



Organisation for Economic Co-operation and Development

**DAF/WGB(2017)67**

**Unclassified**

**English - Or. English**

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**12 January 2018**

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

**Cancels & replaces the same document of 6 December 2017**

**Phase 3 Evaluation of Belgium: Additional written report**

**Paris, 12-15 December 2017**

**JT03425349**

## ADDITIONAL WRITTEN FOLLOW-UP REPORT TO THE PHASE 3 EVALUATION OF BELGIUM

<b>Name of Country:</b>	<b>BELGIUM</b>
<b>Date of approval of the Phase 3 evaluation report:</b>	<b>11 October 2013</b>
<b>Date of information:</b>	<b>20 November 2017</b>

### PART I: RECOMMENDATIONS FOR ACTION

#### *Recommendations for ensuring effective investigation, prosecution and sanctioning of bribery of foreign public officials*

***Text of recommendation:***

2. With respect to the liability of legal persons, the Working Group recommends that Belgium, take the necessary measures to bring its legal framework into compliance with the Convention and 2009 Recommendation, as already recommended in Phase 2, (i) by clarifying the attribution of the intentional element of the foreign bribery offence and (ii) by eliminating the element of mutually exclusive liability between the natural and legal person [Convention, Article 2 ; 2009 Recommendation, Annex I.B.].

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

(i) As far as attribution is concerned, please note the following:

It is specified in sessional papers that the attribution of an offence is considered as a question of fact determined by the judge. Parliamentary proceedings nevertheless provide guidance on how to determine the existence of the mental element by the legal person. For example, consideration should be given to the fact that “the offence was 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”. An example of negligence provided by the legislator is “the assumption whereby defective internal organisation of the legal person, inadequate safety measures or unreasonable budget restrictions created conditions that made it possible to commit the offence.” Parliamentary proceedings add that the court may base its judgement on “the attitude of corporate bodies within the legal person including de facto bodies that may not be identified as natural persons; (...) the legal person may incur liability from the actions of its staff or officers.”

(ii)

a. A bill (N°54 – K0816 – <http://www.dekamer.be/FLWB/PDF/54/0816/54K0816001.pdf>) was brought before the Chamber of Representatives in January 2015 and considered by the Chamber's Justice Commission in July. The bill proposes repealing paragraphs 2 and 4 of Article 5 of the Penal Code. Another bill (N°54 – K1031 - <http://www.dekamer.be/FLWB/PDF/54/1031/54K1031001.pdf>) was brought before the Chamber of Representatives in April 2015, and considered by the Chamber's Justice Commission in July. This bill proposes repealing paragraph 2 and reforming paragraph 4 of Article 5 of the Penal Code.

Accordingly, the aim of both bills is to repeal the ruling on mutually exclusive liability, thereby implying that henceforth, when a legal person and a natural person commit the same offence, they will both in principle be criminally liable. The opinion of the Council of State (on both proposals) was dated 8 October 2015, and delivered on 12 October 2015

(<http://www.dekamer.be/FLWB/PDF/54/0816/54K0816002.pdf>). The Minister of Justice's office had also asked for the opinion of the College of General Prosecutors. The College gave a favourable opinion on the ruling of mutually exclusive liability.

These bills were primarily intended to address the issue of the criminal liability of local officers who, following the criminal immunity for public entities with an elected body, and the in-principle impossibility of arguing mutually exclusive liability, are frequently the only persons to be prosecuted and convicted for actions that would most likely be attributed de facto to the public authority concerned.

The bills are still being discussed.

b. A working group studying the reform of the Penal Code has entered the last phase of its work. The proposals are still being discussed but an agreement has already been reached to simplify the rules on the liability of legal persons, i.e. by eliminating the element of mutually exclusive liability. The new text reads as follows:

*Liability of legal persons*

*Offences can be committed by natural persons and legal persons.*

*All legal persons are criminally liable for offences that are intrinsically connected with the attainment of their purpose or the defence of their interests, or for offences that concrete evidence shows to have been committed on their behalf.*

*The following are considered to be legal persons:*

*1° temporary associations and joint ventures;*

*2° companies referred to in Article 2, para. 3, of the co-ordinated Acts on companies, as well as companies in the process of being established;*

*3° civil partnerships that have not been constituted as a company.*

*The following are not considered to be legal persons criminally liable for the purpose of the present Article: the federal State, the regions, communities, (the provinces, emergency service zones, pre-zones, Brussels and its suburbs, communes, multi-district zones, intra-communal territorial bodies, the French Community Commission, the Flemish Community Commission, the Joint Community Commission and public welfare centres).*

*The criminal liability of legal persons does not exclude the criminal liability of natural persons who have committed or taken part in the same offences.*

The objective is to complete the process before the elections in May 2019 (in practice the end of 2018, before the powers of the outgoing government and parliament are limited to current affairs). This issue and the new Code are very important for our Minister.

