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Country Profile on Penalties in Drug Trafficking Cases in Belgium

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General information on penalties in drug trafficking cases
In Belgium, the drug trafficking offences and their different penalties are set out in the 1921 Law on Drug Trafficking (1). The legal provisions already take into account aggravating circumstances and criteria such as ‘health age’, the individual’s age, etc. However, quantity is not an aggravating factor according to the law. Article 2bis determines the following sanctions:

- Imprisonment for 3 months–5 years and a fine of EUR 1 000–100 000 for the offences mentioned in the Royal Decree of 31 December 1930.
- Imprisonment for 5–10 years when the offences mentioned in the Royal Decree of 31 December 1930 are committed in relation to a minor above 16 years, if the substances have caused an incurable disease, a permanent incapacity for work, the complete loss of an organ or a severe disfigurement. A fine of EUR 1 000–100 000 can also be imposed, but this is not automatically applied.
- Imprisonment for 10–15 years when the offences mentioned in the Royal Decree of 31 December 1930 are committed in relation to a minor aged 12–16 years; if the offences form the main or ancillary activity of an association of criminals; or if the use of substances caused death. A fine of EUR 1 000–100 000 can also be imposed, but this is not automatically applied.
- Imprisonment for 15–20 years when the offences mentioned in the Royal Decree of 31 December 1930 are committed in relation to a minor under 12 years and if the offences form the main or ancillary activity of an association of which the offender is a leading figure. A fine EUR 1 000–100 000 can also be imposed, but this is not automatically applied.

Article 9 of the law of 1921 regulates the possibility for a less harsh sentence in cases of personal use.

In cases of repeated convictions in a period of five years, the sentences mentioned above can be doubled (art. 5 1921 Law on Drug Trafficking).

Article 6 § 3 and § 4 determine that a reduced penalty for a crime (or exclusion for a misdemeanor) is to be imposed when the accused has reported, before the prosecution, to the government the identities of the perpetrators of the crimes, defined in the 1921 Law on Drug Trafficking or, if the perpetrators are unknown, the existence of such crimes are revealed. These revelations have to be made before the prosecution was instigated. Other mitigating circumstances can only have an influence on the decision of the judge, since the law itself does not provide for other specific mitigating circumstances.

In Belgium there are no prosecutor or sentencing guidelines for drug trafficking offences.

(1) Law of 24 February 1921, published in The Belgian State Gazette on 6 March 1921
**Scenarios: prescribed and expected sentences**

The legislation outlined above indicates the sentencing ranges that are prescribed for the supply of defined quantities of particular drugs in certain circumstances.

One prosecutor and three defence lawyers were interviewed in order to understand what the most likely sentence would be in eight (hypothetical) supply offences. They were asked what sentence they would expect a hypothetical first-time offender to receive.

The results may be summarised as follows:

<table>
<thead>
<tr>
<th>Substance</th>
<th>Weight</th>
<th>Penalty range prescribed in law/guidelines</th>
<th>Expected penalty range (sentence)</th>
<th>Average expected penalty (sentence)</th>
</tr>
</thead>
</table>
| Cannabis (10 % THC)        | 1 kg   | 3 months–5 years’ imprisonment and fine of EUR 1 000–100 000                                              | 2 years + EUR 2 000 (prosecutor 1)  
2 years 6 months (defence lawyer 1)  
2 years + EUR 1 000 (defence lawyer 2)  
2 years (defence lawyer 3)           | 2 years                                           |
|                            | 10 kg  | 3 months–5 years’ imprisonment and fine of EUR 1 000–100 000                                               | 4 years + EUR 4 000 (prosecutor 1)  
5 years (defence lawyer 1)  
3 years + EUR 3 000 (defence lawyer 2)  
4 years (defence lawyer 3)           | 4 years                                           |
| Amphetamine (20 % purity)  | 100 g  | 3 months–5 years’ imprisonment and fine of EUR 1 000–100 000                                               | 1 year 6 months + EUR 1 000 (prosecutor 1)  
3 years (defence lawyer 1)  
2 years + EUR 1 000 (defence lawyer 2)  
3 years (defence lawyer 3)           | 2 years 6 months                                 |
|                            | 1 kg   | 3 months–5 years’ imprisonment and fine of EUR 1 000–100 000                                               | 3 years + EUR 3 000 (prosecutor 1)  
4 years (defence lawyer 1)  
3 years + EUR 2 000 (defence lawyer 2)  
4 years (defence lawyer 3)           | 3 years 6 months                                 |
| Cocaine (33 % purity)      | 100 g  | 3 months–5 years’ imprisonment and fine of EUR 1 000–100 000                                               | 1 year 6 months + EUR 1 000 (prosecutor 1)  
3 years (defence lawyer 1)  
2 years + EUR 1 000 (defence lawyer 2)  
2 years (defence lawyer 3)           | 2 years                                           |
|                            | 1 kg   | 3 months–5 years’ imprisonment and fine of EUR 1 000–100 000                                               | 3 years + EUR 3 000 (prosecutor 1)  
5 years (defence lawyer 1)  
3 years + EUR 2 000 (defence lawyer 2)  
3 years 4 months (defence lawyer 3) | 3 years 2 months                                 |
Heroin (25 % purity)

