in another procedure other than that for which the request was made.

2. Immunity provided for in this article shall cease when the person, having had the possibility to leave the territory of the requesting State during fifteen (15) consecutive days after having been notified that their presence was no longer required by the competent authorities, nevertheless remains in the territory or returns of their own free will after having left.

B.6. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 17 – SAFE-CONDUCT

1. Any person who appears before the competent authorities of the requesting Party, according to their request, cannot be prosecuted, detained, nor subjected to any other restriction of their individual liberty in the territory of this Party for acts, omissions or sentences prior to their departure from the territory of the requested Party. This person also cannot be compelled to testify in a procedure or collaborate in an inquiry other than the procedure or inquiry that concerns the request.

2. Any person appearing before the competent authorities of the requesting Party in order to answer for acts for which they are subject to prosecution cannot be prosecuted, detained, nor subjected to any other restriction of their individual liberty in the territory of this Party for acts, omissions or sentences prior to their departure from the territory of the requested Party.

3. Immunity provided for in this article shall cease when the person, having had the possibility to leave the territory of the requesting party during fifteen (15) consecutive days after having received an official notice that their presence was no longer required by the competent authorities, nevertheless remains in this territory or returns after having left.

4. A person that does not remand to a summons where return has been requested cannot be subjected, unless otherwise specified in the summons, to a fine or measure of constraint, unless they return voluntarily to the territory of the requesting Party and are once more summoned to appear.

(b) Observations on the implementation of the article

669. The safe conduct of witnesses and experts, while not foreseen expressly in Belgian law, is safeguarded in several of its bilateral treaties. In addition, Belgium would provide assurances of safe conduct even in the absence of a treaty. Belgium is in compliance with the provision under review.

Paragraph 13 of article 46

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

670. Belgium indicated that it has implemented the provision under review and cited the following provisions of existing treaties as applicable.

A. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Art. 24

Any Contracting Party may, at the time of signing of this Convention or at the time of delivering their instrument of ratification or adhesion, through a statement addressed to the Secretary General of the Council of Europe, indicate which authorities it considers as legal authorities for the purposes of this Convention.

Declaration made at the time of deposit of the instrument of ratification on 13 August 1975
-Period: 11/11/1975 - ...

Aforementioned statement relative to articles: 24

The Government of the Kingdom of Belgium declares that, as regards Belgium, judicial authorities for the purposes of the Convention are to be understood as meaning members of the judiciary responsible for administering the law, examining magistrates and members of the Department of Public Prosecution.

B. Bilateral agreements

B.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 15. Central Authorities

(1) Under the terms of this treaty, all requests and their replies shall be transmitted and received by the central authorities, without, however, excluding, where particular

circumstances require it, the transmission by diplomatic channels.

(2) In Canada, the central authority is constituted by the Minister of Justice or by the functionaries that he designates; in Belgium, the central authority is constituted by the Minister of Justice, his representative and his delegate.

B.2. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 17. Central Authorities

1. Any request for mutual assistance shall be presented and executed through a Central Authority for each of the Contracting States. These Central Authorities communicate directly with each other in order to apply the provisions of this Convention.

2. For the purposes of this Convention, by Central Authority it is understood:

- a) for the Kingdom of Belgium, the Minister of Justice, his representative or his delegate;
- b) for the United States of America, the Attorney General or the representatives that he has designated.

B.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE II – Central Authorities

1. Each Party shall designate a central authority.

2. For Hong Kong, Special Administrative Region, the Central Authority is the Secretary of Justice or his legal representative. For the Kingdom of Belgium, the Central Authority is the Federal Public Service of Justice and, for cases of urgency, the Office of the Federal Prosecutor. Each Party may change its Central Authority; as the case may be, it must notify the change to the other Party.

3. Requests submitted according to this Convention shall be exclusively addressed by the central authority of the requesting Party to the central authority of the requested Party. The requests shall be presented in writing. In cases of urgency, the request may be transmitted by fax.

4. The central authority of the requested Party shall quickly execute the requests or, given the case, transmit them to its competent authorities with the purpose that they execute them.

5. Any communication having the objective of obtaining additional information may be carried out directly between the competent authorities responsible for the execution of the request.

B.4. Convention between the Kingdom of Belgium and the Tunisian Republic with regard to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

Art. 30 – Process to follow

The letters rogatory provided for in articles 22 and 23 as well as the requests of notification of legal acts shall be transmitted either by diplomatic channels, or directly between Ministries of Justice.

B.5. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual agreement on criminal matters, signed in Bangkok on November 12, 2005

Article 3 – Central Authorities

1. Each State Party establishes a Central Authority.

2. For the Kingdom of Thailand, the Central Authority is the Attorney General or a person designated by him.
3. For the Kingdom of Belgium, the Central Authority is the Minister of Justice or a person designated by him.
4. The requests for mutual assistance presented under this Convention shall be formulated and executed between the Central Authorities of the State Parties.

B.6. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 3 – CENTRAL AUTHORITIES

1. Each Party shall designate a central authority that shall deliver or receive the requests referred to in this Convention. The central authority for the Kingdom of Belgium shall be the Federal public service of Justice; the central authority for the Republic of Korea shall be the Minister of Justice or a functionary designated by the aforementioned minister.
2. The central authorities shall communicate with each other through diplomatic channels or, in the case of urgency, directly, for the purposes of this Convention.
3. The central authority of the requested party executes the requests or, as the case may be, transmits them to its competent authorities in order that they execute them.

(b) Observations on the implementation of the article

671. The central authority for Belgium is the Federal Public Justice Service and the Secretary-General of the United Nations has been notified of its designation. On regular basis Belgium coordinates with the different authorities, namely on our expertise on international cooperation. The Federal public service of Justice forwards the incoming requests when these concern different Public prosecutor's offices, concern terrorism or when the public prosecutor's offices is unknown to the Federal Public Prosecutor, otherwise they will be sent directly to the competent Public prosecutor. Belgium is in compliance with the provision under review.

Paragraph 14 of article 46

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

672. Belgium indicated that it has implemented the provision under review and cited the following measures as applicable.

Article 7 LMLA:

§1 The requests of mutual legal assistance on criminal matters, from the Belgian judicial authorities and intended for the competent foreign authorities shall be transmitted through the Federal Public Service Justice, through the diplomatic channel. The return of the documents

of execution is done in the same way.

Requests for mutual legal assistance in criminal matters from the competent foreign authorities and addressed to the Belgian judicial authorities shall be transmitted through the diplomatic channel. The return of the pieces of execution is done in the same way.

§ 2. However, an international instrument binding the requesting State and Belgium can provide that requests for mutual legal assistance in criminal matters shall be transmitted and the executed documents returned directly between the Belgian judicial authorities and the competent foreign authorities to issue and execute them, or between the relevant departments of justice.

§ 3. A copy of any request for assistance transmitted or received by a Belgian judicial authority shall be communicated to the Federal Public Service Justice.

§ 4. Whereas a request for mutual legal assistance in criminal matters transmitted or received by a Belgian judicial authority concerns a case of such nature that it could cause serious disturbance to the public order or could prejudice essential Belgian interests, an information report shall be forwarded without delay to the Minister of Justice by the Federal Prosecutor or, if an investigating judge or a public prosecutor is in charge of the request, by the Attorney General.

This obligation to provide information does not prejudice the application of Article 5.

A. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Article 14

1. The requests of mutual assistance must include the following indications:

- (a) the authority who issues the request;
- (b) the object and the motive of the request;
- (c) as possible, the identity and nationality of the person in question, and (d) the name and address of the recipient if there is one.

2. The letters rogatory provided for by articles 3, 4 and 5 shall mention, in addition, the offence and include a short summary of the facts.

Article 15

1. The letters rogatory provided for in articles 3, 4 and 5, as well as the requests provided for in article 11, shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party, and resent by the same channels.

2. In case of urgency, the aforementioned letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be resent along with documents related to the execution by the channel provided for in paragraph 1 of this article.

3. The requests provided for in paragraph 1 of article 13 may be directly addressed by the judicial authorities at competent service of the requested Party, and the replies may be resent directly by this service. The requests provided for in paragraph 2 of article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.

4. The requests for mutual legal assistance, other than those provided for in paragraphs 1 and 3 of this article, and particularly the requests of preliminary inquiry for prosecution, may be subject to direct communication between judicial authorities.

5. In case where the direct transmission is accepted by this Convention, it may be carried out through the International Criminal Police Organization (Interpol).

6. Any Contracting Party may, at the time of signing this Convention or at the time of delivering its instrument of ratification or adhesion, through a statement addressed to the Secretary General of the Council of Europe, give notice that all or certain requests of mutual

legal assistance must be addressed through a channel other than that provided by this article, or request that, in the case provided for in paragraph 2 of this article, a copy of the rogatory letter be communicated at the same time to its Ministry of Justice.

7. This article does not affect the provisions of bilateral agreements or arrangements in effect between the Contracting Parties, according to which the direct transmission of requests of mutual legal assistance between the authorities of the Parties is provided.

Article 16

1. Subject to the provisions of paragraph 2 of this article, the translation of the requests and annexed documents shall not be required.

2. Any Contracting Party may, at the time of signing or delivering its instrument of ratification or adhesion, through a statement addressed to the Secretary General of Council of Europe, reserve the right to demand that the requests and annexed documents addressed to him are accompanied by either a translation in its own language, a translation in one of the official languages of the Council of Europe or in one of these languages, as indicated by it. The other Parties may implement the rule of reciprocity.

3. This article shall not affect the provisions relative to the translation of annexed requests and documents included in the agreements or arrangements in force or to be concluded between two or more Contracting Parties.

Article 17

The evidence and documents transmitted in application of this Convention shall be exempt of all formalities of legalisation.

B. Bilateral agreements

B.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 14. Content of the requests

(1) In all cases, the requests of mutual assistance shall include the following information:

- a) the competent authority that conducts the inquiry or the procedure that concerns the request;
- b) a description of the nature of the inquiry or the procedures, a summary of the pertinent facts and a copy or summary of the applicable laws;
- c) the motive of the request and the reason for seeking mutual assistance; and d) an indication of the desired period of execution.

(2) In the following cases, the request shall include the following information:

- a) when the request involves taking testimony or search and seizure, the reasons that give rise to believe that the evidence may be found within the territory of the requested State;
- b) when the request involves taking testimony, details on the necessity to obtain statements under oath or solemn affirmation and a description of the subject about which the testimony or statement must be;
- c) when the request involves the loan of evidence, the authority that will have its custody, the place to where the evidence shall be transported, the tests to which it may be subject and the date in which it shall be returned; and
- d) when the request involves making detained individuals available to the requesting State, the authority that shall ensure their custody during the transfer, the place where the detained shall be transferred and the date of their return.

If the information provided for in paragraphs c) and d) is not included in the request, this

information must be subsequently sent as soon as possible.

(3) As long as necessary and within what is possible, the requests of mutual assistance shall also include the following information:

- a) the identity and nationality of the person or persons that are subject of the enquiry or procedure and the place where they can be found;
- b) details on every particular procedure that the requesting State wishes to see followed and the reasons for doing so; and
- c) a stipulation of confidentiality and the reasons justifying it.

(4) If the requested State considers that the information included in the request is insufficient, it may demand to be provided with additional information.

(5) The requests shall be made in writing. In case of urgency or if the requested State allows it, the request may be formulated by fax; in such case the request shall be promptly confirmed in writing.

B.2. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 15. Content of the requests

1. A request of assistance shall specify:

- a) the name of the authority that conducts the investigation or the procedure for which the request is made;
- b) the subject and nature of the investigation or the procedure;
- c) a description of the information or the object of the inquiry or intervention to be undertaken; and
- d) the objective for which the information, the object or intervention are requested.

2. Where necessary, and within what is possible, the request shall include:

- a) available information on the identity and localisation of the person being sought;
- b) the identity and localisation of the recipient of evidence, their relation with the procedure and the manner in which the return of the evidence is to be carried out;
- c) the identity and localisation of the people from whom they wish to obtain evidence;
- d) a description of the manner in which a testimony must be registered and transcribed;
- e) a list of the questions which are appropriate to answer;
- f) an exact description of the place where the search must take place as well as the objects to be seized;
- g) a description of all particular procedures to follow for the execution of the request; and
- h) information related to the compensation to which the witness or expert summoned to appear in the requesting State may be entitled to.

B.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE V - Requests

1. Requests must include:

- a) the precise contact details of the authority for which the request is made;
- b) a description of the nature of the inquiry, of the prosecution, of the offence or of the criminal affair, as well as a summary of the facts and the pertinent laws;
- c) if possible, the identity and nationality of the person in question as well as their address or registered place of residence;
- d) a description of the purpose of the request and nature of the request for mutual assistance;

- e) any demand for confidentiality;
 - f) the details of any particular procedure that the requesting Party wishes to follow; and
 - g) the desired period of execution of the request, and if possible, the reasons for urgency.
2. The requests and documents submitted in support of the requests shall be sent in one of the official languages of the requesting Party and accompanied by a translation into English. The cost of the translation of a request or a reply to a request shall be covered by the requesting Party.

B.4. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997

Art. 13. Form of the request for mutual legal assistance.

- 1° The request for mutual assistance must include the following indications: a) the authority who issues the request;
- b) The object and motive of the request;
 - c) Insofar as possible, the identity and nationality of the person in question; d) the name and address of the recipient if applicable;
 - e) As the case may be, any other information in possession of the requesting authority and relative to the request of mutual assistance.
- 2° Additionally, the requests of letters rogatory provided for in articles 4 and 6 shall include a summary of the facts, the main charges and texts of the applicable laws.

Art. 14. Procedure

- 1° The letters rogatory referred to in articles 4 and 6 of this convention shall be transmitted by diplomatic channels. The requests of notification of legal acts and excerpts of criminal records shall be transmitted directly between the Ministries of Justice of the two countries.
- 2° In case of urgency, the letters rogatory may be directly addressed by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. These letters rogatory and documents relative to their execution shall be returned, in any case, according to the means provided for in the previous paragraph.
- 3° Communications meant to obtain simple information may be directly exchanged between the judicial authorities or the criminal police authorities.

B.5. Convention between the Kingdom of Belgium and the Tunisian Republic relative to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

Art. 29. Form of the requests for mutual legal assistance

- (1) The letters rogatory referred to in articles 22 and 23 shall mention the charges as well as the objective of the request, and they shall include a summary of the facts. If the requesting authority wishes that the witness or the experts testify under oath, it must expressly indicate so.
- (2) Other requests of mutual legal assistance, in particular those headed towards the notification of legal acts, obtaining excerpts of criminal records or the communication of simple information, shall include the following indications:
- (a) the authority from which these originate;
 - (b) the objective of the request;
 - (c) the reason for the request;
 - (d) the identity and, if possible, the nationality of the person being prosecuted or sentenced;
 - (e) as the case may be, the name and address of the recipient.

Art. 30. Process to follow

The letters rogatory referred to in articles 22 and 23 as well as the requests for notification of legal acts shall be transmitted either through diplomatic channels, or directly between the

ministries of Justice.

B.6. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters, signed in Bangkok on November 12, 2005

Article 5 – Content of the requests for mutual assistance

1. The request for mutual assistance shall be done in writing. In case of urgency or if the requested State authorizes it, the request may be sent by fax, or by any other means, but it must immediately be confirmed in writing.

2. All the requests of mutual assistance shall include the following indications:

(a) the name of the competent authority that conducts the inquiry, the prosecution or the procedure that is in question in the request;

(b) a description of the nature of the inquiry, the prosecution or the procedure, including a summary of the facts and the pertinent legislation;

(c) a description of the evidence or the information sought or the acts of mutual assistance to carry out;

(d) the purpose for which the evidence, information or any other mutual assistance are being sought.

3. If applicable, the request shall also include:

(a) if possible, the identity, nationality and localisation of the person or persons who are the object of the inquiry, prosecution or procedure within the requesting State;

(b) the available information concerning the identity and place of residence of a person to be found within the requested State;

(c) the identity and localisation of a person to whom a notification must be addressed, the connection between this person and the inquiry, prosecution or procedure and the terms of submittal;

(d) the identity and localisation of persons about whom evidence is being sought;

(e) in the case of requests involving the gathering of evidence, search and seizure, information on the reason that leads them to believe that the evidence can be found within the jurisdiction of the requested State;

(f) a precise description of the location and/or evidence that is the subject of the investigation;

(g) if applicable, the necessity to maintain confidentiality and the justifying reasons of this request;

(h) a description of the manner of gathering and recording testimonies and statements;

(i) a list of questions that must be answered;

(j) in the case of requests involving the gathering of evidence from a person, a specification of the statements under oath or affirmation that are required and a description of the objective of the evidence or statement sought;

(k) a description of any particular procedure to be followed in the execution of the request;

(l) information concerning the amends and expenditures provided for a person appearing in the requesting State;

(m) in the case of the availability of persons in custody, the person or the authority that shall keep them in custody during the transfer, the place where the person in custody shall be transferred and the date of their return; and

(n) any other information that could be brought to the attention of the requested State in order to facilitate the execution of the request.

4. If the requested State considers that the information included in the request is not sufficient to allow the proceeding thereof, it may request additional information.

B.7. Convention of mutual legal assistance on criminal matters between the Kingdom of

Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 6 – CONTENT OF THE REQUESTS

1. A request of mutual assistance shall include:

- (a) the name of the competent authority that conducts the investigation, prosecution or procedure that concerns the request;
- (b) the objective of the request and a description of the mutual assistance requested;
- (c) except in the case of a request involving the submittal of documents, a description of the objective and nature of the inquiry or procedure, including a summary of the pertinent facts and legislation ad hoc; and
- (d) any timeframe in which the request must be preferably fulfilled.

2. A request of mutual assistance may also include, insofar as possible:

- (a) information on the identity, nationality and localisation of any person that is subject to the inquiry, prosecution or procedure within the requesting Party and of any person about whom they wish to obtain evidence;
- (b) information on the identity and localisation of a person to whom a notification must be addressed, on the connection between this person and the procedure as well as the terms of the notification;
- (c) information on the identity and place of residence of a person;
- (d) a description of the venue or the person to be searched and the property to be seized;
- (e) a description of all procedures or particular terms to observe in the execution of the request;
- (f) information concerning amends and expenditures provided for a person summoned by the requesting Party;
- (g) the need for confidentiality and the reasons that justify it; and
- (h) any other information that may reveal itself to be necessary for the execution of the request.

673. Belgium clarified that if the requested State considers that the information included in the request is not sufficient to allow the proceeding thereof, it may request additional information.

674. Belgium has notified the Secretary-General of the United Nations regarding the acceptable languages in January 2009. Belgium accepts requests for mutual legal assistance in the following languages: French, Dutch and English.