**Belgium considers that, in practice, the element of mutually exclusive liability is not a problem, for**

the following reasons:

The preparatory work for the Act of 4 May 1999 demonstrates that the purpose of the ruling on the element of mutually exclusive liability was to prevent the new category of criminally liable persons from always being convicted at the same time as the natural persons. Indeed, there were concerns that judges would too readily convict both categories. The element of mutually exclusive liability was introduced to protect workers and force judges to make a choice (Doc., Chamber, 1998-99, 2093/5, p. 25).

The principle enshrined in the law is the exclusion of the accumulation of liabilities. It states in the preparatory work that the Act “thereby intends to amend a bold aspect of case-law concerning the attribution of offences to officers working for legal persons on the premise that the failings of these individuals prove the offence, in cases where it is necessary to show clear criminal intention, or even establishing quasi-criminal liability on the sole basis of the position of the individual in question within the legal person”.

If the known natural person committed the fault “knowingly and willingly”, he can be convicted at the same time as the legal person that is liable. In this case, the accumulation of liabilities is possible.

The words “knowingly and willingly” refer to the notion of wilful misconduct. Mutually exclusive liability is ruled out for offences of wilful misconduct as, under this assumption, the criminal liability of the natural person, and therefore of the legal person, is triggered only by acts committed knowingly and willingly, a situation that refers to the optional accumulation of criminal liabilities (Cass. 26/09/2006). Accordingly, liability will always be accumulated for acts of bribery, as they always involve wilful misconduct.

**In addition, Belgium would like to cite one of its cases of foreign bribery, the EU cereals subsidies (2013) case, referred to as a good practice in the Study on foreign bribery detection by the Secretariat of the OECD Working Group on Bribery, in which natural and legal persons were sanctioned together:**

*The case was referred to the Belgian authorities by OLAF and concerns the bribery of a Dutch European official by non-Belgian companies and nationals for the provision of information covered by professional secrecy relating to the fixing of prices for cereals on the European market. The total amount of bribes in the case (travel, luxury goods, property and transfers of cash) was estimated, in the court’s judgment, at EUR 850 000, and the total amount of advantages obtained by the companies in question was approximately EUR 22 million.*

*Belgium exercised its territorial jurisdiction in relation to the offence of bribery of foreign officials (the European official was based in Brussels). The investigations were conducted by the Central Office for the Repression of Corruption (Office central pour la répression de la corruption, OCRC) in 2003 and the Brussels Court of First Instance handed down a conviction on 27 June 2012. On 6 May 2013 the Brussels Court of Appeal upheld the initial conviction of the two foreign companies for bribery of the European public official. Of the eight non-Belgian individuals prosecuted for foreign bribery in this case, four were acquitted; one received a suspended conviction; and three individuals were sentenced to suspended prison sentences of 12 to 18 months and fines of EUR 2 500 to 7 500.*

Furthermore, it is possible to mention at least three arrests for money laundering (2015-2016) which resulted in a natural person being sanctioned together with legal persons.

***Text of recommendation :***

3. With respect to sanctions for foreign bribery and confiscation, the Working Group recommends that Belgium:

b) For legal persons, (i) increase the amount of applicable fines, and (ii) carry out their current plans to introduce a criminal record for legal entities as soon as possible which would enable the practical application of additional sanctions of debarment from public procurement [Convention, Articles 2 and 3];

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

The Law of 25 December 2016 amending the legal status of prisoners and prison surveillance, and containing various provisions in matters of justice (“Pot-Pourri IV”) was published in the *Moniteur Belge* on 30 December 2016, and entered into force on 9 January 2017. Among other things, the aim of this Law is to allow for the creation of a Central Register of Criminal Records for Legal Persons.

The law is available here:

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2016122514](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2016122514)

Articles 18 to 25 of the said Law amend Articles 589, 590, 591, 592, 593, 595 and 596 of the Belgian Code of Criminal Procedure Law (which are in Title VII, Chapter I – On the Central Register of Criminal Records).

