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Development of an EU Evaluation Mechanism in the area of Anti-Corruption with a particular focus on identifying and reducing the costs of corruption in Public Procurement involving EU Funds

Report on Belgium, April 2012

Prof. Dr. Paul De Hert
Drs. Karen Weis
1. Introduction & sources of data

During the carrying out of this research, it became apparent that Belgian national authorities were very hesitant to cooperate. Neither the specialised police unit within the federal police (see below), nor the federal prosecutor agreed to meet the researchers as to discuss the questionnaire. This report is thus drawn up solely on the basis of legal doctrine and international reports on corruption in Belgium. These latter reports also identify the same lack of access to information about the number of foreign bribery cases, information on the status of cases and other details.¹

The following data thus have been used for the drawing up of this report:

- quantitative or qualitative evidence available in reports, media articles, and other studies (see below)
- data(bases) on:
  - police records (on suspected cases of corruption) – see website Federal Police
  - national prosecutors records (on suspected cases of corruption) – see website FOD Justitie

There is a national website in Belgium with regards to public procurement², with
  - procurement form EU funds and other public funds
  - tenders specifications
  - tender procedures (per tender)
These websites do not contain information on the outcome of these procurement proceedings.

No specific publicly accessible information could be found on corruption with regards to EU funds.

2. Patterns of corruption

What is the overall estimated size of corruption in this Member State (e.g. % of the GDP?)? Has it been growing or declining over the last 10 years? What is the estimated size of corruption in EU funds (notably Structural Funds). Is there any indication that corruption in EU funds is higher or lower than corruption in other parts of society?

1. Corruption in general

There are no recent national data available on the estimated size of corruption in Belgium.³ One could however base estimations on the number of reported cases and convictions, but one has to take into account the low clearance rate of corruption cases in Belgium. The numbers cited below in most cases do not differ on the basis of the nature of the case (national/European/international) and the available statistics thus mainly does not include corruption of foreign public officials as a separate category.

- Number of reported cases of corruption

The first set of data that could be found, concerned the reported cases in the period 2000-2007. It thus does not reflect the number of convictions. The main reasons for discontinuing proceedings were insufficient evidence (39.97% of cases), no offence committed (20.24%), other priorities (11.25%), no antecedents (3.81%), perpetrator unknown(3.81%), limited social impact (3.63%), reasonable time

exceeded (2.77%), consequences disproportionate to the disturbance caused (2.42%). Grounds such as insufficient investigation capacity (1.56%) and time-barred (1.04%) were used very infrequently.4

The Annual Report of the Federal Police (2010) reports the number of requests for cooperation issued by a prosecutor (first category) and second, the number of police reports drawn up with regards to offences of corruption and their evolution throughout the period 2007-2010. However, this does not reflect the exact number of cases or the extent to which corruption is perceived as a crime in Belgium, as in one case several of such requests (or reports) can be drawn up.


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- Number of convictions

In Belgium, information on the number of convictions is not gathered systematically. The statistical services of neither the Ministry of Justice, nor the individual courts provide numbers on the nature of the offences for which convicted persons were trialled. In international reports, only one table concerning convictions could be found (period 1993-2006):

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bribery of a person responsible for a public service</td>
<td>26</td>
<td>42</td>
<td>37</td>
<td>42</td>
<td>25</td>
<td>43</td>
<td>16</td>
<td>19</td>
<td>27</td>
<td>35</td>
<td>15</td>
<td>19</td>
<td>31</td>
<td>20</td>
</tr>
<tr>
<td>of whom (1)</td>
<td>11</td>
<td>15</td>
<td>22</td>
<td>17</td>
<td>6</td>
<td>22</td>
<td>4</td>
<td>10</td>
<td>10</td>
<td>13</td>
<td>5</td>
<td>10</td>
<td>15</td>
<td>11</td>
</tr>
<tr>
<td>of whom (2)</td>
<td>15</td>
<td>27</td>
<td>15</td>
<td>27</td>
<td>19</td>
<td>21</td>
<td>12</td>
<td>9</td>
<td>17</td>
<td>22</td>
<td>10</td>
<td>10</td>
<td>16</td>
<td>10</td>
</tr>
<tr>
<td>of whom (3)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

(1) Passive bribery of person performing public duties
(2) Active bribery or coercion by force or threats of person performing public duties
(3) Unlawful issue of a passport, firearms licence, identity card or waybill by an official in response to gifts or promises