<table>
<thead>
<tr>
<th>Substance</th>
<th>Weight</th>
<th>Penalty range prescribed in law/guidelines</th>
<th>Average expected penalty (sentence)</th>
<th>Average expected time spent incarcerated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis resin (10 % THC)</td>
<td>1 kg</td>
<td>3 months–5 years’ imprisonment and fine of EUR 1 000–100 000</td>
<td>2 years</td>
<td>8 months</td>
</tr>
<tr>
<td></td>
<td>10 kg</td>
<td>3 months–5 years’ imprisonment and fine of EUR 1 000–100 000</td>
<td>4 years</td>
<td>1 year 4 months</td>
</tr>
<tr>
<td>Amphetamine (20 % purity)</td>
<td>0.1 kg</td>
<td>3 months–5 years’ imprisonment and fine of EUR 1 000–100 000</td>
<td>2 years 6 months</td>
<td>10 months</td>
</tr>
<tr>
<td></td>
<td>1 kg</td>
<td>3 months–5 years’ imprisonment and fine of EUR 1 000–100 000</td>
<td>3 years 6 months</td>
<td>1 year 2 months</td>
</tr>
<tr>
<td>Cocaine (33 % purity)</td>
<td>0.1 kg</td>
<td>3 months–5 years’ imprisonment and fine of EUR 1 000–100 000</td>
<td>2 years</td>
<td>8 months</td>
</tr>
<tr>
<td></td>
<td>1 kg</td>
<td>3 months–5 years’</td>
<td>3 years 2 months</td>
<td>12.5 months</td>
</tr>
</tbody>
</table>

Early release in drug trafficking cases

In Belgium, the rules regarding early release in cases such as these are laid down in the law of 2006 concerning the execution of sentences. Different rules apply and an early release will always depend on recurrence, residential status, having a permanent address, etc.

In Belgium, there is a difference between a conviction of less than three years and one of more than three years. For those who are convicted for more than three years, the tribunal d’application des peines, a court responsible for the implementation of the sentence, decides whether someone can be released early under conditions or not.

In general, an individual who has been convicted for the first time and who has a permanent address will be released (or will be able to submit a request to the court) after serving 33 % of their sentence. In other cases, an individual will have to serve at least 67 % of the sentence.

Applying this proportion of 33 % to the average expected penalty, subject to the various conditions outlined above, the average time spent incarcerated would be expected to be as follows:
<table>
<thead>
<tr>
<th>Heroin (25 % purity)</th>
<th>0.1 kg</th>
<th>3 months–5 years’ imprisonment and fine of EUR 1 000–100 000</th>
<th>2 years</th>
<th>8 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 kg</td>
<td>3 months–5 years’ imprisonment and fine of EUR 1 000–100 000</td>
<td>3 years 2 months</td>
<td>12.5 months</td>
<td></td>
</tr>
</tbody>
</table>