This is a logical extension of the Law of 8 August 1997 on the Central Register of Criminal Records and the Law of 4 May 1999 instituting the criminal liability of legal persons. Any criminal judgment, against either natural or legal persons, will be entered in the Central Register.

***Text of recommendation :***

4. With respect to investigations and prosecutions of foreign bribery cases, the Working Group recommends that Belgium:

a) Give the necessary priority to the fight against foreign bribery, in particular (i) by urgently making available adequate human and material resources to the judicial and law enforcement authorities so that they can effectively investigate, prosecute and adjudicate cases in which foreign bribery is committed by Belgian nationals or companies, and (ii) by making foreign bribery a priority of its criminal justice policy [Convention, Article 5; 2009 Recommendation, V. and Annex I.D.];

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

(i) a. With regard to judges, Belgium can provide the following information. To prevent any more major tax cases running out of time due to a lack of specialised knowledge, there are plans to increase the number of specialised tax prosecutors in the Brussels prosecutors' office. They are used in the fight against organised economic and financial offences, which also includes the fight against bribery and fraud (tax / financial / economic / social).

The programme law of 1 July 2016 (*Moniteur Belge* of 04/07/2016) increased the number of prosecutors from 15 to 30. In practice, the number of prosecutors in the Brussels prosecutor's office will increase

from 5 to 10. In Antwerp, Ghent, Liège and Mons, staffing levels will increase from 4 to 5 prosecutors. The implementation of this full complement of 30 individuals is a priority for the Minister of Justice.

This thereby gives a boost to the justice reform, one of the main objectives of which is to increase the number of specialised prosecutors. The measures should help FPS Justice to close a case within a reasonable timeframe. Indeed, numerous tax issues require specialised knowledge and the heavy workload of prosecutors means that they do not always have enough time to become sufficiently acquainted with a given matter, leading to the risk of time running out on some complex tax cases.

b. With regard to the Federal criminal police, a recruitment drive is currently under way to increase the number of investigators working for the OCRC (Central Office for the Repression of Corruption).

c. In addition, a Royal Decree dated 31 May 2017 amends the rules governing the secondment of officials in tax administrations to the Crown prosecutor and the Judge Advocate for Labour, to help them carry out their duties. The amended regulations entered into force on 24 June 2017.

This Royal Decree amends the Royal Decree of 21 January 2007 laying down the rules for the secondment of officials in tax administrations to the Crown prosecutor and the Judge Advocate for Labour, to help the latter carry out their duties.

The purpose of the draft Royal Decree is to amend the Royal Decree of 2007, so as to take account of:

- Changes at FPS Finance, namely the introduction of new careers and a new departmental structure,
- The increase in the number of officials from tax administrations seconded to prosecutors' offices, following the decision of the Council of Ministers of 22 April 2016

The number of tax officials seconded to prosecutors' offices by FPS Finance would increase by 15 full-time equivalents (FTE). Given that 18 tax officials may currently be seconded to the Crown prosecutor and the Judge Advocate for Labour, the total number of available secondments would rise to 33.

The officials are granted the status of judicial police officer and help the deputies working on bribery and fraud.

The Royal Decree is available here:

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2017053105](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2017053105)

(ii)

a. The Circular on criminal policy No; 11/2015 of 8 October 2015 expressly provides that, "cases of public bribery, misappropriation, unlawful acquisition of an interest and embezzlement by an individual exercising a public function must be dealt with as a matter of priority".

b. The National Security Plan (PNS) for 2016-2019 was officially presented on 7 June 2016.

This document, published by the Minister of Security and Home Affairs, and the Minister of Justice, is the guiding thread of police functioning.

The PNS reflects the contribution of the integrated police to the security policy set out by federal government and reiterated in the Integral Security Framework Document (ISFD).

The title of this National Security Plan 2016-2019, 'Together to the heart of the matter', places the emphasis on integral and integrated cooperation: 'integrated' co-operation between the local police and the federal police on the one hand, and 'integral' co-operation between the integrated police and their

partners in the security chain, on the other hand.

The PNS contains several objectives in terms of both domestic and foreign bribery:

P.28: OBJECTIVE 3: The Federal criminal police will be actively involved in the fight against domestic and transnational bribery. Within the specific framework of an approach targeting the proceeds of corruption, the ISFD places the focus on a cross-cutting approach to the specific phenomena of economic and financial crime, including the bribery of Belgian, international and foreign officials.