675. Belgium's national law does not explicitly mention the requirements as for the form of the request. Article 7 of the LMLA stipulates general terms. Belgium also referred to the ministerial guideline 15/99 - Circulaire COL 15 d.d. 22 novembre 1999: Joint Circular of the Minister of Justice and the College of Public Prosecutors on Good Practice in Mutual Legal Assistance in Criminal Matters with the Other Member States of the European Union. <http://www.om-mp.be/omzendbrief/4016726/omzendbrief.html> as applicable.

(b) Observations on the implementation of the article

676. Article 7 of the LMLA, the Ministerial Guideline 15/99 on Good Practices in MLA in Criminal Matters with other EU members and several bilateral treaties set out the requirements concerning the format, content and languages of MLA requests. Belgium has notified the Secretary-General that the acceptable languages for MLA are English,

French and Dutch. Belgium is in compliance with the provision under review.

Paragraphs 15 and 16 of article 46

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

677. Belgium indicated that it has implemented the provision under review and referred to its responses under article 46 paragraph 14 above.

(b) Observations on the implementation of the article

678. Article 7 of the LMLA, the Ministerial Guideline 15/99 on Good Practices in MLA in Criminal Matters with other EU members and several bilateral treaties set out the requirements concerning the format, content and languages of MLA requests. Belgium has notified the Secretary-General that the acceptable languages for MLA are English, French and Dutch. Belgium is in compliance with the provision under review.

Paragraph 17 of article 46

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

679. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. Law on Mutual Legal Assistance

Articles 3 and 6

Article 3

The Belgian judicial authorities shall grant mutual legal assistance in criminal matters as widely as possible in compliance with this law and the applicable rules of international law.

Article 6

§ 1. Requests for mutual legal assistance in criminal matters from the competent foreign authorities shall be executed in accordance with Belgian law and, where applicable, with the instruments of international law in force binding the requesting State and Belgium.

§ 2. However, if the request for mutual legal assistance specifies so and an existing international instrument binding Belgium and the requesting State provides for such an obligation, such request shall be executed in accordance with the rules of procedure expressly indicated by the foreign authorities, on the condition that these rules do not infringe fundamental rights or any other fundamental principle of Belgian law.

§ 3. The execution of a request for mutual assistance in criminal matters in accordance with the rules of procedure expressly indicated by the foreign authorities is also possible, within the limits laid down in § 2, in the absence of an international binding instrument between Belgium and the requesting State and providing for such an obligation.

§ 4. If a request for mutual legal assistance in criminal matters can not be carried out because of legal grounds, the Belgian authority in charge of request shall inform the competent foreign authority without delay and shall justify its decision, stating, where appropriate, the conditions under which such execution might take place.

If a request for mutual legal assistance in criminal matters can not be executed within the time limits specified in the request, the Belgian authority responsible for the request shall inform the competent foreign authority without delay, specifying the reasons for the delay and the time limit in which execution may occur.

B. European Convention on mutual legal assistance on criminal matters. (APRIL 20, 1959)

Art. 3

1. The requested Party shall execute, in a manner as prescribed by its legislation, the letters rogatory relative to a criminal affair that shall be addressed to it by the judicial authorities of the requesting Party and that have as an objective to carry out investigative acts or to communicate evidence, case files or documents.

2. If the requesting Party wishes that the witnesses or experts give their statement under oath, it must make it expressly known in the request and the requested Party shall follow-up if the law of its country does not prohibit it.

3. The requested Party may only transmit copies or certified copies consistent with the requested case files or documents. Nevertheless, if the requesting Party expressly requests the originals, they shall be given following such request where possible.

C. Bilateral agreements

C.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996.

Art. 2. Execution of the requests

(1) The requests of mutual assistance shall be promptly executed, according to the law of the requested State and, insofar that is not incompatible with such law, in the manner expressed

by the requesting Party.

(2) Upon request, the requested State shall inform the requesting State of the date and place of execution of the request of mutual assistance.

C.2. Convention of JANUARY 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 16. Execution of the request and return of items

1. The Central Authority of the requested State shall reply as soon as possible to the request or, if necessary, transfer it for execution to the competent authority that, where possible, executes the request.

The judicial authorities of the requested State have the jurisdiction to deliver subpoenas, search warrants or other rulings necessary for the execution of the request.

2. Unless this Convention provides otherwise, the requests shall be executed according to the law and internal procedures of the requested State. The procedures specified in the request shall be followed, even if they are unusual in the requested State, provided that they are not expressly prohibited by the laws of this State.

3. The requested State may provide copies of documents, case files and evidence gathered in the execution of the request. At the request of the requesting State, the requested State shall provide the originals where possible.

4. Without prejudice to the provisions of article 7, the requesting State shall return as soon as possible all objects that were provided pursuant to the execution of the request of mutual assistance, unless renounced by the requested State.

C.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE VI – Execution of the requests

1. The requests shall be executed according to the legislation of the requested Party and, provided that the legislation of the requested Party does not prohibit it, according to the directives formulated in the request.

2. The requested Party shall inform the requesting Party as soon as possible of any circumstance likely to significantly delay the execution of the request.

3. The requested Party shall notify as soon as possible to the requesting Party of any decision to not execute, in full or in part, a request of mutual assistance, as well as the reasons for this decision.

4. Provided that this is not incompatible with the legislation of the requested Party, the competent authority within the requested Party may authorize the judges and the competent authorities of the requesting Party, as well as other persons involved in the investigation or procedure and that were mentioned in the request, to be present during the execution of the request and to participate in the procedure within the requested Party.

C.4. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997.

Art. 4 Execution of the letters rogatory

1° The requested State shall execute, in the manner provided by its legislation, the requests of mutual assistance relative to a criminal affair that shall be addressed to it by the competent judicial authorities of the requesting State and that have as an objective to carry out acts of investigation, to communicate evidence or submit objects, case files or documents.

2° The requested State may only transfer copies or certified copies consistent with the

requested case files or documents.

Nevertheless, if the requesting State expressly requests the originals, they shall be given following this request where possible.

C.5. Convention between the Kingdom of Belgium and the Tunisian Republic with regard to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989.

Art. 22. Execution of the letters rogatory

(1) The High Contracting Parties shall execute, in the terms required by the legislation of the requested Party, the letters rogatory relative to a criminal affair that shall be addressed by the authorities of one of them to the authorities of the other Party, and that have as an objective the fulfillment of investigative acts, as well as the communication of evidence, case files or documents.

(2) The requested authority may transmit certified copies consistent with these case files or documents. If the requesting Party expressly request the originals, they shall be given following this request. Nevertheless, the requested Party may delay handing over the original case files or documents if they are necessary for an ongoing criminal procedure. The original case files and documents shall be returned by the requesting Party to the requested Party as soon as possible, unless the latter renounces them.

C.6. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on the mutual assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 6 – Execution of the requests

1. The requests for mutual assistance shall be executed promptly according to the legislation of the requested State and, insofar that this legislation does not prohibit it, according to the terms requested by the requesting State.

2. The requested State shall not refuse the execution of a request based on bank secrecy.

C.7. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 7 – EXECUTION OF REQUESTS OF MUTUAL ASSISTANCE

1. The requested Party shall execute the requests for mutual assistance relative to a criminal offence that shall be addressed to it by the competent authorities of the requesting Party and that have as an objective to carry out acts of inquiry, to gather evidence or to communicate case files, documents or evidence, or to reconstitute the victim, without prejudice to the rights of third parties, according to the applicable laws, objects or valuables derived from an offence found in the possession of the author of said crime.

2. The requests of mutual assistance are executed according to the forms and rules of the procedure of the requested Party. This latter, however, may subject itself to different procedural rules that are expressly indicated by the requesting Party, on condition that these rules cannot prejudice fundamental rights or be against any other fundamental principle of the law of the requested Party.

3. If the requesting Party wishes the witnesses or experts to give their statements under oath, it must be expressly stated in the request and the requested Party shall follow through if its legislation does not prohibit it.

(b) Observations on the implementation of the article

680. Outgoing MLA requests are generally executed in accordance with the domestic law

of the requested State, and incoming requests in line with the instructions from the requesting State, unless it is contrary to Belgian law (LMLA, articles 3 and 6, bilateral treaties). Belgium is in compliance with the provision under review.

Paragraph 18 of article 46

18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

681. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. Belgian law - articles 112 and 112bis of the Criminal Procedure Code.

(These articles can be found in chapter III, in the explications under article 32 of UNCAC)

B. European Convention on mutual legal assistance on criminal matters (APRIL 20, 1959) + second additional protocol to the European convention on mutual legal assistance on criminal matters (08.11.2001)

Article 9 – Hearing by videoconference

1 If a person who is within the territory of a Party must be heard as a witness or expert by the judicial authorities of another Party, this latter may request, if it is inopportune or impossible for the person in question to appear in person in their territory, that the hearing take place by videoconference, according to paragraphs 2 through 7.

2 The requested Party shall consent to the hearing by videoconference provided that the recourse to this method does not go against the fundamental principles of its law and provided that it has the technical means to allow for a videoconference. If the requested Party does not have the technical means to allow for a videoconference, the requesting Party may place them at the disposal of the requested Party with their consent.

3 The requests of a hearing by videoconference shall include, in addition to the information indicated in article 14 of the Convention, the reason for which it is not desired or possible that the witness or the expert be present in person at the hearing, the name of the judicial authority and the person that shall proceed with the hearing.

4 The judicial authority of the requested Party shall summon the person in question according to the forms provided by its legislation.

5 The following rules are applicable to the hearing by videoconference:

a the hearing takes place before a judicial authority of the requested Party, assisted as needed by an interpreter; this authority is also responsible for the identification of the person to be heard and for ensuring respect to the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party considers that the fundamental principles of the law of the requested Party are not respected

during the hearing, it shall immediately take the necessary measures to ensure that the hearing is carried out according to those principles;

b the competent authorities of the requesting and the requested Parties shall agree, as the case may be, on the measures relative to the protection of the person to be heard;

c the hearing shall be carried out directly by the judicial authority of the requesting Party, or under its direction, according to its internal law;

d at the request of the requesting Party or of the person to be heard, the requested Party shall ensure that the person is, as needed, assisted by an interpreter;

e the person to be heard may invoke the right to not testify, which shall be recognized by the law of either the requested Party or of the requesting Party.

6 Without prejudice to any of the agreed to measures on that which concerns the protection of people, the judicial authority of the requested Party shall draft, at the end of the hearing, the minutes indicating the date and place of the hearing, the identity of the person heard, the identities and qualities of all the other persons of the requested Party that have participated in the hearing, any oaths made and the technical conditions in which the hearing took place. This document is sent by the competent authority of the requested Party to the competent authority of the requesting Party.

7 Each Party shall take the necessary measures so that, when the witnesses or experts are heard in their territory, according to this article, and refuse to testify when they are required to do so, or make false statements, their national right applies as it would apply if the hearing had taken place within the framework of a national procedure.

8 The Parties may, if they so wish, equally apply the provisions of this article, when appropriate and with the consent of their competent judicial authorities, to hearings by videoconference in which the accused or the suspect participate. In this case, the decision to hold the videoconference and the manner in which it takes place must be subject to an agreement between the concerned Parties and according to their national law and the international instruments on such matters. The hearings in which the accused or the suspect participate may only take place with their consent.

9 Any contracting State may, at any time, through a statement addressed to the Secretary General of the Council of Europe, state that it will not avail itself of the faculty, provided for in paragraph 8 of this article, to apply the provisions of this article to hearings by videoconference in which the accused or the suspect participate.

Recent bilateral conventions also provide for the hearing by videoconference, for example:

MLA-convention with Thailand:

Article 13 – Collection of testimonies and statements by videoconference

When possible and according to the fundamental principles of the internal law, if a person is within the territory of a State Party and must be heard as a witness or as an expert by the competent authorities of the other State Party, the first State Party may, at the request of the other, authorize the collection of the testimony or statement by videoconference, under the terms and conditions mutually agreed to between the State Parties, if it is not possible or desired for this individual to appear in person in the territory of the requesting State. The State Parties may agree that the collection of the testimony or statement be conducted by a competent authority of the requesting State and that a competent authority of the requested State assist.

(b) Observations on the implementation of the article

682. Hearing of witnesses (as well as victims) via videoconference is possible (CPC articles 112 and 112bis; ECMLA article 9 and bilateral treaties). Belgium is in compliance with the provision under review.

Paragraph 19 of article 46

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

683. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. Law on Mutual Legal Assistance

Article 2/4. Transmitted personal data or information may not be used as evidence unless the competent Belgian judicial authority has authorized such use.

B. European Convention on mutual legal assistance on criminal matters + second additional protocol to the European convention of mutual legal assistance on criminal matters

Article 26 - Protection of information

1 Information of a personal nature transferred from one Party to another as a result of the execution of a request carried out under the Convention or one of its protocols may only be utilized by the receiving Party:

a for purposes of procedures for which the Convention or one of its protocols is applicable, or
b for purposes of other legal or administrative procedures directly connected to procedures referred to in point a, or
c for purposes of preventing an immediate and serious threat against the public security.

2 Such data may, however, be utilized for any other purpose, with prior consent of either the Party that relayed the information or the person concerned.

3 Any Party may refuse to relay information obtained as a result of the execution of a request made under the Convention or one of its protocols, when

- such information is protected under its national law, and
- the Party to which the information would be relayed is not bound by the Convention to protect individuals with regard to the automated processing of information of a personal nature, executed in Strasbourg on January 18, 1981, except if this latter Party agrees to grant the information the same protection given by the first Party.

4 Any Party that relays information obtained as a result of the execution of a request

made under the Convention or one of its Protocols may require that the Party to which the information is relayed notifies it of its usage.

5 Any Party may, through a statement addressed to the Secretary General of the Council of Europe, require that, within the framework of the procedures for which it may have been able to refuse or limit the transmission or utilisation of information of a personal nature, according to the provisions of the Convention or one of its protocols, the information of a personal nature that it relays to another Party is not used by this latter for the purposes referred to in paragraph 1, unless they have prior consent to do so.

C. Bilateral agreements

C.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996.

Art. 17. Restriction in the usage of information

Before using or divulging information or evidence provided for purposes other than those stated in the request, the requesting State must obtain the consent of the central authority of the requested State.

C.2. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE VIII – Limits of use

1. The requested Party may, after consulting with the requesting Party, request that the information or evidence provided remains confidential or is not divulged or used other than according to the terms and conditions that it would have specified.

2. The requesting Party may not divulge or use information or evidence provided for purposes other than those that would have been stipulated in the request without prior consent of the central authority of the requested Party.

C.3. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual legal assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 8 – Limits of usage and confidentiality

1. Information and evidence obtained under this Convention may not be divulged or used for purposes other than those stated in the request without prior consent of the requested State. This information and evidence may only be used by the services of the Federal Public Service of Justice, the judicial authorities and the services charged with the implementation of the law, responsible for the execution of tasks under this Convention.

2. The requesting State may require that the request for mutual assistance, its contents and related documents, as well as its execution, remain confidential. If the request cannot be executed without lifting the request for confidentiality, the requested State shall notify the requesting State, who decides whether or not to go ahead with the execution of the request.

3. The requested State may require that information or evidence provided as well as their source remain confidential according to the conditions that it specifies. In this case, the requesting State shall respect these conditions except if the information or evidence is necessary in a public procedure as a result of the investigation, prosecution or procedure mentioned in the request.

C.4. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 20 - CONFIDENTIALITY

1. If so is expressed, each Party shall ensure to keep confidential, to the extent authorized by its law, the requests for mutual assistance or their response. If the request cannot be executed without lifting the request for confidentiality, the requested Party shall notify the requesting Party, who then shall decide whether or not to go ahead with the execution of this request.
2. The requesting Party cannot divulge, use or relay information or evidence provided for purposes other than those that were stipulated in the request without the prior consent of the central authority of the requested Party.

(b) Observations on the implementation of the article

684. In line with the Law on Mutual Legal Assistance (article 2 paragraph 4), ECMLA articles 26 and bilateral treaties, Belgium respects the rules of speciality in the transmission of information. Belgium is in compliance with the provision under review.

Paragraph 20 of article 46

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

685. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. European Convention of mutual legal assistance on criminal matters + second additional protocol of the European convention of mutual legal assistance on criminal matters

Article 25 - Confidentiality

The requesting Party may require the requested Party to ensure that the request and its contents remain confidential, except to the extent where this is not compatible with the execution of the request. If the requested Party cannot comply with the requirement for confidentiality, it must notify the requesting Party as soon as possible.

B. Bilateral agreements

B.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 16. Confidentiality

- (1) The requested State may require that the information or evidence provided, or even the source of the information or evidence, remains confidential or is not divulged or utilised for means other than those specified by it.

(2) The requesting State shall notify the requested State of the extent to which it may agree to the request formulated by the requested State. The requested State then shall determine if it refuses or defers further action to the request of mutual assistance.

(3) The requested State shall protect, to the extent requested, the confidential nature of the request, its contents, its supporting documents and any action undertaken as a result of this request, except to the extent necessary for its execution.

(4) If it cannot comply with the request without prejudice against the aforementioned confidential nature, the requested State shall notify the requesting State, who will then decide whether to maintain or not its request.

B.2. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 8 – Limit of use and confidentiality

1. The information or evidence obtained under this Convention may not be divulged or utilised for purposes other than those stated in the request without prior consent of the requested State. This information and evidence can only be utilised by the services of the Federal public service of Justice, the judicial authorities and the services in charge of the implementation of the law, responsible for the execution of the tasks provided for by this Convention.

2. The requesting State may demand that the request of mutual assistance, its contents and related documents, as well as its execution remain confidential. If the request cannot be executed without lifting the request for confidentiality, the requested State shall notify the requesting State, who shall then decide whether or not to go ahead with the execution of the request.

3. The requested State may require that information or evidence provided, as well as their source, remain confidential according to the conditions specified by it. In this case, the requesting State shall respect these conditions except to the extent that the information or evidence is necessary in a public procedure as a result of the investigation, prosecution or procedure mentioned in the request.

B.3. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 20 - CONFIDENTIALITY

1. If so is expressed, each Party shall ensure to keep confidential, to the extent authorized by its law, the requests of mutual assistance or their response. If the request cannot be executed without lifting the request for confidentiality, the requested Party shall notify the requesting Party, who then shall decide whether or not to go ahead with the execution of this request.

2. The requesting Party cannot divulge, use or relay information or evidence provided for purposes other than those that were stipulated in the request without prior consent of the central authority of the requested Party.

(b) Observations on the implementation of the article

686. In line with the Law on Mutual Legal Assistance (article 2 paragraph 4), ECMLA articles 26 and bilateral treaties, Belgium respects the rules of speciality in the transmission of information. Belgium is in compliance with the provision under review.

Paragraph 21 of article 46

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

(a) Summary of information relevant to reviewing the implementation of the article

687. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. Law on Mutual Legal Assistance

Art. 4.