- International standards and indexes

Transparency International, a global civil society organization fighting corruption, has created several international standards and rankings as to define how ‘corrupt’ a State is, or at least is perceived to be. For example, the Corruption Perceptions Index (CPI) ranks countries according to their perceived levels of public-sector corruption. This index draws on different assessments and business opinion surveys carried out by independent institutions. Questions relating to the bribery of public officials, kickbacks in public procurement, embezzlement of public funds and questions that probe the strength and effectiveness of public-sector anti-corruption efforts are answered by the interviewees. The CPI focuses on corruption in the public sector, or corruption which involves public officials, civil servants or politicians. The data sources are used to compile the index include questions relating to the abuse of public power and focus on: bribery of public officials, kickbacks in public procurement, embezzlement of public funds, and on questions that probe the strength and effectiveness of anti-corruption efforts in the public sector. As such, it covers both the administrative and political aspects of corruption. In producing the index, the scores of countries/territories for the specific corruption-related questions in the data sources are combined to calculate a single score for each country.

In 2011, Belgium was ranked 19th with a score of 7.5 in the CPI ranking. During the previous years, the score was more or less identical and the ranking varied between place 22nd and 17th. This shows that

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5 See for more information: [http://www.transparency.org/whoweare/organisation](http://www.transparency.org/whoweare/organisation).
Belgium is perceived as being a country where corruption is present, though not in a very severe manner. There however only seems to be a limited progress. This could relate to the fact that the interviewees do not see substantial improvements in the dealing with corruption.  

Belgium is not mentioned in the Global Corruption Barometer, another international standard put forward by Transparency International. In the 2011 Bribe Payers Index, which ranks the likelihood of companies from 28 leading economies to win business abroad by paying bribes (private sector), Belgium is ranked 3rd with a score of 8,7. Belgium is thus the third least likely country in which bribes could lead to business opportunities.

- Conclusion

It is impossible to determine the exact number of corruption cases in Belgium. What however is clear is that there is corruption in Belgium, which follows from both national data and information given by international organisations.

2. Corruption with EU-funds

The Progress Report 2011 on the Enforcement of the OECD Anti-Bribery Convention, also drawn up by Transparency International, contains several data on the practical enforcement of the OECD Anti-Bribery Convention which requires each State to make foreign bribery a crime. The data in this report also indirectly mentions the number of prosecuted cases of corruption with EU-funds in Belgium.

For example:

**TABLE A: FOREIGN BRIBERY ENFORCEMENT IN OECD CONVENTION COUNTRIES**

<table>
<thead>
<tr>
<th>Country</th>
<th>Enforcement</th>
<th>Share of World Exports, % for 2010</th>
<th>Share of Foreign Investment, % for 2009 (outward)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Cases</td>
<td>Investigations Under Way</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2010</td>
<td>2009</td>
<td>in 2010</td>
</tr>
<tr>
<td>Belgium</td>
<td>4^(IV)</td>
<td>4^(IV)</td>
<td>0^(IV)</td>
</tr>
</tbody>
</table>

- IV Number unknown or based on media reports.
- VI Belgium has brought 10 additional cases on behalf of EU institutions.


From this table, it can thus be deduced that - next to the 4 cited cases, - 10 additional cases relating to corruption on behalf of the EU institutions have been investigated during 2010 and 2009.

Another table represents the status of foreign bribery cases, though this table does not explicitly refer to the above cited EU-cases.
There is however no data available on the estimated size of corruption in EU funds. There is also no indication that corruption in EU funds is higher than corruption in other parts of society.

**What patterns of corruption emerge? What sectors are more vulnerable to corruption? Are these linked to EU funds?**

No information was provided. It is however generally accepted that public officers and other persons who come in contact with the public (for example police, judiciary etc.) are more vulnerable to corruption. This can, for example, be established when studying the preventive measures that have been undertaken in the past years (see below).

**What are the available estimates on the costs of corruption in general and for EU funds in particular?**

No official or unofficial estimations exist.

### 3. Anti-corruption measures

#### 1. Investigation and prosecution of corruption

**What are the main actors/institutions involved in the investigation of corruption? What are their main roles, competences, strengths and weaknesses?**

- **Main actors/institutions involved in the investigation of corruption**

In Belgium, a separate entity of the federal police office is competent to investigate cases of alleged corruption. This **Central Service for the Repression of Corruption** (Centrale Dienst voor de Bestrijding van Corruptie) is a part of the Directorate for Economic and Financial Crime (ECOFIN), belonging to the Belgian Federal Judicial Police. It has the legal power to carry out investigations on the entire Belgian territory. The main task of the service is to investigate complex and serious crimes of corruption in the public service and the private sector, as well as other related offences like misappropriation of public funds, conflicts of interest and embezzlement committed by a person who holds a public office, offences committed in connection with public procurement contracts and public funding and the issue of authorizations, permits, approvals and acceptances.\(^{11}\)

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#### TABLE B: STATUS OF FOREIGN BRIBERY CASES

<table>
<thead>
<tr>
<th>Country</th>
<th>Total Cases through 2010</th>
<th>Major Cases</th>
<th>Year last major case was initiated</th>
<th>Criminal (and Civil) Sanctions – to end 2010</th>
<th>Acquittals (^1)</th>
<th>Share of World Exports (% for 2010) (^1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>4</td>
<td>1</td>
<td>2006</td>
<td>0 (^1)</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Next to this central office, the 27 district judicial police services, spread over the all country, also handle investigations related to corruption. The Central Office and the district police services often cooperate on various investigations.