OBJECTIVE 4: Recent assessments of the application of international treaties and conventions showed that development of an image of the phenomenon of bribery is problematic. Given this situation, the Federal criminal police will improve training on the image of the phenomenon of bribery, notably by adding data from other departments to the data at the disposal of the police.

P. 30: OBJECTIVE 13: Better manage processing times: research management sets forth the need to better manage the time taken to process police inquiries for the purpose of investigating and adjudicating within a reasonable timeframe offences of an economic, financial, fiscal and environmental nature, including money laundering, domestic and international bribery, and the financing of terrorism.

Further details on these PNS objectives are given in the Integral Security Framework Document, which was presented at the same time:

P. 31: Accordingly, the focus must be placed on phenomena specific to economic and financial crime, including the laundering of criminal assets and the bribery of Belgian, international and foreign officials, to which some sectors are particularly susceptible, for example the gambling industry, and to the detection and solving of which some “financial” professions can make a significant contribution.

P. 31-32: Develop a methodology to improve the image of the phenomenon of bribery. The figures currently available on the fight against bribery in general only reflect the activities of the prosecutor’s Office and the police services. Ideally, the criminal image of the phenomenon should be refined by integrating data available from other departments than the Justice and the police. In addition, it would be useful to this end to take into account the need for strategic information on bribery carried out by foreign and international officials.

P. 33: A more dynamic and cross-cutting approach based on the concept of Intelligence Led Policing (ILP) to supplement the “conventional” and vertical approach to bribery. Complaints and referrals remain essential in fighting this phenomenon, and it would be a good idea to complete this “conventional” and vertical with a more dynamic and cross-cutting approach based on the concept of Intelligence Led Policing. Bearing in mind, in addition, that domestic and international bribery facilitate the operations of criminal organisations, notably their financing through the sale of illegal products, rapid detection based on reliable indicators and datamining techniques should help improve the identification and seizure of criminal assets, and accelerate the speed at which the perpetrators appear before the courts and judicial authorities.

All the information on the National Security Plan and the Integral Security Framework Document is available at the following links:

<https://www.police.be/5998/fr/a-propos/police-integree/le-plan-national-de-securite>

The PNS: <https://www.police.be/5998/sites/default/files/downloads/PNS2016-2019.pdf>



The Integral Security Framework Document:

[https://www.police.be/5998/sites/default/files/downloads/Kadernota\\_IV\\_FR\\_DEF.pdf](https://www.police.be/5998/sites/default/files/downloads/Kadernota_IV_FR_DEF.pdf)

***Text of recommendation:***

4. With respect to investigations and prosecutions of foreign bribery cases, the Working Group recommends that Belgium:

b) Take a more proactive stance in foreign bribery cases, in particular by investigating information about foreign bribery disclosed in the context of international cooperation and not waiting for a formal referral before opening an investigation [Convention, Articles 5 and 9; 2009 Recommendation, V. and Annex I.D.];

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

A Memorandum of Understanding was signed on 13 October 2015 between SPF Justice, SPF Foreign Affairs and the judicial authorities. The foremost purpose of this MoU is to encourage Belgian diplomatic missions abroad to circulate the Convention and the Good Practice Guidance to Belgian businesses with overseas operations. Second, if Belgian diplomatic missions are holding information about corruption that may concern Belgian companies with overseas operations, they will inform SPF Foreign Affairs. This information will then be shared with SPF Justice, which will pass it on to the federal prosecutor's office for the latter to take any legal action.

Based on this MoU, five allegations have already been received (one in 2016 and four in 2017). An investigation has been opened in each case. One case turned out not to constitute foreign bribery and has since been closed. The investigations into the other cases are still ongoing. It can therefore be said that this MoU has genuinely increased proactivity in the fight against foreign bribery, although the climate remains difficult, and the threat of terrorism very real.

***Text of recommendation:***

4. With respect to investigations and prosecutions of foreign bribery cases, the Working Group recommends that Belgium:

c) Take all necessary measures to ensure that foreign bribery cases are not closed on the grounds of insufficient investigative resources, lack of priority or exceeding a "reasonable time limit" solely because investigations, proceedings and judgments take too long [Convention, Article 5; 2009 Recommendation, V. and Annex I.D.];

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

Explicitly quoted in circular No. 11/2015: Any decision to take no further action on the grounds of "insufficient investigative resources" or "other priorities for investigations or proceedings" in a case of public bribery, misappropriation, unlawful acquisition of an interest or embezzlement by a public official may only be finalised with the express agreement of the most senior official. (p. 4).