1. Requests for mutual legal assistance in criminal matters which are not a part of the framework of an instrument of international law relating to mutual legal assistance between Belgium and the requesting State shall be carried out only through a reciprocal commitment of good cooperation.

§ 2. The execution of a request referred to in § 1 shall be refused if:

- (1) the execution prejudices the sovereignty, security, public order or other essential interests of Belgium;
- (2) the request is about facts which, in Belgium, constitute political offenses or are related to such offenses;
- (3) the procedure in which the request is made, is motivated by reasons relating to alleged race, sex, color, ethnic or social origin, genetic characteristics, language, religion or belief, political opinion or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;
- (4) the request relates to an offense punishable by a death penalty in the requesting State, if:
 - it can not be reasonably assumed that enforcement is likely to reduce the risk of a death sentence;
 - this request does not follow a request from the accused or the defendant himself;
 - the requesting State does not give sufficient guarantees that the death penalty will not be pronounced or, if pronounced, will not be executed.

B. European Convention of mutual legal assistance on criminal matters (APRIL 20, 1959)

Art. 2

Mutual legal assistance may be refused:

- (a) if the request concerns offences considered by the requested Party as either political offences, offences connected to political offences, or as fiscal offences;
- (b) if the requested Party considers that the execution of the request may threaten the

sovereignty, security, public order or other essential interests of its country.

C. Bilateral agreements

C.1. Convention relative to extradition and mutual legal assistance on criminal matters between the Kingdom of Belgium and the People's Democratic Republic of Algeria, and annex, signed in Brussels on June 12, 1970

Art. 19

Mutual legal assistance, as provided for by this title, is not applicable:

- a) to special offences of military nature;
- b) to the reciprocal execution of decisions on criminal matters.

Art. 20

(1) Mutual legal assistance may be refused:

- a) if the request concerns offences considered by the requested State as either political offences, or as offences connected to political offences;
- b) if the requested State considers that the execution of the request may threaten the sovereignty, security, public order or other essential interests of its country. (2) Any refusal of mutual assistance must be justified.

C.2. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 3. Limits of the mutual assistance

- (1) Mutual assistance may be refused if the State considers that the execution of the request may be a threaten against its sovereignty, its security, its public order or another of its fundamental interests.
- (2) Mutual assistance may be deferred if the execution of the request may interfere with an ongoing inquiry or prosecution in the requested State.
- (3) Mutual assistance may be refused if the request concerns a political offence, except for offences that the contracting States have the faculty to not consider as political under the terms of any other international agreement to which they are a party.
- (4) Before refusing to grant a request of mutual assistance or deferring its execution, the requested State, after consulting with the requesting State in cases that lend themselves, shall determine if the mutual assistance may be agreed to under the conditions that it considers necessary. If the requesting State accepts mutual assistance under these conditions, it is bound to respect them.
- (5) The requested State shall notify the requesting State as soon as possible of its decision to refuse or adjourn and provide its reasons.

C.3. Convention of JANUARY 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 13. Limits of the mutual assistance

1. The central authority of the requested State may refuse to execute a request when:
 - a) the execution of the request may threaten the sovereignty, security or other essential public interests of the requested State;
 - b) the request concerns an offence of military laws that is not an offence before the ordinary criminal law; or
 - c) the request is not in accordance with the provisions of this Convention.
2. The central authority of the requested State may, likewise, refuse to execute a request if it concerns a political offence.

This paragraph is not applicable to offences that the contracting States have the faculty to not

consider as political under the terms of any other international agreements to which they are a party.

3. If, according to this article, a decision of refusal is considered, it shall be preceded by a consultation between the Central Authorities with the purpose of determining under which conditions the mutual assistance may be agreed to. If the requesting State accepts the mutual assistance under these conditions, it is bound to respect them.

4. The central authority of the requested State may defer the execution of a request or only comply with it under certain terms if the execution is likely to interfere with an ongoing investigation or procedure in this State.

5. The central authority of the requested States shall notify, as soon as possible, the central authority of the requesting State of the reasons for refusal or adjournment of the execution of the request.

C.4. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE IV – Restrictions for mutual assistance

1. The requested Party may refuse and, if its legislation so requires it, shall refuse to mutual assistance in the following cases:

a) if accepting the request may threaten, in the case of the Government of the Kingdom of Belgium, the sovereignty, the security or the public order of the Kingdom of Belgium, or, in the case of the Government of Hong Kong, Special Administrative Region, the sovereignty, the security or the public order of the People's Republic of China;

b) if it considers that executing the request may seriously threaten its essential interests;

c) if the request of mutual assistance concerns an offence that, by the circumstances in which it was allegedly committed or was effectively committed, constitutes an offence of political nature or an offence connected to an offence of political nature;

d) if it has strong reasons to believe that the request for mutual assistance shall result in a person being prosecuted, punished or that they shall be affected in any manner by reason of their gender, race, religion, nationality, or political opinions;

e) if the requesting Party cannot fulfill any condition with regard to the confidentiality or restrictions on matters of usage of the provided evidence;

f) if the request of mutual assistance seeks to prosecute a person by reason of an offence for which this person has already been judged and is subject to a definitive sentence or has been granted amnesty within the requested Party;

g) in the case of requests that include measures of constraint, when the actions or omissions that allegedly constitute an offence would not have constituted an offence if they had taken place within the jurisdiction of the requested Party;

h) if the request concerns a military offence that does not constitute an offence in ordinary criminal law;

i) if the request is not in accordance with the provisions of article V;

j) if the request is likely to give rise to a sentence delivered by a court or tribunal established in exceptional circumstances or for exceptional affairs and where the terms and operational procedures deviate from the principles of law recognized internationally.

2. The requested Party may not invoke bank secrecy as an essential interest with the objective of refusing mutual assistance according to paragraph 1 b).

3. Paragraph 1 c) of this article does not apply to an offence that the requested Party does not consider as a political offence under any other international convention applicable to the Parties;

4. The requested Party may refuse mutual assistance if the request concerns an offence punishable by the death penalty in the requesting Party, but for which the death penalty is not provided in the requested State or is not normally enforced, except if the requesting Party gives its assurance, judged sufficient by the requested Party, that the death penalty shall not be delivered, or if it is delivered, that it shall not be enforced.

5. The requested Party may defer the mutual assistance if the execution of the request is likely to interfere with an ongoing inquiry or prosecution in the requested Party.

6. Before refusing or deferring the mutual assistance according to this article, the requested Party, through its central authority, must:

a) notify the requesting Party as soon as possible of the existing reasons for which the refusal or adjournment is considered; and

b) consult the requesting Party in order to decide if mutual assistance may be agreed to under terms and conditions deemed necessary by the requested Party.

7. If the requesting Party accepts the mutual assistance under the terms and conditions stipulated in paragraph 6 b), it is bound to comply with them.

C.5. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997

Art. 2 Exceptions

1° This convention is not applicable in cases of solely military or political offences.

2° Mutual legal assistance may be refused:

a) If the request concerns offences considered by the requested State as offences connected with political or military offences.

b) If the requested State considers that the execution of the request may threaten its sovereignty, its security or its public order, or is not compatible with its legislation.

C.6. Convention between the Kingdom of Belgium and the Tunisian Republic with regard to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

Art. 21 Case of refusal

(1) Mutual legal assistance may be refused:

(a) if the request concerns offences considered by the requested Party either as political offences, or as offences connected to political offences;

(b) if the requested Party considers that the execution of the request may threaten the sovereignty, security, public order or other essential interests of its country.

(2) Any refusal of mutual assistance shall be justified.

C.7. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 2 – Reasons for refusal or adjournment

1. The requested State may refuse to execute a request if it considers that:

(a) the execution of the request may threaten the sovereignty, security, public order or other essential interests of the requested State;

(b) the request concerns a political offence;

(c) there exist serious reasons for the requested State to believe that the request was submitted for the purpose of investigating, prosecuting, punishing or carrying out other procedures against a person by reason of their race, gender, religion, nationality or political opinions, or that the situation of this person runs the risk of being aggravated by any one of these reasons;

(d) the request concerns an offence punishable by the death penalty according to the

legislation of the requesting State but not according to the legislation of the requested State. The request, however, may not be refused if the requesting State provides the requested State with sufficient assurance that the death penalty shall not be delivered or, if it is delivered, that it shall not be enforced. The refusal by the requested State of executing a request by reason of this shall allow the requesting State to decide, on a reciprocal basis, to refuse the execution of a request by the other State concerning an offence of similar nature and severity.

2. The requested State may defer the mutual assistance if the execution of the request is likely to interfere with an ongoing inquiry, prosecution or procedure in the requested State.

3. Before refusing or deferring the execution of a request of mutual assistance according to this Article, the requested State shall determine if the mutual assistance may be agreed to under the conditions that it deems necessary. If the requesting State accepts mutual assistance under these conditions, it is bound to respect them.

4. The requested State shall notify the requesting State as soon as possible of the reasons for refusal or adjournment of the execution of the request.

C.8. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 5 – REFUSAL OF MUTUAL ASSISTANCE

1. Mutual assistance may be refused when the legislation of the requested Party prohibits it, and in particular:

(a) if the request concerns offences considered by the requested Party:

- as either political offences, or as offences connected to political offences;
- as either military offences that do not constitute offences in common law;

(b) if the requested Party considers that the execution of the request may threaten the sovereignty, security, public order or other essential interests of its country. The requested Party, however, may not invoke bank secrecy as an essential interest of its country under this provision for the purpose of refusing the mutual assistance;

(c) if the affair that is subject to criminal procedures in the requesting Party does not constitute an offence under the terms of the legislation of the requested Party, in the case where the affair is under the jurisdiction of the requested Party;

(d) if the procedure within which the request falls is motivated by reasons allegedly connected to race, gender, colour, ethnic or social origins, genetic characteristics, language, religion or convictions, political opinions or any other opinion, affiliation with a national minority, wealth, birth, a handicap, age, or sexual orientation;

(e) if the request concerns an offence punishable by the death penalty in the legislation of the requesting Party, unless

- it can be reasonably assumed that the execution of the request is likely to reduce the risk of a sentence to death penalty;
- this request is a follow-up to a request made by the accused or the defendant himself;
- the requesting Party gives sufficient assurance that the death penalty shall not be delivered or, if delivered, that it shall not be enforced;

(f) if the request for mutual assistance involves the prosecution of a person by reason of an offence for which this person has already been judged and is subject to a definitive sentence or has been acquitted or been granted definitive amnesty within the requested Party;

(g) if the requesting Party is not able to fulfil the conditions established by the requested Party on matters of confidentiality or with regard to restrictions in the use of the evidence provided, as provided by article 20 of this Convention.

2. The requested Party may defer the mutual assistance if the execution of the request is likely to affect an ongoing procedure in the requested Party. In such cases, the requesting Party shall be notified about the likely period in which the request may be executed.

3. Before refusing the mutual assistance according to this article, the requesting Party, through its central authority, shall notify the requesting Party of the existing reasons for which the refusal is considered and indicate, as the case may be, the terms under which this execution may be carried out.

4. If the requested Party refuses or adjourns the mutual assistance, it must notify the requesting Party of the reasons for this refusal or adjournment.

(b) Observations on the implementation of the article

688. Grounds for refusal of mutual legal assistance requests are set out in the Law on MLA, ECMLA and bilateral treaties, and are in line with the requirements of the Convention. Belgium is in compliance with the provision under review.

Paragraph 22 of article 46

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

689. Belgium indicated that it has implemented the provision under review. Belgium explained that such a ground for refusal is not mentioned in the LMLA.

A. In the Belgian law on MLA this is not mentioned as one of the grounds for refusal. (Law on the international police transmission of personal information and information with legal purposes, international mutual legal assistance on criminal matters which amends article 90ter of the Code of criminal procedure (Law on mutual assistance) (December 9, 2004) (see general part, pages 259-260 and answer under paragraph 21, A.)

B. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Art. 2

Mutual legal assistance may be refused:

(a) if the request concerns offences considered by the requested Party as either political offences, offences connected to political offences, or tax offences;

(b) if the requested Party considers that the execution of the request may threaten the sovereignty, security, public order or other essential interests of its country.

C. Additional protocol to the European convention of mutual legal assistance on criminal matters (March 17, 1978)

Article 1

The contracting Parties shall not exercise the right referred to in article 2.a of the Convention of refusing mutual legal assistance for the sole reason that the request concerns an offence that the requested Party considers as a fiscal offence.

690. Belgium also referred to its responses under previous paragraphs of article 46. The cooperation in any of the treaties shall always be assistance in the broadest terms possible.

(b) Observations on the implementation of the article

691. Belgium does not refuse MLA requests on the ground that the offence is considered to

involve fiscal matters. Belgium is in compliance with the provision under review.

Paragraph 23 of article 46

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

692. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. Law on Mutual Legal Assistance

Article 6 §4. If a request for legal assistance on criminal matters cannot be executed for legal reasons, the Belgian authority in charge of it shall inform without delay the competent foreign authority and substantiate its decision indicating, if applicable, the conditions in which the request may be executed.

If a request for legal assistance on criminal matters cannot be executed in the periods indicated in the request, the Belgian authority in charge of it shall inform without delay the competent foreign authority, specifying the reasons for the delay and the period in which the request may be executed.

B. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Art. 19

Any refusal of mutual legal assistance shall be justified.

C. Bilateral agreements

C.1. Convention relative to extradition and mutual legal assistance on criminal matters between the Kingdom of Belgium and the People's Democratic Republic of Algeria, and annex, signed in Brussels on June 12, 1970.

Art. 20.

(1) Mutual legal assistance may be refused:

a) if the request concerns offences considered by the requested State as either political offences, or as offences connected to political offences;

b) if the requested State considers that the execution of the request may threaten the sovereignty, security, public order or other essential interests of its country. (2) Any refusal of mutual assistance shall be justified.

C.2. Convention of JANUARY 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 13. Limits of the mutual assistance

1. The central authority of the requested State may refuse to execute a request when:

a) the execution of the request may threaten the sovereignty, security or other essential public interests of the requested State;

b) the request concerns an offence of military laws that is not an offence according to ordinary criminal law; or

c) the request is not in accordance with the provisions of this Convention.

2. The central authority of the requested State may also refuse to execute a request if it concerns a political offence.

This paragraph is not applicable to offences that the contracting States have the faculty to not consider as political under the terms of any other international agreement of which they are party.

3. If, according to this article, a decision of refusal is considered, it must be preceded by a consultation between the Central Authorities for the purpose of determining under which conditions the mutual assistance may be agreed. If the requesting State accepts mutual assistance under these conditions, it is bound to respect them.

4. The Central Authority of the requested State may defer the execution of a request or execute it only under certain conditions if the execution may interfere with an ongoing investigation or legal procedure in this State.

5. The central authority of the requested State shall notify the central authority of the requesting State, as soon as possible, of the reasons for the refusal or adjournment of the execution of the request.

C.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE IV - Restrictions on the mutual assistance

1. The requested Party may refuse and, if its legislation so requires it, shall refuse mutual assistance in the following cases:

a) if accepting the request may threaten, in the case of the Government of the Kingdom of Belgium, the sovereignty, security or public order of the Kingdom of Belgium, or, in the case of the Government of Hong Kong, Special Administrative Region, the sovereignty, security or public order of the People's Republic of China;

b) if it considers that executing the request may seriously threaten its essential interests;

c) if the request for mutual assistance concerns an offence that, by the circumstances in which it was allegedly committed or was effectively committed, constitutes an offence of political nature or an offence linked to an offence of political nature;

d) if it has strong reasons to believe that the request for mutual assistance shall result in a person being prosecuted, punished or affected in any manner by reason of their gender, race, religion, nationality or political opinions;

e) if the requesting Party cannot fulfil any condition relative to the confidentiality or restrictions with regard to the usage of the evidence provided;

f) if the request of mutual assistance seeks to prosecute a person by reason of an offence for which this person has already been judged and subjected to a definitive sentence or has been granted amnesty by the requested Party;

g) in the case of requests that include measures of constraint, where the actions or omissions that allegedly constitute the offence would not have constituted an offence if they had taken place within the jurisdiction of the requested Party;

h) if the request concerns a military offence that does not constitute an offence in ordinary criminal law;

i) if the request is not according to the provisions of article V;

j) if the request is likely to give rise to a sentence delivered by a court or tribunal established in exceptional circumstances or for exceptional affairs and where the terms and operational procedures deviate from the principles of law internationally recognized.

2. The requested party cannot invoke bank secrecy as an essential interest for the purpose of

refusing mutual assistance according to paragraph 1 b).

3. Paragraph 1 c) of this article does not apply to an offence that the requested Party does not consider as a political offence under any other international convention applicable to the Parties;

4. The requested Party may refuse the mutual assistance if the request concerns an offence punishable by the death penalty in the requesting Party, but for which the death penalty is not provided in the requested State or is not normally enforced, except if the requesting Party gives its assurance, judged sufficient by the requested Party, that the death penalty shall not be delivered, of it is delivered, that it shall not be enforced.

5. The requested Party may defer the mutual assistance if the execution of the request is likely to interfere with an ongoing inquiry or prosecution in the requested Party.

6. Before refusing or deferring the mutual assistance according to this article, the requested Party, through its central authority, must:

a) notify the requesting Party as soon as possible of the existing reasons for which the refusal or adjournment is considered; and

b) consult the requesting Party in order to decide if the mutual assistance may be agreed to under terms and conditions deemed necessary by the requested Party.

7. If the requesting Party accepts mutual assistance under the terms and conditions stipulated in paragraph 6 b), it is bound to comply with them.

C.4. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997.

Art. 3. Reason for refusal

Any refusal of mutual assistance shall be justified.

C.5. Convention between the Kingdom of Belgium and the Tunisian Republic relative to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

Art. 21. Case of refusal

(1) Mutual legal assistance may be refused:

(a) if the requests concern offences considered by the requested Party as either political offences, or as offences connected to political offences;

(b) if the requested Party considers that the execution of the request may threaten the sovereignty, security, public order or other essential interests of its country.

(2) Any refusal of mutual assistance shall be justified.

C.6. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters, signed in Bangkok on November 12, 2005

Article 2 – Reason for the refusal or adjournment

1. The requested State may refuse to execute a request if it considers that:

(a) the execution of the request may threaten the sovereignty, security, public order or other essential interests of the requested State;

(b) the request concerns a political offence;

(c) there exist serious reasons for the requested State to believe that the request was submitted for the purpose of investigating, prosecuting punishing or carrying out other procedures against a person by reason of their race, gender, religion, nationality or political opinions, or that the situation of this person runs the risk of being aggravated by any one of these reasons;

(d) the request concerns an offence punishable by the death penalty according to the legislation of the requesting State but not according to the legislation of the requested State.

The request, however, may not be refused if the requesting State provides the requested State with sufficient assurance that the death penalty shall not be delivered or, if it is delivered, that it shall not be enforced. The refusal by the requested State of executing a request by reason of this shall allow the requesting State to decide, on a reciprocal basis, to refuse the execution of a request by the other State concerning an offence of similar nature and severity.