Prosecuting authorities are decentralized in Belgium. In small, local, cases it is investigation and prosecution will take place at the local level. In larger scale cases, the office of the federal prosecutor will intervene as to coordinate the investigation. There are several experts with regards to fraud and corruption in this office. They will work in close cooperation with the Central Service for the Repression of Corruption and/or other police services involved.

On an institutional level, there is an Interdepartmental Working Group, which is presided by the Service of Criminal Policy (part of the Ministry of Justice), an organ competent for the follow up to, and implementation of recommendations of the UN, OECD and GRECO with regards to corruption. In this working group, the above mentioned organs are represented.

The partners in the investigative and prosecuting phase are also gathered in the Expertise Network Corruption. Information is transferred in the framework of this network, both with regards to prevention and the combatting of corruption.

- Strengths and weaknesses of the Belgian system

Experts in Belgium found, in the framework of the Third Evaluation Round Evaluation Report on Belgium on Incriminations carried out by GRECO, several significant inadequacies in the enforcement system to punish foreign bribery. Those were (and still are) inadequate resources, lack of coordination between investigation and prosecution, lack of specialised training, inadequate complaints system and/or whistle-blower protection and a lack of awareness-raising.

Another report signals inadequacies in legal framework, a lack of resources, a lack of coordination between investigation and prosecution, insufficient complaints mechanisms and whistle-blowing and a lack of awareness-raising.

Especially the lack of whistle-blower protection is an issue that recurs regularly. There is no whistle-blower protection in the public (except in the Flemish region) or private sectors, nor are there sanctions for civil servants who fail to inform the public prosecutor about crimes witnessed in the execution of their duties. A proposal for legal whistle-blower protection for federal public servants is currently being prepared, but a proposal for a bill is not yet under revision in the federal parliament.

- Dealing with corruption with regards to EU-funds

The workload resulting from EU files has been described by practitioners as heavy and this could hinder the fight against corruption at the national level. Several months are needed to open a file for fraud and corruption cases, and such cases take several years to conclude, as the police and the judiciary do not

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14 The definition of foreign bribery in the Belgian Criminal Code is not autonomous, thus this report, referring to the country’s case law, which is based on a very comprehensive interpretation of the term “public official”. According to the Belgian Code of Criminal Procedure, an individual from or primarily residing in Belgium may only be prosecuted in Belgium for foreign bribery “on condition that these events constitute an offence in the country where they were committed.”
have enough resources and training to deal with these cases. Therefore there is an imbalance between the resources and the cases.\textsuperscript{18}

Are there any established “Red flags” for corruption (e.g. signals of likelihood of corruption in EU funds and projects, such as over-bureaucratic requirements in procurements processes, lack of adequate assessment of relevance of the project prior to their selection, fragmentation of big budgets to avoid European tendering, etc.)? What evidence is available on their relevance, review and use in the Country?

No data provided.

2. Prevention of corruption

Are there any tools/mechanisms used for the prevention of corruption by public and/or private actors? What are their main features (i.e. who is involved, through what procedures, how these are activated, how often are such mechanism in place)?

In the current Federal Safety Plan, a plan which is made for preparing and evaluating of policy goals with regards to safety issues and criminality, corruption offences get prior attention. An integral safety philosophy is in these plans a central issue. This implies prevention, repression and aftercare.\textsuperscript{19}

Internal training sessions for professions of which it is known that corruption is a real risk (for example police officers, customs, employees of ministries etc.) are organised regularly and have proven to be effective.\textsuperscript{20} Deontological codes were also elaborated, for example by the police\textsuperscript{21} and the Office for Ethics and Deontology, which is a part of the Federal Ministry for the Budget. The latter’s “
\textit{cadre déontologique pour les agents de la fonction publique administrative fédérale}” contains guidelines for employees of the federal services, amongst others with regard to corruption.\textsuperscript{22} The same codes exist on the level of the communities.\textsuperscript{23} In the private sector, individual initiatives have been undertaken, amongst others by the VBO (Federation of Enterprises in Belgium), the Belgian division of Transparency International and the International Chamber of Commerce.\textsuperscript{24}

With regards to the transparency regarding the income of public officeholders, the \textit{Federal auditing commission of state spending} is responsible for the publicizing the mandates of all public officeholders as some officeholders hold a number of offices) Assets held before and after a period in public office also have to be declared, but are not published. The process seems to be effective (various politicians have been investigated, just after the global financial crisis and the country’s bailout plans).