We would like to highlight the following:

- We have already closed three foreign bribery cases in the tribunal, with final rulings handed down, and natural or legal persons were convicted in two of those cases. One case is pending appeal.

In total there are nine ongoing investigations, proving that we are far from a situation in which foreign bribery cases are closed with no action taken.

***Text of recommendation:***

6. With respect to the limitation period the Working Group recommends that Belgium urgently take all necessary measures to extend the possibilities for suspending the limitation period to allow adequate time for foreign bribery investigations and prosecutions [Convention, Article 6].

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

The limitation period is an issue that is dealt with in the discussions of a working group on the reform of the Code of Criminal Procedure.

The College of General Prosecutors took the initiative of writing a paper on this recommendation—in order to show that there are already many different "possibilities for suspending the limitation period".

In short:

Any suspension of the limitation period results in its extension. A "suspensive" procedural act triggers the application of a new limitation period of equal length to the initial one. A *délit* (offence) is subject to a limitation period of five years. If the limitation period is interrupted after three years, a new five-year limitation period begins. The interruption, therefore, will in a certain sense "cancel" the initial limitation period and trigger a second period. Under the provisions of Article 22 of the Preliminary Title of the Code of Criminal Procedure, the limitation period can be suspended several times, although it may not exceed twice the length of the original limitation period. This kind of offence is therefore limited to a maximum of ten years (provided the limitation period is suspended (see below)).

Suspensive acts must meet four criteria:

- They must constitute investigative or prosecution proceedings;
- They must be carried out by a competent authority;
- They must be legally valid;
- They must be carried out within the original limitation period.

There is no legal definition of "investigative or prosecution proceedings", so the definition has fallen to case law.

Investigative proceedings are defined as "any proceedings initiated by authorities competent to do so and designed to gather evidence or prepare the case for trial".

Examples of investigative proceedings include the record of an offence by a criminal police officer; the apostille which designates the order of the prosecutor royal to hear a witness or suspect; an interview of the defendant by the prosecuting magistrate; postponement of a case to a future date by the trial court.

Prosecution proceedings have been defined by case law as "any proceedings initiated by authorities competent to do so and designed to lead to the punishment of the defendant or his or her standing trial."

Examples of prosecution proceedings include an order to conduct an investigation issued by the prosecutor royal; a complaint with application for damages; final submissions from the prosecutor royal pending the resolution of the proceedings; appeal by the prosecutor royal; delivery of a default judgment.

Causing a suspension will stop the clock for a certain length of time. If a case features grounds for suspension, the result will be that that case is frozen for a given period. The time that elapses between the point when the suspensive act takes effect and the point when another procedural act, linked to the suspensive act, is established, extends the limitation period by an equal number of days without discounting time already elapsed (as opposed to interruption). The limitation period will resume until any further suspensive act.

Grounds for suspension are set out in law.

Article 24 of the Preliminary Title of the Code of Criminal Procedure sets out several grounds for suspension of the limitation period for prosecution. Any obstacle preventing charges being brought or conducted (e.g.: request for authorisation in the case of proceedings against a minister or proceedings to determine the competent jurisdiction ("*procédure en règlement de juges*")) provides grounds for suspension. Other causes of suspension include the resolution of pleas of lack of competence, inadmissibility or invalidity, provided they meet certain conditions, and the performance of additional tasks (requiring a suspension of no more than one year).

Causes of suspension may apply both during the original period and the secondary period.

We cannot talk about the limitation period without mentioning the reasonable period.

The principle of the reasonable period is enshrined in Articles 6 of the European Convention on Human Rights and 14, 3 c) of the International Pact on Civil and Political Rights.

According to this principle, any person accused of committing a crime by a jurisdiction has the right to have his or her case heard within a reasonable timeframe.

The Belgian judicial authorities are careful to ensure respect for the principle of the reasonable period, which should be considered during the investigation of every case, especially if the case reaches beyond the national borders. The international factor unarguably and almost systematically extends the period in which a case can be processed, largely because of the duty to investigate abroad by means of international letters rogatory requiring the collaboration of foreign authorities.