2. The requested State may defer the mutual assistance if the execution of the request is likely to interfere with an ongoing inquiry, prosecution or procedure in the requested State.

3. Before refusing or deferring the execution of a request of mutual assistance according to this Article, the requested State shall determine if the mutual assistance may be agreed to under the conditions that it deems necessary. If the requesting State accepts the mutual assistance under these conditions, it is bound to respect them.

4. The requested State shall notify the requesting State as soon as possible of the reasons for refusal or adjournment of the execution of the request.

C.7. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 5 – REFUSAL OF MUTUAL ASSISTANCE

1. Mutual assistance may be refused when the legislation of the requested Party prohibits it, and in particular:

(a) if the request concerns offences considered by the requested Party:

- as either political offences, or as offences connected to political offences;
- as either military offences that do not constitute offences in common law;

(b) if the requested Party considers that the execution of the request may threaten the sovereignty, security, public order or other essential interests of its country. The requested Party, however, may not invoke bank secrecy as an essential interest of its country under this provision for the purpose of refusing the mutual assistance;

(c) if the affair that is subject to criminal procedures in the requesting Party does not constitute an offence under the terms of the legislation of the requested Party, in the case where the affair is under the jurisdiction of the requested Party;

(d) if the procedure within which the request falls is motivated by reasons allegedly connected to race, gender, colour, ethnic or social origins, genetic characteristics, language, religion or convictions, political opinions or any other opinion, affiliation with a national minority, wealth, birth, a handicap, age, or sexual orientation;

(e) if the request concerns an offence punishable by the death penalty in the legislation of the requesting Party, unless

- it can be reasonably assumed that the execution of the request is likely to reduce the risk of a sentence of the death penalty;
- this request is a follow-up to a request made by the accused or the defendant himself;
- the requesting Party gives sufficient assurance that the death penalty shall not be delivered or, if delivered, that it shall not be enforced;

(f) if the request for mutual assistance involves the prosecution of a person by reason of an offence for which this person has already been judged and subjected to a definitive sentence or has been acquitted or been granted definitive amnesty within the requested Party;

(g) if the requesting Party is not able to fulfil the conditions established by the requested Party on matters of confidentiality or with regard to restrictions in the use of the evidence provided, as provided by article 20 of this Convention.

2. The requested Party may defer the mutual assistance if the execution of the request is likely to affect an ongoing procedure in the requested Party. In such cases, the requesting Party shall be notified about the likely period in which the request may be executed.

3. Before refusing the mutual assistance according to this article, the requested Party, through

its central authority, shall notify the requesting Party of the existing reasons for which the refusal is considered and indicate, as the case may be, the terms under which this execution may be carried out.

4. If the requested Party refuses or adjourns the mutual assistance, it must notify the requesting Party of the reasons for this refusal or adjournment.

(b) Observations on the implementation of the article

693. Belgium is in compliance with the provision under review. Belgium provides a requesting State with reasons for refusing a MLA request (LMLA article 6 paragraph 4, ECMLA article 19 and bilateral treaties).

Paragraph 24 of article 46

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

694. Belgium informed that it has implemented the provision under review and cited the following measures as applicable.

A. article 6 §4 MLA-law is applicable, see answer (A.) under paragraph 23.

Article 6 §4. If a request for legal assistance on criminal matters cannot be executed for legal reasons, the Belgian authority in charge of it shall inform without delay the competent foreign authority and substantiate its decision indicating, if applicable, the conditions in which the request may be executed.

If a request for legal assistance on criminal matters cannot be executed in the periods indicated in the request, the Belgian authority in charge of it shall inform without delay the competent foreign authority, specifying the reasons for the delay and the period in which the request may be executed.

B. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

It is not specifically mentioned in the text, but the practice goes in this direction.

C. Bilateral agreements

C.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 2. Execution of the requests

(1) The requests for mutual assistance shall be promptly executed, according to the law of the requested State and, as long as it is not incompatible with this law, in the manner expressed by the requesting State.

(2) Upon request, the requested State shall notify the requesting State of the date and place of execution of the requested mutual assistance.

C.2. Convention of JANUARY 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 16. Execution of the request and return of items

1. The Central Authority of the requested State shall reply as soon as possible to the request or, if necessary, transfer it for its execution, to the competent authority that, where possible, executes the request.

The judicial authorities of the requested State have the jurisdiction to deliver subpoenas, search warrants or other rulings necessary for the execution of the request.

2. Unless this Convention provides otherwise, the requests shall be executed according to the law and internal procedures of the requested State. The procedures specified in the request may be followed, even if they are unusual in the requested State, provided that they are not expressly prohibited by the laws of this State.

3. The requested State may provide copies of documents, case files and evidence gathered for the execution of the request. At the request of the requesting State, the requested State shall provide the originals where possible.

4. Without prejudice to the provisions of article 7, the requesting State shall return as soon as possible all objects that were provided pursuant to the execution of the request of mutual assistance, unless renounced by the requested State.

C.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE VI – Execution of requests

1. The requests shall be executed according to the legislation of the requested Party and, provided that the legislation of the requested Party does not prohibit it, according to the directives formulated in the request.

2. The requested Party shall inform the requesting Party as soon as possible of any circumstance likely to significantly delay the execution of the request.

3. The requested Party shall notify the requesting Party as soon as possible of any decision to not execute, in full or in part, a request of mutual assistance, as well as the reasons for this decision.

4. Provided that this is not incompatible with the legislation of the requested Party, the competent authority within the requested Party may authorize the judges and the competent authorities of the requesting Party, as well as other persons involved in the investigation or procedure and that were mentioned in the request, to be present during the execution of the request and to participate in the procedure within the requested Party.

C.4. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 6 – Execution of requests

1. The requests of mutual assistance shall be executed as soon as possible according to the

legislation of the requested Party and, to the extent that this legislation allows it, according to the terms requested by the requesting State.

2. The requested State shall not refuse the execution of a request based on bank secrecy.

(b) Observations on the implementation of the article

695. Belgium is in compliance with the provision under review. Belgium always consults a requesting State before refusing the MLA request.

696. When asked about how long it usually takes to execute MLA requests, Belgium provided the following examples:

- MLA to Moldova: +/-7 months
- MLA to Switzerland: +/-5 months
- MLA to Cyprus: +/-3 months
- MLA to USA: +/- 8 months
- MLA to Peru: +/-7 months
- MLA to Brasil: +/- 6 months
- MLA to Kazakhstan: +/- 1 year

697. Within the Ministry of Justice, Belgium has a software programme for all areas of international cooperation in criminal matters, including mutual legal assistance requests, extradition requests and cross-border transfer of sentenced persons. The main functions of the software are to create new case files, to identify existing case files and to produce statistics.

Paragraph 25 of article 46

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

698. Belgium indicated that it has implemented the provision under review. The Law on mutual legal assistance does not include as a ground for refusal of MLA requests the fact that such assistance would interfere with an ongoing investigation, prosecution or judicial proceeding.

A. Law on Mutual Legal Assistance - this is not a ground for refusal according to Belgian law.

B.1. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Art. 6

1. The requested Party may delay the delivery of objects, case files or documents whose communication is requested, if they are necessary for an ongoing criminal procedure.

2. The objects, as well as the original case files and documents, which would have been communicated in execution of a letter rogatory, shall be returned as soon as possible by the requesting Party to the requested Party, unless this latter renounces them.

B.2. Second additional protocol to the European Convention of mutual legal assistance on criminal matters (November 8, 2001)

Article 7 – Deferred execution of requests

1 The requested Party may delay the execution of a request if acting on it threatens to have negative repercussions on an inquiry, prosecution or any other related procedure conducted by its authorities.

2 Before refusing mutual assistance or delaying it, the requested Party shall examine, as the case may be, after having consulted the requesting Party, if it may be partially agreed to or subject to certain conditions that it deems necessary.

3 Any decision to delay the mutual assistance must be justified. The requested Party shall notify the requesting Party of the reasons that make mutual assistance impossible or that are likely to delay it significantly.

C. Bilateral agreements

C.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 3. Limits of the mutual assistance

(1) Mutual assistance may be refused if the State considers that the execution of the request may threaten its sovereignty, its security, its public order or any other of its fundamental interests.

(2) Mutual assistance may be deferred if the execution of the request may interfere with an ongoing inquiry or prosecution in the requested State.

(3) Mutual assistance may be refused if the request concerns a political offence, except for offences that the contracting States have the faculty to not consider as political under the terms of any other international agreement to which they are a party.

(4) Before refusing to grant the request of mutual assistance or deferring its execution, the requested State, after consulting with the requesting State in cases that lend themselves, shall determine if mutual assistance may be agreed to under the conditions that it considers necessary. If the requesting State accepts mutual assistance under these conditions, it is bound to respect them.

(5) The requested State shall notify the requesting State, as soon as possible, of its decision to refuse or adjourn and provide its reasons.

C.2. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 13. Limits of the mutual assistance

1. The central authority of the requested State may refuse to execute a request when:

a) the execution of the request may threaten the sovereignty, security or other essential public interests of the requested State;

b) the request concerns an offence of military laws that is not an offence according to ordinary criminal law; or

c) the request is not in accordance with the provisions of this Convention.

2. The central authority of the requested State may also refuse to execute a request if it concerns a political offence.

This paragraph is not applicable to offences that the contracting States have the faculty to not consider as political under the terms of any other international agreement of which they are party.

3. If, according to this article, a decision of refusal is considered, it must be preceded by a

consultation between the Central Authorities for the purpose of determining under which conditions the mutual assistance may be agreed. If the requesting State accepts mutual assistance under these conditions, it is bound to respect them.

4. The Central Authority of the requested State may defer the execution of a request or execute it only under certain conditions if the execution may interfere with an ongoing investigation or legal procedure in this State.

5. The central authority of the requested State shall notify the central authority of the requesting State, as soon as possible, of the reason for the refusal or adjournment of the execution of the request.

C.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE VI – Execution of requests

1. The requests shall be executed according to the legislation of the requested Party and, provided that the legislation of the requested Party does not prohibit it, according to the directives formulated in the request.

2. The requested Party shall inform the requesting Party, as soon as possible, of any circumstance likely to significantly delay the execution of the request.

3. The requested Party shall notify the requesting Party, as soon as possible, of any decision to not execute, in full or in part, a request of mutual assistance, as well as the reasons for this decision.

4. Provided that this is not incompatible with the legislation of the requested Party, the competent authority within the requested Party may authorize the judges and the competent authorities of the requesting Party, as well as other persons involved in the investigation or procedure and that were mentioned in the request, to be present during the execution of the request and to participate in the procedure within the requested Party.

C.4. Convention between the Kingdom of Belgium and the Tunisian Republic relative to extradition and mutual legal assistance on criminal matters signed in Tunis on April 27, 1989.

Art. 22. Execution of letters rogatory

(1) The High Contracting Parties shall execute, in the manner required by the legislation of the requested Party, the letters rogatory relative to a criminal affair that shall be addressed by the authorities of one of them to the authorities of the other Party, and that have as an objective the execution of investigative acts, as well as the communication of evidence, case files or documents.

(2) The requested authority may transmit certified copies consistent with these case files or documents. If the requesting Party expressly requests the originals, they shall be given following this request. Nevertheless, the requested Party may delay handing over the original case files or documents if they are necessary for an ongoing criminal procedure. The original case files and documents shall be returned, as soon as possible, by the requesting Party to the requested Party, unless the latter renounces them.

(b) Observations on the implementation of the article

699. Belgium is in compliance with the provision under review as it does not postpone the provision of MLA on the ground that it would interfere with an ongoing investigation, prosecution or judicial proceeding.

Paragraph 26 of article 46

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

700. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. Law on Mutual Legal Assistance

Article 6 §4.

If a request for legal assistance on criminal matters cannot be executed for legal reasons, the Belgian authority in charge of it shall inform without delay the competent foreign authority and substantiate its decision indicating, if applicable, the conditions in which the request may be executed.

If a request for legal assistance on criminal matters cannot be executed in the periods indicated in the request, the Belgian authority in charge of it shall inform without delay the competent foreign authority, specifying the reasons for the delay and the period in which the request may be executed.

B. European Convention of mutual legal assistance on criminal matters (April 20, 1959) + second additional protocol to the European convention of mutual legal assistance on criminal matters (November 8, 2001)

Article 7 – Deferred execution of requests

1 The requested Party may delay the execution of a request if acting on it threatens to have negative repercussions on an inquiry, prosecution or any other related procedure conducted by its authorities.

2 Before refusing mutual assistance or delaying it, the requested Party shall examine, as the case may be, after having consulted the requesting Party, if it may be partially agreed to or subject to certain conditions that it deems necessary.

3 Any decision to delay mutual assistance must be justified. The requested Party shall notify the requesting Party of the reasons that make mutual assistance impossible or that are likely to delay it significantly.

C. Bilateral agreements

C.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 3. Limits of the mutual assistance**

(1) Mutual assistance may be refused if the State considers that the execution of the request may threaten its sovereignty, its security, its public order or any other of its fundamental interests.

(2) Mutual assistance may be deferred if the execution of the request may interfere with an

ongoing inquiry or prosecution in the requested State.

(3) Mutual assistance may be refused if the request concerns a political offence, except for offences that the contracting States have the faculty to not consider as political under the terms of any other international agreement to which they are a party.

(4) Before refusing to grant the request of mutual assistance or deferring its execution, the requested State, after consulting with the requesting State in cases that lend themselves, shall determine if mutual assistance may be agreed to under the conditions that it considers necessary. If the requesting State accepts mutual assistance under these conditions, it is bound to respect them.

(5) The requested State shall notify the requesting State, as soon as possible, of its decision to refuse or adjourn and provide its reasons.

C.2. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 13. Limits of the mutual assistance

1. The central authority of the requested State may refuse to execute a request when:

- a) the execution of the request may threaten the sovereignty, security or other essential public interests of the requested State;
- b) the request concerns an offence of military laws that is not an offence according to ordinary criminal law; or
- c) the request is not in accordance with the provisions of this Convention.

2. The central authority of the requested State may also refuse to execute a request if it concerns a political offence.

This paragraph is not applicable to offences that the contracting States have the faculty to not consider as political under the terms of any other international agreement of which they are a party.

3. If, according to this article, a decision of refusal is considered, it must be preceded by a consultation between the Central Authorities for the purpose of determining under which conditions mutual assistance may be agreed. If the requesting State accepts mutual assistance under these conditions, it is bound to respect them.

4. The Central Authority of the requested State may defer the execution of a request or execute it only under certain conditions if the execution may interfere with an ongoing investigation or legal procedure in this State.

5. The central authority of the requested State shall notify the central authority of the requesting State, as soon as possible, of the reason for the refusal or adjournment of the execution of the request.

C.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE IV – Restrictions of the mutual assistance

1. The requested Party may refuse and, if its legislation so requires it, shall refuse mutual assistance in the following cases:

- a) if accepting the request may threaten, in the case of the Government of the Kingdom of Belgium, the sovereignty, security or public order of the Kingdom of Belgium, or, in the case of the Government of Hong Kong, Special Administrative Region, the sovereignty, security or public order of the People's Republic of China;
- b) if it considers that executing the request may seriously affect its essential interests;
- c) if the request for mutual assistance concerns an offence that, by the circumstances in which

it was allegedly committed or was effectively committed, constitutes an offence of political nature or an offence linked to an offence of political nature;

d) if it has strong reasons to believe that the request for mutual assistance shall cause a person to be prosecuted, punished or be affected in any manner by reason of their gender, race, religion, nationality or political opinions;

e) if the requesting Party cannot fulfil any condition relative to the confidentiality or restrictions for the usage of the evidence provided;

f) if the request for mutual assistance seeks to prosecute a person by reason of an offence for which this person has already been judged and subjected to a definitive sentence or has been granted amnesty by the requested Party;

g) in the case of requests that include measures of constraint, where the actions or omissions that allegedly constitute the offence would not have constituted an offence if they had taken place within the jurisdiction of the requested Party;

h) if the request concerns a military offence that does not constitute an offence in ordinary criminal law;

i) if the request is not in accordance with the provisions of article V;

j) if the request is likely to give rise to a sentence delivered by a court or tribunal established in exceptional circumstances or for exceptional affairs and where the terms and operational procedures deviate from the principles of law internationally recognized.

2. The requested Party cannot invoke bank secrecy as an essential interest for the purpose of refusing mutual assistance according to paragraph 1 b).

3. Paragraph 1 c) of this article does not apply to an offence that the requested Party does not consider as a political offence under any other international convention applicable to the Parties;

4. The requested Party may refuse the mutual assistance if the request concerns an offence punishable by the death penalty in the requesting Party, but for which the death penalty is not provided in the requested State or is not normally enforced, except if the requesting Party gives its assurances, judged sufficient by the requested Party, that the death penalty shall not be delivered, or if it is delivered, that it shall not be enforced.

5. The requested Party may defer the mutual assistance if the execution of the request is likely to interfere with an ongoing inquiry or prosecution in the requested Party.

6. Before refusing or deferring the mutual assistance according to this article, the requested Party, through its central authority, must:

a) notify the requesting Party as soon as possible of the existing reasons for which the refusal or adjournment is considered; and

b) consult the requesting Party in order to decide if mutual assistance may be agreed to under terms and conditions deemed necessary by the requested Party.

7. If the requesting Party accepts mutual assistance under the terms and conditions stipulated in paragraph 6 b), it is bound to comply with them.

C.4. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 5 – REFUSAL OF MUTUAL ASSISTANCE

1. Mutual assistance may be refused when the legislation of the requested Party prohibits it, and in particular:

(a) if the request concerns offences considered by the requested Party:

- as either political offences, or as offences connected to political offences;

- as either military offences that do not constitute offences in common law;

(b) if the requested Party considers that the execution of the request may threaten the sovereignty, security, public order or other essential interests of its country. The requested

Party, however, may not invoke bank secrecy as an essential interest of its country under this provision for the purpose of refusing the mutual assistance;

(c) if the affair that is subject to criminal procedures in the requesting Party does not constitute an offence under the terms of the legislation of the requested Party, in the case where the affair is under the jurisdiction of the requested Party;

(d) if the procedure within which the request falls is motivated by reasons allegedly connected to race, gender, colour, ethnic or social origins, genetic characteristics, language, religion or convictions, political opinions or any other opinion, affiliation with a national minority, wealth, birth, a handicap, age, or sexual orientation;

(e) if the request concerns an offence punishable by the death penalty in the legislation of the requesting Party, unless

- it can be reasonably assumed that the execution of the request is likely to reduce the risk of a sentence to the death penalty;

- this request is a follow-up to a request made by the accused or the defendant himself; - the requesting Party gives sufficient assurance that the death penalty shall not be delivered or, if delivered, that it shall not be enforced;

(f) if the request for mutual assistance involves the prosecution of a person by reason of an offence for which this person has already been judged and subjected to a definitive sentence or has been acquitted or been granted definitive amnesty within the requested Party;

(g) if the requesting Party is not able to fulfil the conditions established by the requested Party on matters of confidentiality or with regard to restrictions in the use of the evidence provided, as provided by article 20 of this Convention.