To prevent corruption, public procurements of a certain value must now be advertised in a standardized manner to make them transparent. This rule has, however, been circumvented (as revealed by corruption cases, for example in Charleroi), by splitting the market in sufficiently small units. There have been several legal and regulatory responses in an attempt to fight corruption. Mainly at the local level, powerful politicians can still use different strategies to maintain “friendly arrangements” (for example,

\begin{tiny}
\begin{footnotesize}
\begin{itemize}
\item A. DORMAELS & G. VANDEWALLE, “Preventing corruption: lessons learned from anti-corruption training for Belgian customs and excise officers”, \textit{World Customs Journal} 2011, Volume 5, Number 2, 35-48.
\item Koninklijk Besluit van 10 mei 2006 houdende vaststelling van de deontologische code van de politiediensten (B.S. 30 mei 2006).
\item Cadre déontologique pour les agents de la fonction publique administrative fédérale, \url{http://www.begroting.be/portal/page/portal/INTERNET_pagegroup/INTERNET_integriteit/TAB149685/DecoKaderNL.pdf}.
\end{itemize}
\end{footnotesize}
\end{tiny}
with local contractors, companies and so on) and maintain their potential for patronage, as such politicians still largely control the recruitment of civil servants (party-political “placement”).

Are there any “good practices” in the prevention of corruption? What are the main features of such practices (e.g. actors involved, processes, success rates)?

No information provided.

3. Definition of Corruption

According to your national legislation which offences fall within the scope of the study definition of corruption, i.e “the abuse of power for private gain”? (please only list the respective offences, there is no need to detail the offence definitions)

The Belgian criminal code incriminates active and passive bribery of public officials (articles 246 and 247 of the Criminal Code). These provisions must be read jointly.

Bribery of a person holding a public office is unlawful: making, directly or indirectly, an offer or a promise of an advantage of any nature to a person holding public office for their benefit or the benefit of a third party in order to influence the person holding the public office’s behavior is punishable under Belgian law. Soliciting or accepting such a bribe, directly or indirectly, is also unlawful.

Private bribery is also unlawful. Private bribery consists of making, directly or indirectly, an offer or promise of an advantage of any nature to a person who is the administrator or manager of a company or the agent or employee of a company or person, for their benefit or for the benefit of a third party in order to influence that person to commit or not commit an act linked to his/her position or facilitated by his/her position, and which is neither known nor authorized by the board of directors or the shareholders’ meeting, the principal or the employer. Soliciting or accepting such a bribe, directly or indirectly, is – again – also unlawful.

Article 247.4 establishes the offence of trading in influence by persons performing public duties (for trading in influence.

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.

Bribing foreign public officials is an offence under Article 250, which should be read in combination with articles 246-249, of the Criminal Code. This article applies to both established and contractual international public officials and makes no distinction between international civil servants in the strict sense and members of international parliamentary assemblies and judges and officials of international courts.

4. Cases of Corruption

As no specific information was provided by the police, nor by the prosecuting authorities, this section only concerns cases that have been published in the media. This is however doubtfully a very representative reflection of the complete body of corruption cases in Belgium.

What are the main features of corruption cases (e.g. who is corrupting whom, how, in what sectors, for which EU Funds)?

The main cases of suspected corruption that are published in the media, concern public authorities. For example cases of corruption within the Federal Service for Buildings (Régie des Bâtiments), when selling or buying a building or when drawing up contracts for works in the federal buildings, have been
published in the media.\textsuperscript{25} At the local level, several politicians have also been linked to cases of corruption, mainly in Wallonia.\textsuperscript{26} Cases of corruption with individuals within the police services, or cases of alleged corruption by civil servants, also regularly are mentioned in the news.

The media exceptionally mentions cases of alleged corruption with regards to EU-funds. It is thus impossible to identify the main features of these cases.

**How are Corruption Cases collected in your Country (formal procedures, informal exposure through media, else)?**

Corruption cases are collected by the police on the basis of information and indications given to them by people in the field (whistle blowers) or investigations are started when there are indications that there is corruption. There are however no formal procedures as to indicate that one suspects corruption. As mentioned above, there is almost no protection for whistle blowers in Belgium.

**Are cases collected specifically for investigation, persecution, prevention, or there is no distinction as such?**

Cases are collected by the police for investigation and persecution. The same goes for the prosecutor’s offices. Cases for prevention however are divided from these first cases. Prevention is, albeit connected to repression, a separate topic.