Although the current system allows the theoretical time limit for prosecution to be extended, it cannot be extended indefinitely, without being obliged to make, as provided for under Article 21 c) of the Code of Criminal Procedure, a simple declaration of guilt in lieu of a conviction or handing down a lesser penalty than that provided for by law. If the national jurisdiction, in this case Belgium, does not adhere to the fundamental principles of party initiative, the European Court of Human Rights will oblige it to do so (should the defendant take the case to that court).

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

***Text of recommendation:***

12. With respect to reporting acts of foreign bribery, the Working Group recommends that Belgium:

b) Promptly take appropriate measures to protect public and private sector employees who report suspected acts of foreign bribery to the competent authorities from any discriminatory or disciplinary action [2009 Recommendation, IX.(i) and (iii)].

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

Several initiatives have been taken in Belgium to offer better protection to some specific categories.

1. The law on the surveillance of the financial sector and financial services was amended, and the introduction of Article 69b asked the financial services and markets watchdog, the FSMA, to set up effective mechanisms allowing workers in that sector to report potential violations of financial law, which it is responsible for upholding. Bona fide whistle-blowers are protected from retaliatory action. A contact point for whistle-blowers has been created on the watchdog's website.

The law of 2 August 2002 concerning the surveillance of the financial sector and financial services was amended by the law of 31 July 2017, with a view to implementing Regulation (EU) No. 596/2014 on market abuse and transposing both Directive 2014/57/EU on criminal sanctions for market abuse and Implementing Directive (EU) 2015/2392 regarding the reporting of infringements, and introducing various provisions:

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2017073110&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2017073110&table_name=loi)

This law partially transposes into Belgian law the Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No. 596/2014 as regards reporting to the competent authorities the actual or potential infringement of that Regulation. It involves the adoption of a system concerning people reporting such infringements (known as whistle-blowers).

The new Article 69bis implements and transposes these provisions. The whistle-blower system that has been introduced is not limited to the reporting of infringements, however, (of the transposing provisions) of the aforementioned EU regulation which requires Member States to introduce a whistle-blower system, but is applicable more broadly to the reporting of infringements of all rules covered by Article 45 of the law of 2 August 2002, which the FSMA is responsible for upholding. The legislator considers that the whistle-blower system should be introduced across the board in order to encompass reported infringements of all rules covered by Article 45 of the law of 2 August 2002.

Infringements reported by whistle-blowers can indeed represent a significant source of information about adherence to all these rules. This approach is also justified in the light of the constitutional principle of equality, because it prevents a situation in which a whistle-blower reporting a violation of the national provisions adopted under the transposition of the UCITS directive is protected, while a whistle-blower reporting a violation of similar national provisions transposing the AIFM directive is not. In order to encourage informers to report infringements, sufficient protection is provided in the latter situation.

2. In addition to the judicial and tax investigations launched in Belgium in relation to the Panama Papers, a special commission, "International tax evasion/Panama Papers", has been set up within the Chamber of Representatives, and has set itself the task of examining the legal framework, resources and results of the fight against international tax evasion and avoidance in Belgium.

The special commission completed its work on 31 October 2017. The report is available here:

<http://www.lachambre.be/FLWB/PDF/54/2749/54K2749001.pdf>

The commission also examined whistle-blowing, and issued the following recommendations on the subject:

- Work needs to be carried out on the development of a general system for the protection of whistle-blowers both in the private and public sector, after public consultation. Such a system would provide for the establishment of a point of contact offering whistle-blowers advice and support. It would need to be strictly regulated by law and a careful balance would need to be struck between the rights of all parties (those of the whistle-blower, of the person or persons concerned by the report and the institutions whose information has been used, but also the public interest, etc.). This system would prevent false reports.

- Businesses offering tax, legal and financial services must actively inform their staff of the existence of whistle-blower regulations and the contact point.
- It is recommended that the authorities introduce a legal whistle-blower status, which should be discussed in open debate, drawing on the legal experience of other countries.
- On the understanding that whistle-blowers act disinterestedly, in the public interest, it might be advisable to provide for indemnification of the damage suffered in the event that the reported events are confirmed and the whistle-blower wishes to leave the institution for which he or she is working in the light of the probable degradation of the relationship.

3. Within the SPF Foreign Affairs, a working group has been set up to examine the current state of whistle-blower protection, both nationally and internationally. The issue of whistle-blower status, protection and any indemnification is a question for the government.

In the SPF Finance, a working group has been set up to examine the same subject, chaired by the General Administrator of the Special Tax Inspectorate (ISI).

It is a subject we are following closely.