2. The requested Party may defer the mutual assistance if the execution of the request is likely to affect an ongoing procedure in the requested Party. In such cases, the requesting Party shall be notified about the likely period in which the request may be executed.

3. Before refusing the mutual assistance according to this article, the requested Party, through its central authority, shall notify the requesting Party of the existent reasons for which the refusal is considered and indicate, as the case may be, the terms under which this execution may be carried out.

4. If the requested Party refuses or adjourns the mutual assistance, it must notify the requesting Party of the reasons for this refusal or adjournment.

(b) Observations on the implementation of the article

701. Belgium is in compliance with the provision under review. Belgium always consults a requesting State before refusing the MLA request.

Paragraph 27 of article 46

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the

territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

702. Belgium indicated that it has implemented the provision under review referred to its responses under article 32 of the Convention. In addition, it cited the following treaties as applicable:

A. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Art. 12

1. No witness or expert, whatever their nationality, who, following a summons, appears before the legal authorities of the requesting Party, may be either prosecuted, detained, or subjected to any other restriction of their individual liberty in the territory of this Party for acts or sentences prior to their departure from the territory of the requested Party.

2. No person, whatever their nationality, summoned before the legal authorities of the requesting Party, in order to account for acts for which they are the object of prosecution, may be either prosecuted, detained, or subjected to any restriction of their individual liberty for acts or sentences prior to their departure from the territory of the requested Party and not specified in the summons. 3. The immunity provided for in this Article shall cease when the witness, expert or prosecuted person, having had the possibility to leave the territory of the requesting Party during fifteen consecutive days, after their presence is no longer required by the judicial authorities, remains, nevertheless, in their territory or returns after having left.

B. Bilateral agreements

B.1. Convention relative to extradition and mutual legal assistance on criminal matters between the Kingdom of Belgium and the People's Democratic Republic of Algeria, and annex, signed in Brussels on June 12, 1970

Art. 27

No witness or expert, whatever their nationality, who, while residing in the territory of one of the Parties, appears before the authorities of the other Party as a result of a subpoena that had been addressed to them, may be prosecuted or subjected to any other restriction of its individual liberty for acts or sentences prior to their arrival, unless that, within thirty days following the cease of their activity as a witness or as an expert, they have not left the territory of the requesting Party having had the possibility to do so.

B.2. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 12. Safe Conduct

(1) Except for the detention provided for in article 11 (2), any person travelling to the requesting State following a request to this effect under the terms of articles 9 or 11, cannot be prosecuted, detained, nor subjected to any restriction of their individual liberty in this State for acts or sentences prior to their departure from the requested State, nor be required to testify in any procedure other than that which concerns the request.

(2) Paragraph (1) of this article shall cease to apply when the person, free to leave, does not

leave the requesting State within 30 days after having been officially notified that their presence is no longer required or if, having left, they return of their own free will.

(3) Any person who fails to appear in the requesting State cannot be submitted to any fine or constraint measure in the requested State.

B.3. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 11. Application of articles 9 and 10

1. In case of the application of articles 9 and 10:

a) the detention served in the State to which the person was transferred shall be considered as part of the sentence of deprivation of liberty remaining to be served in the other State;

b) the person transferred cannot be prosecuted, detained or subjected to any other restriction of their individual liberty in the State to which they were transferred for acts or sentences prior to their transference;

c) the immunity provided for in point b) of this article shall cease when the transferred person:

(i) having had the possibility, during fifteen consecutive days, to leave the State to which they were transferred, stays there; or

(ii) after having left, returns.

2. In case that the transferred person escapes, the State to which this person was transferred shall take all measures in order to arrest them.

3. Any person transferred under articles 9 or 10 will be returned without the need to resort to the procedure of extradition.

B.4. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE XVI - Immunity

1. Any person that consents to the transference according to articles XIV or XV cannot be prosecuted, detained or subjected to any other restriction of their individual liberty in the requesting Party for a criminal offence, nor be prosecuted on a civil affair for which they could not be prosecuted if they were not within the requesting Party, for any act or omission prior to their departure from the requested Party.

2. Any person that consents to the transference according to articles XIV or XV cannot be prosecuted based on their testimony, except in the case of a false testimony.

3. A person that consents to the transference according to articles XIV or XV may not be requested to testify in another procedure other than that referred to by the request.

4. Any person that does not consent to the transference according to articles XIV or XV cannot be subjected to any sentence or measure of constraint by the tribunals of the requesting Party or of the requested Party.

5. Any person who is the subject of a summons from the requesting Party for the purpose of answering for acts for which they are the subject of prosecutions cannot be prosecuted, detained or submitted to any other deprivation of liberty in the requesting Party for acts or omissions prior to their departure from the requested Party and which are not mentioned in the summons.

6. Paragraphs 1 and 5 are not applicable if the person, being free to leave, does not leave the requesting Party within a period of 30 days after having been notified that their presence was no longer required, or if they return to the requesting Party after having left.

B.5. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997

Art. 11 – Immunity of witnesses and experts

1° No witness or expert, whatever their nationality, who, following a summons, appears before the legal authorities of the requesting State may be prosecuted, detained, or submitted to any restriction of their individual liberty in the territory of this State for acts or sentences prior to their departure from the territory of the requested State.

2° No person, whatever their nationality, summoned before the legal authorities of the requesting State for the purpose of answering for acts for which they are the subject of prosecution, may be prosecuted, detained, or submitted to any other restriction of their individual liberty for acts or sentences prior to their departure from the territory of the requested State and not mentioned by the summons.

3° The aforementioned immunity of this article shall cease when the witness, expert or the prosecuted person, having had the possibility to leave the territory of the requesting State during thirty consecutive days, after their presence was no longer required by the legal authorities, nevertheless remains or returns after having left.

B.6. Convention between the Kingdom of Belgium and the Tunisian Republic relative to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

Art. 27 – Immunity of witnesses and experts

No witness or expert, whatever their nationality, who, while residing in the territory of one of the Parties, appears before the authorities of the other Party as a result of a subpoena that had been addressed to them, may be prosecuted or subjected to any other restriction of its individual liberty for acts committed prior to their arrival, unless, within thirty days following the cease of their activity as a witness or as an expert, they have not left the territory of the requesting Party having had the possibility.

B.7. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual legal assistance on criminal matters, signed in Bangkok on November 12, 2005

Article 25 - Immunity

1. Any person that is within the territory of the requesting State in order to testify or make a statement according to the provisions of this Convention, cannot be subject to a subpoena, be detained or subjected to any other restriction of their individual liberty by reason of acts or omissions prior to their departure from the territory of the requested State, nor be required to provide evidence in another procedure other than that for which the request was issued.

2. The immunity provided for in this article shall cease when the person, having had the possibility to leave the territory of the requesting State during fifteen (15) consecutive days after having been notified that their presence was no longer required by the competent authorities, nevertheless remains in the territory or returns of their own free will after having left.

B.8. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 17 – SAFE CONDUCT

1. Any person who appears before the competent authorities of the requesting Party, according to their request, cannot be prosecuted, detained, nor subjected to any other restriction of their individual liberty in the territory of this Party for acts, omissions or sentences prior to their departure from the territory of the requested Party. This person also

cannot be compelled to testify in a procedure or collaborate in an inquiry other than the procedure or inquiry that concerns the request.

2. Any person appearing before the competent authorities of the requesting Party in order to answer for acts for which they are subject to prosecution cannot be prosecuted, detained, nor subjected to any other restriction of their individual liberty in the territory of this Party for acts, omissions or sentences prior to their departure from the territory of the requested Party.

3. The immunity provided for in this article shall cease when the person, having had the possibility to leave the territory of the requesting Party during fifteen (15) consecutive days after having received an official notice that their presence was no longer required by the competent authorities, nevertheless remains in this territory or returns after having left.

4. A person that does not remand to a summons where return has been requested cannot be subjected, unless otherwise specified in the summons, to a fine or measure of constraint, unless they return voluntarily to the territory of the requesting Party and are once more called to appear.

(b) Observations on the implementation of the article

703. Safe conduct of witnesses is addressed in multilateral and bilateral treaties that Belgium is a party to. Belgium is in compliance with the provision under review.

Paragraph 28 of article 46

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

704. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. European Convention on mutual legal assistance on criminal matters (April 20, 1959) + second additional protocol to the European convention on mutual legal assistance on criminal matters (November 8, 2001)

Article 5 - Fees

Article 20 of the Convention is replaced by the following provisions:

1 The Parties mutually shall not reclaim repayment for fees derived from the application of the Convention or its protocols, with the exception of:

a fees resulting from the intervention of experts in the territory of the requested Party;

b fees resulting from the transference of detained individuals, carried out in application of articles 13 or 14 of the additional Second Protocol to this Convention, or of article 11 of this Convention;

c important or extraordinary fees.

2 Nevertheless, the cost of establishing a video or telephonic connection, the costs linked with establishing a video or telephonic connection at the disposal of the requested Party, the payment of interpreters provided by it and amends owed to witnesses as well as

their travelling expenses from the requested Party shall be repaid by the requesting Party to the requested Party, unless the Parties agree otherwise.

3 The Parties shall consult with each other in order to determine the terms of payment for the fees likely to be claimed under the provisions of paragraph 1.c of this article.

4 The provisions of this article are applicable without prejudice to the application of the provisions of article 10, paragraph 3, of this Convention.

B. Bilateral agreements

B.1. Treaty of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Canada, signed in Brussels on January 11, 1996

Art. 20. Fees

(1) The requested State shall bear the costs linked to the execution of the request of mutual assistance, except for the following fees, which shall be responsibility of the requesting State:

a) the fees pertaining to the transport of any person at the request of the requesting State, to or from the territory of the requested State, and all the fees and amends payable while this person finds herself in the requesting or required State, following a request under the terms of articles 8 (2), 9 or 11;

b) the fees and expenses of experts, whether they were incurred in the territory of the requested State or in that of the requesting State.

(2) If it seems that the execution of a request implies fees of an exceptional nature, the contracting States shall consult with each other in order to determine the terms and conditions in which the mutual assistance required may be provided.

B.2. Convention of January 28, 1988, concerning mutual legal assistance on criminal matters between Belgium and the USA

Art. 18. Fees and translations

1. The requested State shall provide its assistance to the requesting State without the requiring financial participation by this State, with the exception of the expenses of private experts if the request authorizes the recourse of these experts.

2. The requesting State shall bear all costs related to the transfer of a person in custody, carried out based on articles 9 and 10.

3. If, during the execution of the request, it is made evident that, in order to carry on, exceptional fees must be incurred, the central authorities shall decide the terms and conditions under which the execution of the request may be processed.

4. The requests provided for by this Convention are issued in the English, French and Dutch languages; nevertheless, the letters of transmission issued from a central authority do not have to be translated.

If applicable, the annexes to these requests shall be translated by the requesting State.

The translation of documents provided in the execution of the requests lies on the requesting State.

B.3. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004

ARTICLE VII - Fees

1. The requested Party bears all the costs associated with the execution of the request within its territory, with the exception of:

- a) fees resulting from the recourse of experts;
 - b) interpretation fees;
 - c) travelling fees and subsistence allowances of witnesses, experts, persons in custody transferred and the agents that escort them.
2. If, during the execution of the request, it seems that fees of an extraordinary nature are required in order to fulfil the request, the Parties shall consult with each other in order to establish the terms and conditions according to which the execution of the request may be processed.

B.4. Convention between the Kingdom of Belgium and the Tunisian Republic relative to extradition and mutual legal assistance on criminal matters, signed in Tunis on April 27, 1989

Art. 35. Fees

- (1) Fees resulting from the extradition to the territory of the requested Party shall be borne by this Party.
- (2) Fees resulting from the transit through the territory of the Party requested to allow transit shall be borne by the requesting Party
- (3) The High Contracting Parties shall waive the repayment of fees that result from mutual assistance agreed according to the provisions of title II, with the exception of expert fees; these fees shall be repaid on the submittal of supporting evidence.

B.5. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 7 - Fees

- 1. The requested State shall rule all costs related to the execution of the request, with the exception of costs related to the testimony of experts as well as amends and travelling expenses according to articles 20 and 24; these fees, amends and expenses shall be borne by the requesting State. If the witness or expert requests it, the requesting State may provide an advance on travel expenses, fees or amends.
- 2. If it seems that the execution of the requests requires extraordinary expenses, the State Parties shall consult each other with the purpose of establishing the terms and conditions under which the mutual assistance required may be granted.

B.6. Convention of mutual legal assistance on criminal matters between the Kingdom of Belgium and the Republic of Korea, executed in Brussels on January 17, 2007

Article 22 - EXPENSES

- 1. The requested Party bears the costs of executing the request of mutual assistance; however, the requesting Party is responsible for:
 - (a) the expenses related to the transfer of any person to or from the territory of the requested Party at the request of the requesting Party, and all amends or expenses payable to this person while they are within the requesting Party following a request pursuant to article 15 or 16;
 - (b) all travel expenses of the officials accompanying the person following a request pursuant to article 16; and
 - (c) expert expenses and fees.
- 2. If, during the execution of the request, it seems that fees of an extraordinary nature are required in order to fulfil the request, the Parties shall consult each in order to establish the terms and conditions under which the mutual assistance requested may be granted.

705. In addition, Belgium noted that the Directive 2014/41/EU of the European Parliament

and of the Council of 3 April 2014 regarding the European Investigation Order in Criminal Matters also deals with extraordinary costs. Article 10, §2 states that:

Where the executing authority considers that the costs for the execution of the EIO may be deemed exceptionally high, it may consult with the issuing authority on whether and how the costs could be shared or the EIO modified.

The executing authority shall inform the issuing authority in advance of the detailed specifications of the part of the costs deemed exceptionally high.

(b) Observations on the implementation of the article

706. Belgium bears ordinary costs when it is requested to provide MLA. With regard to extraordinary costs, the parties consult each other in order to determine the terms and conditions under which the execution of the request can be continued. For example, in one case where the UK requested MLA, the costs of the making of aerial photos by a drone were borne by Belgium.

Subparagraph 29 (a) of article 46

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

707. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties.

A. Please refer to chapter I/1 of the LMLA.

B. Convention of mutual legal assistance on criminal matters between the Government of the Kingdom of Belgium and the Government of Hong Kong, Special Administrative Region of the People's Republic of China, signed in Brussels on September 20, 2004.

ARTICLE XII – Documents accessible to the public and official documents

1. Subject to its legislation, the requested Party shall provide copies of documents accessible to the public.

2. Subject to its legislation, the requested Party may provide copies of any document, case file or information in the possession of a governmental department or organism and that is not accessible to the public.

(b) Observations on the implementation of the article

708. Belgium is able to provide copies of government records and documents (LMLA article 1 paragraph 1). Belgium is in compliance with the provision under review.

Subparagraph 29 (b) of article 46

29. The requested State Party: ...

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

709. Belgium referred to the information provided under paragraphs 1 to 3 of article 46 + chapter I/1 of the LMLA.

(b) Observations on the implementation of the article

710. Belgium is able to provide copies of government records and documents (LMLA article 1 paragraph 1). Belgium is in compliance with the provision under review.

Paragraph 30 of article 46

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

711. Belgium indicated that it has implemented the provision under review. Belgium explained that while there are no agreements specific to corruption, the agreements of mutual legal assistance concluded have a general field of application and corruption falls within them. Belgium referred to the examples cited in the previous paragraphs of article 46.

(b) Observations on the implementation of the article

712. Belgium is in compliance with the provision under review.

Article 47. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

713. Belgium indicated that it has implemented the provision under review and cited the following applicable laws and treaties. Belgium explained that a treaty basis is necessary for the transfer of criminal proceedings.

A. Belgian law from May 23, 1990 on the transfer between States of sentenced persons, the recovery and surveillance of conditionally sentenced or released persons, as well as the recovery and the transfer of the enforcement of penalties and of precautionary measures. (art. 18 and following).

B. European Convention of mutual legal assistance on criminal matters (April 20, 1959)

Art. 21

1. Any denunciation addressed by a Contracting Party for the purposes of prosecution of another Party before the tribunals shall be the object of communications between the Ministries of Justice.

Nevertheless, the Contracting Parties may use the powers referred to in paragraph 6 of article 15.

2. The requested Party shall make known the development of this denunciation and shall transmit, if applicable, a copy of the decision.

3. The provisions of article 16 shall apply to the denunciations referred to in paragraph 1 of this article.

C. Bilateral agreements

C.1. Convention relative to extradition and mutual legal assistance on criminal matters between the Kingdom of Belgium and the People's Democratic Republic of Algeria, and annex, signed in Brussels on June 12, 1970

Art. 32

Official denunciations issued by one of the Contracting Parties for prosecution before the tribunals of another Party shall be addressed by diplomatic channels.

C. Convention between the Kingdom of Belgium and the Kingdom of Morocco on mutual legal assistance on criminal matters, signed in Brussels on July 7, 1997

Art. 15. Denunciation of acts for prosecution

1° Any denunciation of acts for prosecution shall be transmitted through the means provided for in article 14 of this convention.

2° Once it has established the jurisdiction of its tribunals, the requested State shall notify the requesting State of the existent possibilities for the affected Parties to seek civil compensation, as well as the means of recourse available.

3° The requested State must notify the requesting State the outcome of the denunciation.

C.2. Convention between the Government of the Kingdom of Belgium and the Government of the Kingdom of Thailand on mutual assistance on criminal matters; signed in Bangkok on November 12, 2005

Article 22 Official denunciation for prosecution

1. When the State Party is able to carry out the procedures, but wishes for these to be carried out by the other State Party, the central authority of the requesting Party shall officially communicate to the central authority of the requested Party the facts concerning the affair. If the requested Party has jurisdiction in this regard, it shall submit the case to its competent authorities with the purpose of carrying out a criminal procedure. These authorities shall give their decision according to the legislation of their country.

2. The requested State shall notify the requesting State of the outcome of the official denunciation and transmit, if applicable, a copy of the decision.
3. Once the requested State has established the responsibility of its jurisdictions, it shall notify the requesting Party of the possibilities for the affected Parties to take an action for damages as well as the possible means of recourse.

714. As for case examples, Belgium noted that at the Ministry of Justice only one case of denunciation is known for corruption. It is a demand of Belgium to Cameroon. The case is still ongoing and therefore more information could not be given.

(b) Observations on the implementation of the article

715. Belgium is in compliance with the provision under review. Transfer of criminal proceedings is conditional on the existence of a treaty. The European Convention on Mutual Legal Assistance in Criminal Matters (1959) and bilateral agreements with Algeria and Thailand are relevant in this regard.

Article 48. Law enforcement cooperation

Subparagraph 1 (a) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

716. Belgium indicated that it has implemented the provision under review

717. In Belgium, the federal prosecutor is responsible for facilitating the international police and judicial cooperation. However, the Belgian police also have an efficient network of liaison officers (LO) posted abroad. They offer aid to Belgian investigators within the framework of execution of international letters rogatory and support the several forms of international collaboration. Foreign liaison officers posted in Belgium provide a similar support. Likewise, in the frontier regions, cooperation is intense in the Police and Customs Cooperation Centres (CCPD).

718. Bilateral police agreements exist with neighbouring countries, other countries within the European Union and third countries. These agreements are translated into action plans implemented by the managements of the Federal Judicial Police.

719. Certain collaborations with the European and non-European police services develop

in a multilateral manner, as, for example, the Benelux cooperation. The multilateral initiatives comply with the Schengen regulation, which constitutes a first framework for the exchange of information and the execution of cross-border investigations. The Schengen Information System (SIS) permits the police services of signatory countries to search for persons and to describe objects. Recently, the European Prüm Treaty provides the possibility to mutually exchange, in a simplified and automated manner, DNA information, fingerprints and vehicle number plates contained within national databases.

720. Liaison Officers Network: According the BENELUX Treaty, the three Parties concerned (Belgium, the Netherlands and Luxemburg) can make common use of the bilateral liaison officers stationed abroad. The table below gives an overview of the different LO posts. Luxemburg did not post LO, but they can make full use of the Belgian or Dutch LO network. In some countries there is an overlap, otherwise the LO is working for the benefit of the three countries. Within the European Union, most of the international police information exchange is channeled through Europol.

| FROM | COUNTRY | TOWN | ALSO ACCREDITED TO |
|-------------|--------------------|-------------|--|
| BE | Albania | Tirana | Montenegro / Kosovo / Greece / FYROM |
| BE | Brazil | Brasilia | Paraguay / Uruguay / Argentina |
| BE | Germany | Wiesbaden | Liechtenstein / Switzerland |
| BE | Italy | Rome | Malta / San Marino |
| BE | Morocco | Rabat | Cape Verde / Mali / Mauritania / Niger / Senegal |
| BE | Netherlands | The Hague | |
| BE | Romania | Bucharest | Bulgaria / Moldova / Serbia / Ukraine |
| BE | Russia | Moscow | Armenia / Belarus / Kazakhstan / Kyrgyzstan / Tajikistan / Uzbekistan |
| BE | Spain | Madrid | Portugal |
| BE | Thailand | Bangkok | Cambodia / China / SAR Hong Kong (planned) / Indonesia / Laos / Malaysia / Burma/Myanmar / Singapore / Vietnam |
| BE | Turkey | Istanbul | Pakistan / Georgia |
| BE | USA | Washington | Bahamas / Canada / Mexico / Puerto Rico |
| NL | Australia | Canberra | New-Zealand / Indonesia |
| NL | Bosnia-Herzegovina | Sarajevo | |
| NL | China | Beijing | Japan / South Korea / Hong Kong / Macau / Mongolia |
| NL | Colombia | Bogotá | Costa Rica / Panama / Ecuador |
| NL | France | Paris | Monaco / Andorra |
| NL | France | Lille | |
| NL | Germany | Berlin | |
| NL | Italy | Rome | Austria / Switzerland / Liechtenstein |
| NL | Kenya | Nairobi | |

| FROM | COUNTRY | TOWN | ALSO ACCREDITED TO |
|------|----------------------|--------------|---|
| NL | Malaysia | Kuala Lumpur | Philippines |
| NL | Morocco | Rabat | Algeria / Egypt / Ghana / Nigeria / South Africa / Tunisia |
| NL | Netherlands Antilles | Willemstad | Anguilla / Aruba / Barbados / Cuba / Dominican Republic / Haiti / Jamaica / Trinidad and Tobago / Venezuela |
| NL | Nigeria | Abuja | |
| NL | Pakistan | Islamabad | |
| NL | Peru | Lima | |
| NL | Portugal | Lisbon | Cape Verde(also member of MAOC-N) |
| NL | Romania | Bucharest | Bulgaria / Hungary / Moldova |
| NL | Russia | Moscow | Armenia / Azerbaijan / Belarus / Georgia / Kaliningrad Obl. / Ukraine |
| NL | Serbia | Belgrade | Bosnia-Herzegovina / Croatia / FYROM / Montenegro / Slovenia / Greece |
| NL | Spain | Madrid | Portugal / Gibraltar |
| NL | Surinam | Paramaribo | Brazil / French Guyana / Guyana |
| NL | Thailand | Bangkok | Myanmar (Burma) / Cambodia / Singapore / Sri Lanka / Laos / Vietnam |
| NL | Turkey | Ankara | |
| NL | Turkey | Istanbul | |
| NL | United Arab Emirates | Dubai | Oman / Qatar / Saudi Arabia / Kuwait / Bahrein / Lebanon / Yemen / Djibouti |
| NL | USA | Washington | Bahamas / Bermuda / Canada / Cayman Islands / Haiti / Jamaica / Mexico / Puerto Rico / Virgin Islands |
| NL | Venezuela | Caracas | Peru / Chile / Argentina / Uruguay / Paraguay / Bolivia |

721. At the level of the European Union, more agencies and institutions such as the Task Force of Chiefs of Police (TFCP), the European Police College (CEPOL), the Agency for the control of foreign frontiers of the EU (Frontex), Europol, Eurojust, and the European Anti-Fraud Office (OLAF) are important points of support for the activities of the Federal judiciary police.

722. Globally, Interpol is the organization that permits the execution of international alerts of people being sought for their arrest, extradition or for other measures. Interpol also manages a series of databases for the needs of the Member States. This information englobes, for example, reported people, falsified documents, fingerprints, stolen vehicles, etc. These activities facilitate the work of the Federal judicial police, both at the levels of centralized and decentralized offices. For Belgium, the contacts with this organization are carried out through the national contact Point, managed by the federal police.

723. Belgium also referred to the Decision of the Council relative to the terms of cooperation between the financial intelligence units of the Member States concerning the exchange of information (October 17, 2000):

<http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:32000D0642> and the Decision of the Council establishing the European Police Office (Europol) (April 6, 2009):

http://europa.eu/legislation_summaries/justice_freedom_security/police_customs_cooperation/jl_0025_fr.htm

(b) Observations on the implementation of the article

724. The answer provided shows that Belgium can use different channels of communication for law enforcement cooperation. The federal police, under the guidance of the Federal prosecutor, is responsible for the facilitation of law enforcement cooperation. Belgium cooperates through organizations and networks such as the EU Task Force of Chiefs of Police, the European Police College, Frontex, Europol, Eurojust, the European Anti-Fraud Office, the European Crime Prevention Network, CARIN and INTERPOL. Belgium maintains a network of liaison law enforcement officials abroad and, likewise, numerous foreign liaison officers are posted in Belgium. Belgium has also entered into several bilateral law enforcement cooperation agreements, but frequently relies on ad hoc and case-by-case arrangements.

725. Belgium has further established several different platforms for joint trainings for Belgian law enforcement and its foreign counterparts including exchange programmes. Furthermore, Belgium has established training programmes and other integrity initiatives for law enforcement with, inter alia, the Universities of Ghen and Leuven in Belgium and Strasbourg in France.

726. Belgium is in compliance with the provision under review.

Subparagraph 1 (b) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

727. Belgium indicated that it has implemented the provision under review. It explained that this is part of the general approach of mutual legal assistance. Belgium also referred to its responses under Article 48 sub-paragraph 1 (a).

728. With regard to the international information exchange, Belgium explained that due to its geographic position and its open society, a high number of investigations are characterized by an international dimension. To cope with this volume of international information exchange, the Federal police (in close cooperation with the local police) elaborated a police strategy in this area. "The choice of channel" contains detailed guidelines on using which platform to exchange police information. The different possibilities offered indicate the willingness to collaborate on an international scale. The geographic dimension is an import trigger when it comes to the choice of channel: 4 operational border contact points and 3 common customs and police stations with our neighbouring countries allow for international collaboration in the border region. Europol is the preferred platform for police cooperation with other EU Member States. The SIS net provides the possibility to exchange information with the Schengen countries, especially Iceland, Norway and Switzerland. And the INTERPOL channel is used to deal with international police cooperation outside the EU or the Schengen area. The use of a bilateral Liaison Officer is submitted to specific conditions: sensitive or confidential cases, urgency needs, complex cases requiring operational meeting(s) or the exchange through other channels failed. The policy paper also provides an overview of existing international databases that can be consulted and the procedure to do so.
729. In the fight against corruption, the Belgian law enforcement officers are making use of the same channels. To assure legality, quality and coordination of information, all messages are transmitted via a single point of contact. As a kind of example, the following figures demonstrate the number of outgoing request for information/collaboration in 2015 through the different police channels: 7 447 messages Interpol, 6 553 messages Europol and 46 621 messages to support police cooperation in the border region. In this period, Belgium created 112 531 international alerts or red notices (SIS and Interpol together).
730. Since the kick off meeting in January 2015, Belgium is member of the project S4ACA (Siena for Anti-Corruption Authorities). The Belgian ACA is making full use of SIENA for the international information exchange and international collaboration. In 2015 SIENA has been used to send out 35 requests related to corruption investigations.
731. Proceeds of crime and movement of property
To support magistrates and investigators in tracing, freezing, seizing and confiscating criminal assets, Belgium created its Central Office for Seizure and Confiscation or COSC (Asset Recovery Office or ARO). Although the traditional judicial and police channels may be used to exchange information and to address formal requests, an important part of the international collaboration in this area is organized via the ARO. Because of the free choice of channel, it is impossible to provide complete statistics concerning asset forfeiture in relation to international collaboration. But the assistance provided by the police liaison officers (in the ARO) to ongoing police investigations already provides some good indications.
732. For information exchange, the liaison officers use the ARO or CARIN network, depending on the geographic scope of the request. The ARO network covers the international collaboration between the national asset recovery offices of the EU Member States. The COSC makes use of SIENA for the exchange of information. For requests outside the EU, the ARO's are working together via the CARIN network. The network

connects 62 members (53 countries and 9 international organizations) using traditional mailboxes.

733. The table below shows the number of incoming (requests from foreign countries) and outgoing (Belgian investigations) cases per year, where no distinction is made between ARO or CARIN.

| | 2013 | 2014 | 2015 | 2016 (5 months) |
|-----|------|------|------|-----------------|
| IN | 124 | 92 | 140 | 60 |
| OUT | 188 | 219 | 177 | 101 |

734. In general, there is an intensive (and excellent) collaboration with the Netherlands, France and Spain. Other ARO's consulted on a regular basis are Romania, Portugal, Bulgaria, Poland, Germany, United Kingdom and Luxemburg. The international collaboration is certainly not limited to the European Union. The statistics provide, for instance, proof of collaboration with Thailand, Brazil, Indonesia, USA, South Africa and Russia.

735. As an example, the more detailed figures for 2015, indicate that for the outgoing cases (Belgian demands for assistance):

- 45 requests were related to drugs trafficking
- 11 cases were dealing with trafficking of human beings
- 30 files were initiated for money laundering
- 71 requests were supporting fraud and financial crime investigations
- 20 demands were classified as "others".

736. There are no further details on corruption cases, as these investigations figure as financial crime investigations. Most of the requests (165) concern asset tracing. Twelve outgoing cases were related to the confiscation of criminal assets. For the incoming requests the police liaison officers can provide most of the property related information (real estate, car and boat registration, company register...) by direct access to different databases. Only for bank information, an MLA request is needed.

737. Exchange of expertise

The Belgian police was and will always be willing to take up its commitment to support the exchange of expertise. Beside initiatives on the national level to provide dedicated training for Belgian investigators and to stimulate common initiatives with audit services of other public services and/or administrations, an important part of the training activities is situated at international level.

738. The Belgian police plays an active role in:

- organizing and hosting international conferences (Interpol Sports corruption),
- taking part in TAIEX programs
- training programs on fighting corruption and financial crime in the framework of bilateral police cooperation agreements (Moldova, Romania, Albania...)
- providing instructors for CEPOL training
- exchange programs where hosting and sending country agree upon the training facilities for the trainees
- assisting OCSE in its training programs
- the collaboration with the academic world (like the university of Strasbourg, where a

training program on financial crime and corruption is offered to trainees from France, Belgium and Germany)

(b) Observations on the implementation of the article

739. As indicated above, the answer provided under Article 48 1(a) shows that Belgium can use different channels of communication for law enforcement cooperation. Belgium is in compliance with the provision under review.

Subparagraph 1 (c) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

740. Belgium indicated that it has implemented the provision under review. This is part of the general approach of mutual legal assistance. Reference is made to the general introduction under sub-paragraph 1(a) of article 48.

(b) Observations on the implementation of the article

741. Belgium is in compliance with the provision under review.

Subparagraph 1 (d) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

742. Belgium indicated that it has implemented the provision under review. This is part of the general approach of mutual legal assistance. Reference is made to the general introduction under sub-paragraph 1(a) of article 48.

(b) Observations on the implementation of the article

743. Belgium is in compliance with the provision under review.

Subparagraph 1 (e) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

744. Belgium indicated that it has implemented the provision under review. Reference is made to the general introduction under sub-paragraph 1(a) of article 48.

745. On 17/9/2014, a Chinese delegation came to the FPS Justice for an exchange of information on, among others, the following subjects:

-Is there a specific anti-corruption law in Belgium? What limitations are imposed on the personal freedom and property of public officials by relevant domestic laws?

-How does Belgium deal with the foreigners' proceeds of crime and/or the transformed property within its territory?

-What kind of role does the Ministry of Justice play in Belgium in terms of anti-corruption within Belgium?

-What kind of role does the Ministry of Justice play in international criminal judicial assistance? -How's the extradition system in Belgium? What are the basic standards and conditions on the part of Belgium when negotiating extradition treaties with other countries? How to deal with extradition and death penalty?

-How's the implementation of the China-Belgium Extradition Treaty? Any difficulties/obstacles?

-How's the implementation of the United Nations Convention against Corruption in Belgium? Can a third country invoke the Convention directly as the basis for requesting legal assistance or extradition?

-How's the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in Belgium?

746. They also had the opportunity to visit the police, the prosecutor, etc. Belgium has participated in the exchange of expertise on corruption with other countries (China, Moldavia and Montenegro).

747. B. In 2014, the functionaries of FPS Justice also gave presentations on the bribery in the Moldavian and Montenegrins delegations.

(b) Observations on the implementation of the article

748. As mentioned under subparagraph 1(a) for more information, Belgium maintains a network of liaison law enforcement officials abroad and, likewise, numerous foreign liaison officers are posted in Belgium. Belgium has also entered into several bilateral law enforcement cooperation agreements, but frequently relies on ad hoc and case-by-case arrangements.
749. Belgium has further established several different platforms for joint trainings for Belgian law enforcement and its foreign counterparts including exchange programmes. Furthermore, Belgium has established training programmes and other integrity initiatives for law enforcement with, inter alia, the Universities of Ghen and Leuven in Belgium and Strasbourg in France.
750. Belgium is in compliance with the provision under review. However, Belgium is recommended to broaden its treaty-basis to further enhance the Convention's scope of application in the area of law enforcement cooperation.

Subparagraph 1 (f) of article 48

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

751. Belgium indicated that it has implemented the provision under review.
752. The European Crime Prevention Network (REPC as per its initials in French) was established by decision 2001/427/JAI of the Council, revoked by the decision 2009/902/JAI of the Council. The main objective of the decision of the Council of May 2001 establishing the REPC was to promote actions for the criminal prevention and to provide an instrument which allows to share good practices on the matter. In 2009, a new decision by the Council specified the tasks of the REPC as follows:
- facilitate cooperation, contacts and the exchange of information and experiences between the individuals involved in the prevention of crime;
 - gather, evaluate and spread evaluated information, including good practices relative to existent actions for the prevention of crime;
 - organize conferences, particularly an annual conference on the best practices, and other activities, including, on an annual basis, the European prize for crime prevention, aimed at carrying out the objectives of the Network and to spread the results;
 - to provide its expertise to the Council and the Commission as required;
 - report its activities to the Council through the board of directors and competent work

groups each year. The Council is requested to approve the corresponding report and to transmit it to the European Parliament;

-elaborate and execute a work program based on a clearly defined strategy that takes into account the identification of threats on criminal matters and how to respond to them.

753. The Council decision also describes the structure and operational framework of the REPC. In addition to a board of directors, comprised of national representatives, the structure includes an executive committee, contact points and a secretariat. The European Commission has an observer status within the board of directors and attends the meetings of the executive committee. The internal rules of the REPC describe how its different organs must interact with each other and with third parties.

754. The European Union:

Directive 2011/16/CE, dated February 15, 2011 on administrative cooperation in the fiscal field

Directive 2003/48/CE, dated June 3, 2003 on taxation of savings income in the form of interest payments

Council Directive 2011/16/EU, dated February 15, 2011 on administrative cooperation in the field of taxation

Council Directive 2003/48/EC, dated June 3, 2003 on taxation of savings income in the form of interest payments

755. As the international facet of taxes, particularly of direct taxes, has become more important in these last decades, the Belgian tax authorities can sign international agreements facilitating cooperation and assistance between Belgian-foreign tax authorities. To present day, there are 86 agreements in force and 12 signed but that have yet to be in force.

756. Reference is made to the general introduction under sub-paragraph 1(a) of article 48.

Agreement between the competent authorities of Canada and Belgium relative to administrative cooperation on matters of taxes on revenue (January 16, 2012) (The most recent)

<http://www.fiscus.fgov.be/interfafznl/fr/downloads/coopCanada.pdf> (FR)

http://www.fiscus.fgov.be/interfafznl/fr/downloads/coopCanada_en.pdf (EN)

<http://www.fiscus.fgov.be/interfafznl/nl/downloads/coopCanada.pdf> (NL)

Links to the “type” agreement concerning dual taxes:

[http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=67ff6923-e842-44c1-8365-](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=67ff6923-e842-44c1-8365-0c8536237b93&disableHighlightning=true&documentLanguage=en#findHighlighted)

[0c8536237b93&disableHighlightning=true&documentLanguage=en#findHighlighted](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=67ff6923-e842-44c1-8365-0c8536237b93&disableHighlightning=true&documentLanguage=en#findHighlighted)

(EN)

[http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=a37a9ad7-2257-4d48-9328-](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=a37a9ad7-2257-4d48-9328-dc8d3bc4f8bd&disableHighlightning=true&documentLanguage=fr#findHighlighted)

[dc8d3bc4f8bd&disableHighlightning=true&documentLanguage=fr#findHighlighted](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=a37a9ad7-2257-4d48-9328-dc8d3bc4f8bd&disableHighlightning=true&documentLanguage=fr#findHighlighted)

(FR)

[http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=2e0eb20c-](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=2e0eb20c-9787-4af7-9606-)

[9787-4af7-9606-](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=2e0eb20c-9787-4af7-9606-)

c7a0b8cfa0ab&disableHighlightning=true&documentLanguage=nl#findHighlighted
(NL)

Agreement for the exchange of information concerning taxes, e.g. Saint Kitts and Nevis:

[http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=0a71533e-](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=0a71533e-ecc2-4176-bf01-)

<bea5bed1cf8d&disableHighlightning=true&documentLanguage=fr#findHighlighted>
(FR)

[http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=da285caa-](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=da285caa-46c4-40a0-82e1-)

<03f083b48e28&disableHighlightning=true&documentLanguage=en#findHighlighted>
(EN)

[http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=f1360ae4-](http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=f1360ae4-90ad-4908-b230-)

<80a3a734ab1c&disableHighlightning=true&documentLanguage=nl#findHighlighted>
(NL)

757. A. The Special Tax Inspection's mission is to fight against serious and organized tax evasion. For this reason, the Special Tax Inspection is authorized to check the tax situation of any person liable to tax as regards any tax and duty, whose assessment, control or recovery are ensured by the State. In accordance with its "key mission" the Special Tax Inspection is mainly in charge of examining the fraud cases in connection with the organized economic and financial crime and especially the cases concerning:

- offences in connection with serious and organized tax evasion, which uses complicated mechanisms or international processes (e.g. when it concerns "carousel fraud schemes")
- financial swindling;
- fraudulent use of corporate property;
- fraudulent organization of insolvency.

758. The Special Tax Inspection mainly carries out missions as regards the control and the taxation, but also intervenes at all levels of the litigation procedure. In this respect it enjoys the support of legal offices, which also play an important role as regards technical and legal assistance to taxation services.

759. Besides, the Special Tax Inspection has at its disposal a mobile recovery office: it "ensures" the later recovery of the Special Tax Inspection's taxations. In close collaboration with the competent collectors of the Administration of Tax Recovery, it takes the necessary initiatives, in order to ensure the effective recovery and to stop the fraudulent organization of insolvency.

760. B. FSMA

The Financial Services and Markets Authority takes responsibility for the integrity of the financial markets and fair treatment of financial consumers

The various players in the Belgian financial sector are under permanent supervision, for different aspects of their business, in order to secure confidence in the financial markets and to ensure that investors and financial consumers are treated honestly, fairly and professionally.

This supervision is organized since 1 April 2011 according to the "Twin Peaks"

model, with two autonomous supervisors, namely the National Bank of Belgium and the Financial Services and Markets Authority, abbreviated FSMA, each of which has a specific set of objectives.

761. The FSMA is responsible for supervising the financial markets and listed companies, authorizing and supervising certain categories of financial institutions, overseeing compliance by financial intermediaries with codes of conduct and supervising the marketing of investment products to the general public, as well as for the ‘social supervision’ of supplementary pensions. The Belgian government has also tasked the FSMA with contributing to the financial education of savers and investors.
762. The FSMA is the successor to the former Banking, Financial and Insurance Commission (CBFA), which on 1 April 2011 changed its name as a consequence of the changes in its mandate, in particular its exclusive competence for the supervision of rules of conduct. The new logo embodies the qualities and values that constitute the foundations of the FSMA.
763. All decisions previously taken by the CBFA within its former areas of competence remain legally valid. This web site therefore contains many documents that were formerly on the CBFA web site.
764. The FSMA is responsible for six main missions:
- 1) supervision of markets;
 - 2) supervision of the rules of conduct;
 - (3) supervision of products;
 - (4) financial education of the public;
 - (5) supervision of pension funds;
 - (6) supervision of various financial players: intermediaries in banking services, insurance intermediaries, management companies for collective investment undertakings, portfolio management and investment advisory firms, exchange offices.
765. More specifically, the FSMA will exercise the following functions under the law:
- 1) The FSMA will be responsible for supervising:
 - the issuance regime and takeover bids;
 - the regime of listed companies;
 - markets and company undertakings, including the prevention and suppression of market abuse;
 - collective investment undertakings;
 - companies for the management of collective investment undertaking;
 - portfolio management and investment advisory firms;
 - exchange offices;
 - insurance and reinsurance intermediaries;
 - intermediaries in banking and investment services;
 - undertakings and transactions covered by the Act of 4 August 1992 on mortgage credit;
 - the Act of 25 June 1992 on land insurance contracts and certain non-prudential provisions of the Act of 9 July 1975 on the supervision of insurance undertakings;

- compliance with rules designed to protect the public from the illicit offer or supply of goods or services.

2) The FSMA also exercises the powers of the CBFA to supervise the compliance with the rules of conduct by the categories of institutions now subject to prudential supervision by the National Bank. Moreover, a royal decree may also extend for insurance companies the scope of the rules of conduct specific to the provision of investment services which apply to credit institutions and investment firms. The FSMA is also granted explicit authority to impose remedial measures on these institutions in the event of non-compliance with these rules. These are specifically designed to ensure the honest, fair and professional treatment of investors, customers and other stakeholders through requirements relating to, inter alia, the integrity of the business, the conduct of its affairs and the care taken in its treatment of the aforementioned persons.

3) The FSMA takes over directly the public order powers exercised by the Securities Regulation Fund in respect of past transactions in the public debt market. It will also develop statistical data on these operations and monitor the data that market makers provide to the Debt Agency. These amendments will enter into force on a date determined by Royal Decree.

(4) The FSMA is also responsible for the supervision of the undertakings and operations covered by the Consumer Credit Act of 12 June 1991. The entry into force of this new function will be determined subsequently by Royal Decree.

(5) Institutions for occupational retirement and the supervision of social provisions relating to the second pillar of pensions fall within the powers of the FSMA.

(6) Rules of conduct, in the broad sense, which apply to financial sector undertakings may be extended by Royal Decree to inter alia the rules on advertising, the benefits of services provided and the transparency of prices, commissions and fees.

(7) The FSMA shall also issue, on the advice of the Consumer Council, regulations to prohibit or impose restrictive conditions on the negotiation of retail investment products (product traceability), or to promote the transparency of pricing and administrative costs related to these products.

(8) Finally, the FSMA will have a more general mission to contribute to the financial education of savers and investors.

(b) Observations on the implementation of the article

766. Belgium is part of a European network with the aim to prevent crimes (among others corruption), is bound to EU-regulation on administrative cooperation and has also concluded multiple international agreements on tax cooperation.

767. Belgium is in compliance with the provision under review.

Paragraph 2 of article 48

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this

Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

768. Belgium indicated that it has implemented the provision under review and referred to the following measures as applicable.

Decision of the Council 2008/615/JAI dated June 23, 2008, on the strengthening of cross-border cooperation, particularly in the fight against terrorism and cross-border criminality (Prüm)

http://europa.eu/legislation_summaries/justice_freedom_security/police_customs_cooperation/jl0005_fr.htm

http://europa.eu/legislation_summaries/justice_freedom_security/police_customs_cooperation/jl0005_en.htm

OCTOBER 24, 2008. – Agreement between the Government of the Kingdom of Belgium, the Government of the Federal Republic of Germany, the Government of the French Republic and the Government of the Grand Duchy of Luxembourg, concerning the establishment and operation of a joint centre for police and customs cooperation in the common frontier zone, executed in Luxembourg on October 24, 2008

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2008102469&table_name=loi

NOVEMBER 27, 2008. – Agreement between the Government of the Kingdom of Belgium and the Government of the Czech Republic with regard to police cooperation
http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2008112745&table_name=loi

JUNE 8, 2004. – Treaty between the Kingdom of the Netherlands, the Kingdom of Belgium and the Grand Duchy of Luxembourg on matters of cross-border police intervention, and in Annexes, executed in Luxembourg on June 8, 2004

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2004060848&table_name=loi

769. Belgium considers this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention?

(b) Observations on the implementation of the article

770. On the question of whether Belgium has provided or received law enforcement cooperation using the UN Convention Against Corruption as a legal basis, Belgium responded that it has done so and referred to its general response on international cooperation above. The Convention Against Corruption has served as a legal basis in three incoming MLA requests (Kazakhstan, Peru and Oman) and three outgoing MLA requests (Seychelles, Uruguay and Congo).

771. Belgium is recommended to broaden its treaty-basis to further enhance the Convention's scope of application in the area of law enforcement cooperation.

Paragraph 3 of article 48

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

772. Belgium indicated that it has implemented the provision under review.

773. The police services specialised in the analysis of computer systems and telecommunications are organized in two levels:

The Federal Computer Crime Unit (FCCU) at a national level, under the direction of the fight against financial crime Ecofin.

The Regional CCU (RCCU) within each judicial district, under the direction of the judicial offices.

774. The mission of the Federal Computer Crime Unit (FCCU) is the fight against ICT (Information and Communication Technology) crime, among others, in order to protect citizens from new forms of crime in virtual society. Likewise, this mission consists on supporting the fight against other criminal phenomena by means of investigations specialized in ICT environments. Pedophilia online, internet frauds (fraud sales online) and telecom fraud fall within its jurisdiction.

775. Processing by the FCCU of denunciations received:

- In the case where a criminal offence is discovered

For which Belgium has jurisdiction, an initial record is established with the competent Prosecutor.

For which a foreign judicial authority has jurisdiction, the foreign police service is then informed through Interpol.

- If the received information concerns a phenomenon (e.g. narcotics) or an already ongoing criminal investigation, it is communicated to the competent Belgian police.

- If it deals with an administrative offence, for which a Belgian authority has jurisdiction, this authority is then notified.

776. The RCCU is supported by the minimum quality guarantees of the legal ICT analysts of PC and other data supports and small networks. The RCCU investigates criminal traces online and identifies their authors.

(b) Observations on the implementation of the article

777. Belgium seems to have a good infrastructure to investigate crimes committed through the use of modern technology. The Federal Computer Crime Unit and the Regional Computer Crime Unit support national authorities in the identification and prosecution of offences committed through the use of modern technology. Further measures are foreseen in the Belgian Strategy on Cybercrime.

778. Belgium is in compliance with the provision under review.

(c) Successes and good practices

779. Significant efforts have been undertaken by Belgium to strengthen cross-border law enforcement cooperation, such as through the organization of joint anti-corruptio training workshops and exchange programmes. This was seen by the reviewing States as a good practice.

Article 49. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

780. Belgium indicated that it has implemented the provision under review and cited the following measures as applicable.

A. Law on Mutual Legal Assistance

Article 8

§ 1. The joint investigation teams referred to in this article are assembled in order to carry out criminal investigations in the conditions provided for by the applicable instruments of international law.

They are assembled exclusively by members from the State Parties which are under an instrument of international law connected with Belgium and involving the assembly of such teams. Joint investigation teams cannot operate other than in Belgian territory or in the territory of one of the aforementioned States.

§ 2. The federal prosecutor, the initiative prosecutor or at the request of the public prosecutor or of the investigating judge, may address a request to the competent foreign authorities with regard to the assembly of a joint investigation team or consent to the same request issued by Eurojust or a competent foreign authority.

When an investigating judge or a public prosecutor is involved in the request, the federal prosecutor takes its decision in accordance with them.

The refusal of the federal prosecutor to consent to a request issued by an investigating judge cannot be based on motives other than operational capacity of the police services and with respect to the priorities established by the directives of criminal policy.

When a request to assemble a joint investigation team originating from a foreign authority is likely to seriously affect public order or threaten the essential interests of Belgium, the federal prosecutor can only consent to the assembly of this team with the prior authorization of the Minister of Justice.

§ 3. The requests for the assembly of a joint investigation team include the following indications:

- 1° the authority that issued the request; 2° the purpose and reason for the request;
- 3° as the case may be, the identity and the nationality of the person or persons in question;
- 4° the propositions with regard to the composition of the team;
- 5° a summary of the facts; 6° as the case may be, the charges.

§ 4. The assembly of a joint investigation team as referred to in §§ 1 to 3 must be the subject of a written agreement with the other concerned States. This agreement shall be signed by Belgium, by the investigating judge or by the public prosecutor, as the case may be. Its signature by the investigating judge or by the public prosecutor takes place after consulting with the federal prosecutor with regard to the terms of the assembly of the joint investigation team.

This agreement details the objective of the joint investigation team, its composition, the duration for which it will be assembled, its place of operations, the means to implement it, as well as the name of each of the persons who, according to the State in which the team operates, exercise authority over this team.

§ 5. When a joint investigation team includes Belgian agents and members of at least another Member State of the European Union, the federal prosecutor shall notify Eurojust and Europol of the assembly of this team.

Article 9

§ 1. When the joint investigation team operates in Belgian territory, its members shall act according to the Belgian law and under the authority of the federal prosecutor, the public prosecutor or the investigating judge, as the case may be.

§ 2. The foreign seconded members of this team can themselves carry out acts that correspond to the judicial police, within the limits established by this article.

Without prejudice to the provisions of § 1, the foreign seconded members of this team shall be always accompanied, in the fulfilment of their tasks, by a Belgian functionary in the quality of judicial police officer and act under his direction.

The magistrate referred to in § 1 may decide that the foreign seconded members of the team may not be present during certain acts of information of investigation.

§ 3. In the agreement referred to in article 8, § 4, it can be considered that the representatives of third parties, Eurojust, Europol or OLAF, participate in these investigation teams as experts.

They may be present during acts of information of investigation, with the agreement of the magistrate referred to in § 1. They may not themselves carry out such actions.

Article 10

§ 1. When the joint investigation team operates abroad, the Belgian seconded members of this team may request their competent authorities to take investigative measures in Belgian territory.

The competent Belgian authorities shall process this request as if it were a request filed within the framework of a nation inquiry.

§ 2. Belgian seconded members may, in compliance with the Belgian law, provide the team, for the purpose of criminal investigations conducted by it and in compliance with Belgian law, with information to which it would have access within the framework of a national investigation.

§ 3. The information obtained abroad by Belgian seconded member according to the law of the State in which the joint investigation team operates, in the framework of its participation in the aforementioned joint investigation team, can be used for the following:

- 1° for the purposes for which the team was assembled;
- 2° in order to detect, investigate and prosecute other criminal offences, subject to the prior consent of the Party where the information was obtained;
- 3° in order to prevent an immediate and serious danger for public safety, without prejudice to the provisions of point 2° if, thereafter, a criminal investigation is opened;
- 4° for other purposes, provided that it is agreed by the States that assembled the team

B. Additional second protocol to the European convention of mutual legal assistance on criminal matters (November 08, 2001)

Article 20 – Joint investigation teams

1 The competent authorities of both Parties may at least, by joint agreement, create a joint investigation team, with a specific purpose and a limited duration that may be extended upon the agreement of all the Parties, in order to carry out criminal investigations in one or more of the Parties that create the team. The composition of the team is established in the agreement.

A joint investigation team can particularly be created when:

A within the framework of an investigation directed by a Party in order to detect offences, it is convenient to carry out difficult investigations which involve the mobilization of important resources that also concern other Parties;

B several Parties carry out investigations concerning offences that, by reason of the facts originate them, require a coordinated and organized action within the Parties in question.

The request for the assembly of a joint investigation team may be issued by any Party concerned. The group is assembled in one of the Parties in which the investigation shall be carried out.

2 In addition to the indications specified in the pertinent provisions of article 14 of the Convention, the requests for the assembly of a joint investigation group include the provisions relative to the composition of the team.

3 The joint investigation team shall take action in the territory of the Parties that assembled it under the following general conditions:

a the individual responsible for the team is a representative of the competent authority – participating in criminal investigations – of the Party on whose territory the team takes action. The individual responsible for the team acts within the jurisdiction limits that correspond to him under national law;

b the team carries out its operations according to the law of the Party in whose territory the team takes action. The members of the team and the seconded members of the team execute their tasks under the responsibility of the person referred to in point a, taking into account the conditions established by their own authorities within the agreement relative to the assembly of the team;

c the party on whose territory the team takes action establishes the organizational conditions necessary to allow them to act.

4 In this article, the members of the joint investigation team that come from the Party on whose territory the team takes action are designated as “members”, while members that come from Parties other than that in which the team takes action are designated as “seconded members”.

5 Seconded members of the joint investigation team are able to be present when investigation measures are taken in the Party of operation. Nevertheless, the individual responsible for the team may, for specific reasons, decide otherwise, respecting the law of the Party in which the team operates.

6 Seconded members of the joint investigation team may, according to the law of the

Party of operation, be entrusted by the individual responsible for the team with the task to take certain investigative measures, with the consent of the competent authorities of the Party of operation and of the Party from where the seconded originates.

7 When the joint investigation team requires that investigative measures be taken in one of the Parties that assembled it, the members of the team seconded by the aforementioned Party may request to their competent authorities to take these measures. These measures are considered in the Party in question according to the conditions that would apply if they had been requested in the framework of a national inquiry.

8 When the joint investigation team requires the assistance of one Party other than the ones that assembled it, or of a third State, the request of mutual assistance may be addressed by the competent authorities of the State of operation to their counterparts of the other concerned State, according to the pertinent instruments or arrangements.

9 A seconded member of the joint investigation team may, according to its own national law and within the limits of its jurisdiction, provide the team with information that is available in the Party that seconded him for purposes of criminal investigations carried out by the team.

10 The information obtained in an honest manner by a member or a seconded member within the framework of their participation in a joint investigation team, and that cannot be obtained otherwise by the competent authorities of the concerned Parties, can be utilised for the following:

- a for the purposes for which the team was assembled;
- b in order to detect, investigate and prosecute other criminal offences, subject to the prior consent of the Party where the information was obtained. The consent cannot be refused except in case such usage would represent a danger for the criminal investigations conducted within the concerned Party, or for which this Party may refuse mutual assistance;
- c in order to prevent an immediate and serious danger for public safety and without prejudice to the provisions of point b if, thereafter, a criminal investigation is opened;
- d for other ends, provided that it is agreed by the Parties that assembled the team.

11 The provisions of this article may not affect other existing provisions or arrangements relative to the assembly or the operation of joint investigation teams.

12 Insofar that the law of the concerned Parties or the provisions of any applicable legal instrument between them permits it, agreements may be concluded for persons other than the representatives of the competent authorities of the Parties that assembled the joint investigation team to take part in the activities of the team. The rights granted to members and seconded members of the team under this article are not applicable to these persons, unless stipulated otherwise in the agreement.

(b) Observations on the implementation of the article

781. Belgium has provided for the possibility of joint investigation teams in their national legislation and is party to a relevant multilateral agreement in this respect. Belgium has already established joint investigative teams on a number of occasions, including one with France in a corruption case. When a joint investigation team includes officials from other EU member States, the federal prosecutor needs to notify Eurojust and Europol of the establishment of such a team.

Article 50. Special investigative techniques

Paragraph 1 of article 50

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

782. Belgium indicated that it has implemented the provision under review and cited the following measures as applicable.

Code of Criminal Procedure

§ 6. ON WIRETAPPING, APPROPRIATION AND RECORDING OF PRIVATE COMMUNICATIONS AND TELECOMMUNICATIONS

Article 90ter

§ 1. When the necessities of the investigation demand it, the investigating judge may, exceptionally, wiretap, appropriate and record, during their transmission, private communications or telecommunications, if there exist serious indications that the fact for which this is done constitutes an offence as referred to by one of the provisions listed in § 2, and if other means of investigation are not sufficient to uncover the truth.

In order to allow wiretapping, appropriation or direct recording of private communications or telecommunications with the help of technical means, the investigating judge may also, without the knowledge or consent of the occupant, the proprietary or his beneficiaries, order the intrusion, at any time, in a domicile or private place. The surveillance measure may only be ordered either with respect to persons suspected, on the basis of specific indices, of having committed an offence, either with regard to means of communication or telecommunication regularly utilized by a suspect, or with regard to places allegedly frequented by the suspect. Likewise, it may be ordered with regard to persons who are allegedly, on the basis of specific facts, in constant communication with a suspect.

§ 2. The offences which may justify a surveillance measure are mentioned in: ...

1° quinquies in articles 246, 247, 248, 249, 250 and 251 of the same Code; 10° bis. In article 504 bis and 504 ter of the same Code;

11° in article 505, first paragraph, 2°, 3° and 4° of the same Code; ...

§ 3. The tentative to commit a crime referred to in the previous paragraph may also justify a surveillance measure.

...

§ 7. Once the public prosecutor receives the notification referred to in § 6, first paragraph, 2°, he shall notify the investigating judge as soon as possible.

Upon receipt of a notification as referred to in paragraph 6, first line, 2°, the investigating judge shall authorize the measure in question if it is admissible under the provisions of this article.

He shall notify the foreign authority concerned of its decision within ninety-six hours following its receipt by the Belgian judicial authority.

When an additional delay is necessary, the investigating judge may inform of its decision and provide notification to the competent foreign authority within a maximum of eight days. He

shall notify the competent authority as soon as possible, indicating the reasons in this report. If the investigating judge does not authorize the measure referred to in § 6, he shall also notify the foreign authority that the intercepted data must be destroyed without being able to be used.

783. Belgium is also in the process of putting the law in conformity with the **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters** (Strasbourg, 8.XI.2001), more specifically the next articles:

Article 17 – Cross-border observations

1 Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

2 Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:

a the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;

b a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay. Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

3 The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

a The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.

b Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.

c The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.

d The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.

e Entry into private homes and places not accessible to the public shall be prohibited.

f The officers conducting the observation may neither stop and question, nor arrest, the person under observation.

g All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.

h The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

5 The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.

6 The observation referred to in paragraph 2 may take place only for one of the following criminal offences:

- assassination;
- murder;
- rape;
- arson;
- counterfeiting;
- armed robbery and receiving of stolen goods;
- extortion;
- kidnapping and hostage taking;
- traffic in human beings;
- illicit traffic in narcotic drugs and psychotropic substances;
- breach of the laws on arms and explosives;
- use of explosives;
- illicit carriage of toxic and dangerous waste;
- smuggling of aliens;
- sexual abuse of children.

Article 18 – Controlled delivery

1 Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2 The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.

3 Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 19 – Covert investigations

1 The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

2 The decision on the request is taken in each individual case by the competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.

3 Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which the covert investigation takes place. The Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.

4 Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

784. Belgium clarified that national legislator defines three types of technique: informant or CHIS handling, surveillance and infiltration. The use of special investigation techniques is submitted to the rules of legality, proportionality and subsidiarity. These techniques can be perfectly used in the framework of a corruption investigation.

785. The table below provides statistics on these different types of techniques over the period 2010 - 2015, with the number of corruption cases in relation to the total number of cases.

| | 2010 | 2011 | 2012 | 2013 | 2014 |
|---------------------|-------|-------|-------|------|------|
| Informant rewarding | 0/478 | 0/728 | 0/796 | | |
| Surveillance | 1/797 | 1/785 | 2/796 | | |
| Infiltration | 1/53 | 0/53 | 0/55 | | |

786. Traditionally, special investigative techniques are more often used in organized crime cases (especially drugs and to a lesser extent armed robberies, trafficking in persons, arms trafficking, etc.). In financial crime and corruption cases most of the investigators still prefer to work with traditional investigative techniques. But also the nature of the phenomenon (corruption) makes it difficult to use special investigative techniques, certainly infiltration (high risk on procedural problems). Also informant rewarding is rather exceptional because this kind of crime is often detected by auditing services or by a (covert) human intelligence source who is part of the organization (and who is not driven or motivated by a financial reward). Nevertheless, wiretapping is more and more used in corruption investigations.

(b) Observations on the implementation of the article

787. The investigating judges can order the use of special investigative techniques, namely wiretapping, recording of communications, surveillance and controlled delivery within the Belgian territory (CPC art. 90ter and ECMLA art. 18). The Criminal Procedure Code article 90ter also permits a foreign authority to carry out special investigative measures on Belgian territory, subject to the prior authorization by a competent Belgian judicial

authority. Belgium is in compliance with the provision under review.

Paragraph 2 of article 50

2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

788. Belgium indicated that it has implemented the provision under review. It explained that it is not necessary to conclude any agreements.

Criminal Procedure Code

Article 90ter

§ 6. A competent foreign authority may, within the framework of a criminal investigation, temporally wiretap, appropriate and record, during their transmission, private telecommunications when the person considered within this measure is within the Belgian territory and if the following conditions are fulfilled:

1° the measure does not involve the technical intervention of an asset situated in Belgium; 2° the concerned foreign authority has notified this measure to a Belgian judicial authority;

3° this possibility is provided for in an instrument of international law connecting Belgium and the requesting State;

4° the decision of the investigating judge referred to in § 7 has not yet been communicated to the concerned foreign authority.

789. The data gathered in the implementation of this paragraph can only be used if the competent Belgian judicial authority authorizes the measure.

(b) Observations on the implementation of the article

790. Belgium noted that it is not necessary to have a specific agreement between the countries, for example, if both countries are bound by European law, that is sufficient.

791. The investigating judges can order the use of special investigative techniques, namely wiretapping, recording of communications, surveillance and controlled delivery within the Belgian territory (CPC art. 90ter and ECMLA art. 18). The Criminal Procedure Code article 90ter also permits a foreign authority to carry out special investigative measures on Belgian territory, subject to the prior authorization by a competent Belgian judicial authority. Belgium is in compliance with the provision under review.

Paragraph 3 of article 50

3. *In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

(a) Summary of information relevant to reviewing the implementation of the article

792. Belgium indicated that it has implemented the provision under review. Reference is made to sub-paragraph 2 of article.

(b) Observations on the implementation of the article

793. Belgium is in compliance with the provision under review.

Paragraph 4 of article 50

4. *Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

(a) Summary of information relevant to reviewing the implementation of the article

794. Belgium indicated that it has implemented the provision under review.

795. A distinction must be made between deferred operations, controlled deliveries, assisted controlled deliveries, surveyed deliveries and assisted surveyed deliveries. It may be either a conventional investigation technique, an observation, or an infiltration. The context and the implemented means determine the category of the measure.

796. Articles 47ter to 47novies of the code of criminal procedure are likely to be applicable, as well as the Royal decree of April 9, 2003, with regard to police investigation techniques.

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2003040940&table_name=loi

(NL)

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2003040940&table_name=wet

Code of Criminal Procedure

Article 47ter

§ 1. The particular methods of investigation are observation, infiltration and the use of indicators.

These methods are implemented, in the context of an enquiry or an investigation, by the police services designated by the Minister of Justice, under the control of the public prosecutor and without prejudice of articles 28bis, §§ 1 and 2, 55 and 56, § 1, and 56bis, in order to prosecute perpetrators, investigate, gather, record and process data and information on the basis of serious evidence that punishable acts will be committed

or have been committed, whether these are known or not.

These methods may also be implemented, under the same conditions as those that are provided for observation, infiltration and use of indicators, in the context of the execution of sentences or measures of deprivation of liberty, when the person escapes their execution.

§ 2. The public prosecutor exercises a permanent control on the implementation of particular methods of investigation by the police services within his judicial district.

The public prosecutor shall notify the federal prosecutor of the particular methods of investigation implemented within its judicial district.

When the implementation of particular methods of investigation extends through several judicial districts or falls within the jurisdiction of the federal prosecutor, the competent public prosecutors and the federal prosecutor shall notify each other as soon as possible, and take all the necessary measures in order to guarantee the correct development of the operations.

Within each [decentralized judicial office, referred to] in article 105 of the law of December 7, 1998, which organizes an integrated police service structured on two levels, an officer is responsible for permanently controlling particular methods of investigation within the district. This officer is designated by the director general of the judicial police of the federal police, based on the proposal of the judicial director and on the advice of the public prosecutor. He may be assisted in the execution of this task by one or more designated officers according to the same procedure. <L 2006-06-20/34, art. 48, 047; In force: 01-03-2007>

Article 47quinquies

§ 1. Without prejudice to the provisions of § 2, it is prohibited for the police officer responsible for executing particular methods of investigation to commit offences in the fulfilment of his mission.

§ 2. Police officers that, in the context of their mission and to the success of the latter or for the purpose of assuring their own safety or that of others involved in the operation, commit offences absolutely necessary, are—with the express agreement of the public prosecutor—exempt from the sentences.

These offences cannot be more serious than the offences for which the methods were implemented and must necessarily be proportional to the objective.

Paragraphs 1 and 2 are also applicable to persons who directly provided necessary aid or assistance to the execution of this mission, as well as to persons referred in article 47octies, § 1, paragraph 2.

The magistrate that authorizes, with regard to this code, a police officer [and the persons referred to in paragraph 3] to commit offences in the context of the execution of a particular method of investigation does not incur any punishment.

§ 3. The police officers shall communicate to the public prosecutor, in writing and prior to the execution of the particular methods of investigation, the offences referred to in § 2 that they themselves or the persons referred to in § 2, paragraph 3, intend to commit.

If this prior communication cannot take place, the police officers shall notify the public prosecutor as soon as possible of the offences that they themselves or the persons referred to in § 2, paragraph 3, have committed and follow through with written confirmation.

§ 4. The Minister of Justice and the Minister of the Interior take, upon the joint proposal of the federal prosecutor and the general prosecutor responsible for specific tasks in the fields of terrorism and organized crime, specific measures absolutely

necessary in order to guarantee at any time the protection of the identity and the safety of the police officers in charge of executing the particular methods of investigation, in the preparation and execution of their missions. There can be no infringement when the acts are committed in this context.

§ 5. The police officers of the special units of the federal police that, in the context of their training and in order to execute the particular method of investigation of observation and infiltration, commit offences absolutely necessary as referred to in the Royal decree of December 1, 1975, on general regulations on road traffic police and the use of public roads, are exempt of punishment.

These offences must necessarily be proportional to the objective of the training, making sure to keep the caution that one expects from specialized police services, always giving priority to road safety and taking any reasonable precautions so that no physical or material damages is caused to third parties or to themselves.

Committing such offences requires a prior written agreement from the federal prosecutor.

This agreement shall note the days and places where these offences may, as the case may be, be committed, as well as the vehicle utilized by the police service and its license number.

The magistrate that authorizes a police officer, as referred to in paragraph 1, to commit an offence in the context of the training referred to in this article, does not incur any penalty.

(b) Observations on the implementation of the article

797. The use of controlled delivery is possible. Belgium is in compliance with the provision under review.

(c) Successes and good practices

798. The fact that Belgium can allow foreign authorities to use special investigative techniques on Belgian territory was seen by the reviewing States as a good practice.

ANNEX 1

Indicators (for detail on definitions, please see guidelines in separate Excel sheet)

| Corruption Offence (Article from UN Convention against Corruption) | | Cases adjudicated (final) | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|---------------------------------|------|------|---|------|------|-----------------------|------|------|-----------------------------|------|------|------|------|--|------|------|------|------|---|------|------|------|------|----|
| | | Number of opened investigations | | | Number of persons involved in opened investigations | | | Number of indictments | | | Number of final convictions | | | | | Number of imprisonment / custodial sentences through final convictions | | | | | Number of suspended custodial sentences through final convictions | | | | | |
| | | 2011 | 2012 | 2013 | 2011 | 2012 | 2013 | 2011 | 2012 | 2013 | 2011 | 2012 | 2013 | 2014 | 2015 | 2011 | 2012 | 2013 | 2014 | 2015 | 2011 | 2012 | 2013 | 2014 | 2015 | |
| 1 | Bribery (Articles 15, 16, 21) | Total | 144 | 137 | 133 | 212 | 172 | 174 | 27 | 14 | 16 | 14 | 17 | 20 | 13 | 21 | 8 | 10 | 17 | 10 | 17 | 8 | 8 | 16 | 10 | 17 |
| 1.1.1 | of which: (a) Active bribery | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1.1.2 | (b) Passive bribery | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1.2.1 | of which: (a) Bribery of national public officials (Article 15) | | | | | | | | | | | 11 | 14 | 17 | 12 | 20 | 5 | 7 | 14 | 9 | 16 | 5 | 6 | 14 | 9 | 16 |
| 1.2.2 | (b) Bribery of foreign public officials and officials of public international organisations (Article 16) | | | | | | | | | | | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| 1.2.3 | (c) Bribery in the private sector (Article 21) | | | | | | | | | | | 3 | 3 | 3 | 1 | 1 | 3 | 3 | 3 | 1 | 1 | 3 | 2 | 2 | 1 | 1 |
| 2 | Embezzlement, misappropriation or other diversion of property (Articles 17, 22) | Total | 438 | 403 | 448 | 492 | 534 | 543 | 47 | 25 | 39 | 119 | 138 | 105 | 108 | 141 | 90 | 113 | 86 | 87 | 109 | 8 | 10 | 5 | 11 | 34 |
| 2.1 | of which: (a) Embezzlement, misappropriation or other diversion of property by a public official (Article 17) | | 242 | 205 | 263 | 217 | 258 | 292 | 24 | 11 | 16 | 9 | 10 | 6 | 12 | 32 | 8 | 9 | 3 | 7 | 27 | 7 | 8 | 4 | 8 | 27 |
| 2.2 | (b) Embezzlement of property in the private sector (Article 22) | | 196 | 198 | 185 | 275 | 276 | 251 | 24 | 14 | 23 | 110 | 128 | 99 | 96 | 109 | 82 | 104 | 83 | 80 | 82 | 1 | 2 | 1 | 3 | 7 |
| 3 | Trading in influence (Article 18) | Total | | | | | | | | | | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| 4 | Abuse of functions (Article 19) | Total | 41 | 35 | 47 | 42 | 68 | 40 | 5 | 1 | 6 | 3 | 4 | 1 | 6 | 3 | 3 | 4 | . | 5 | 2 | 3 | 3 | . | 5 | 2 |
| 5 | Illicit enrichment (Article 20) | Total | | | | | | | | | | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| 6 | Acts of corruption not recorded under the above categories (please specify) | Total | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 | All acts of corruption (total) | Total | 579 | 540 | 580 | 703 | 706 | 717 | 70 | 39 | 53 | 136 | 159 | 126 | 127 | 165 | 101 | 127 | 103 | 102 | 128 | 19 | 21 | 21 | 26 | 53 |

ANNEX 2

| CORRUPTION | | | | |
|----------------------|------|------|------|------|
| MLA asked to Belgium | | | | |
| | 2013 | 2014 | 2015 | 2016 |
| Kazakhstan | 1 | | | |
| Brasil | 1 | | | |
| Peru | 1 | | | |
| Moldova | | 1 | | |
| Switzerland | | 1 | | |
| United States | | 1 | | |
| Oman | | 1 | | |
| Turkey | | | | 1 |

| MLA asked from Belgium | | | | |
|------------------------|------|------|------|------|
| | 2013 | 2014 | 2015 | 2016 |
| United States | 1 | | | |
| Seychelles | 1 | | | |
| Uruguay | | 1 | | |
| Switzerland | | | 2 | |
| Congo | | | 1 | |
| Monaco | | | | 1 |
| Morocco | | | | 1 |

ANNEX 2

| Country | Our Ref | Date received | Date execution | Request of |
|---------------|---------|--|------------------------------------|---|
| Kazakhstan | 110284 | 01.2013 send to Federal Prosecutor | 07.01.2014 | info about legal entities, agreements, contracts, understandings and other transactions, origin of the money, circumstances of execution of the contract, accounts opened |
| Brasil | 110794 | 07.2013 send to Federal Prosecutor | 01.08.2013 | all documentation relating to the abroad bank accounts that allegedly received the bribe (confidential and urgent treatment was asked) |
| Peru | 111067 | 11.2013 send to Federal Prosecutor | execution - copie PV 16.04.2014 | video conference |
| Moldova | 111424 | 02.2014 send to Federal Prosecutor | 26.09.2014 | info banking account, inform representants, seize authenticated photocopies, statements of account, hearing of the directors as a witness |
| United States | 111589 | 04.2014 send to Federal Prosecutor | 28.01.2016 | restraint of assets |
| Oman | 111714 | 05.2014 send to Federal Prosecutor | transmission via Federal | info banking accounts, identification of banking accounts |
| Switzerland | 111778 | 06.2014 send to Public prosecutor of Brussels | 28.11.2014 | info banking account, possible hearings, searches |
| Turkey | 113481 | 04.2016 send to Public prosecutor of Charleroi | | hearing |
| United States | 110355 | 15.02.2013 | 03.10.2013 | to obtain from the companies, listed in the request, for the period 2006 until 2011 sale invoices, payment details etc. Remark: 'in the letter we asked: because of the sensitive nature of this investigation the Ministry requests that American authorities treat this MLA-request as confidential and, to the extent possible under the laws of the US, prevent public disclosure of any matter relating to its execution, i.e. keep the request under seal |

| | | | | |
|-------------|--------|------------|----------|--|
| Seychelles | 110697 | 09.07.2013 | ongoing | Information about banking data, verification of the statutes of two companies, information about banking accounts of the companies |
| Uruguay | 111987 | 03.10.2014 | ongoing | information about different persons, information about a passport |
| Switzerland | 112415 | 18.03.2015 | ongoing | copie of documents of a bank account, list of transfers, |
| Switzerland | 112594 | 24.06.2015 | executed | joint investigation, identification of societies,... |
| Congo | 112930 | 22.10.2015 | ongoing | documentation on physical and legal persons via banking society, after identification - hearing, searches, ... |
| Monaco | 113262 | 15.02.2016 | ongoing | identification of a bank account, history, ... |
| Morocco | 113282 | 23.02.2016 | ongoing | verification if persons are holders of account, full identification, information about transactions |