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Executive summary

Note by the Secretariat

Addendum

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II. 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 and deposited its instrument of ratification with the Secretary-General on 25 September 2008.

The implementation by Belgium of chapters III and IV of the Convention was reviewed in the fourth year of the first cycle, and the executive summary of that review was published on 14 September 2016 (CAC/COSP/IRG/II/4/1/Add.44).

Belgium is a federal parliamentary democracy under a constitutional monarchy. It is a federal State, composed of three communities (Flemish, French and German-speaking) and three regions (Flemish, Walloon and Brussels) as well as four linguistic regions. The communities and regions have the same standing as the federal authority and their legislation has equal force in law. While the communities and regions to a large extent have powers that have been devolved to them from the federal system, a number of laws, such as the Criminal Code, the Preliminary Title of the Code of Criminal Procedure, the Code of Criminal Procedure and the Anti-Money-Laundering Act (AML Act), have been adopted at the federal level and are applicable throughout Belgium. Further federal legislation includes the ethical conduct framework for federal public servants as established pursuant to article 7, section 1, of the Royal Decree of 2 October 1937, the Whistle-blower Protection Act of 15 September 2013 and the circular letter entitled “Public procurement and conflicts of interest: the revolving doors mechanism”, published in the Official Gazette of 20 May 2014.

The authorities at the federal level with anti-corruption mandates include the Office of Administrative Ethics and Ethical Conduct (BEDA), located since 1 March 2017 within the Office of Management Control and Policy Evaluation, which is part of the Directorate General for Policy Evaluation and Budget in the Federal Public Service for Policy and Support; the CoorMulti Service within the Federal Public Service for Foreign Affairs; the Office of the Belgian Government for Administrative Recruitment (SELOR), which is part of the Directorate General for Recruitment and Development in the Federal Public Service for Policy and Support; the Financial Information Processing Unit (CTIF-CFI); and the Central Office for Seizure and Confiscation (OCSC).

The CoorMulti Service and the Global Governance Directorate within the Federal Public Service for Foreign Affairs coordinate the work of the various competent entities at the national level in order to ensure the conduct of and follow-up to international evaluations and to determine, together with all competent federal public services and other stakeholders, appropriate measures based on the recommendations of international organizations in relation to the fight against corruption, money-laundering and terrorist financing. The CoorMulti Service was established through a framework cooperation agreement of 30 June 1994 between the federal State, the communities and the regions. The private sector and civil society may participate in ad hoc CoorMulti meetings for consultation purposes.

Contact points have been designated in each ministry to facilitate such coordination. Presently they include the Federal Public Service for Justice, as coordinator for the first cycle of the United Nations Convention against Corruption review, and the Federal Public Service for Foreign Affairs, as coordinator for the second cycle, assisted by the Federal Public Service for Policy and Support for the prevention component and OCSC for the asset recovery component.

Belgium is a member of the European Union, the Organization for Economic Cooperation and Development, the Council of Europe Group of States against

Corruption and the Financial Action Task Force (FATF), among other international bodies, and has participated in relevant anti-corruption review mechanisms.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The federal Government's policy on preventing corruption is the result of the policies of different agencies in the form of the Comprehensive Security Framework Note of March 2004. Since 2016, BEDA has coordinated federal policy on integrity, but has done so with limited human and financial resources. At the time of the country visit, a new federal integrity policy was planned for the end of 2019. Community and regional policies have also been established.

BEDA is assisting the federal Government in the development and promotion of an integrity policy in the agencies of the federal public sector. In collaboration with the University of Louvain, surveys of employees of federal agencies have been carried out to evaluate the integrity policy. BEDA has created and facilitated the activities of two networks – the Network for Integrity in the Federal Public Sector and the Network of Trusted Integrity Officers – to support the internal mechanism established under the Act of 15 September 2013 on the reporting by a staff member of suspected violations of integrity in federal administrative authorities. Additionally, the Federal Internal Audit Service assesses the reliability of internal control, risk management and good governance in each department. However, there is no clearly identified body tasked with coordinating the implementation of the aforementioned policies, in particular between federal and subfederal institutions.

At the time of the country visit, the independence of BEDA, which is not guaranteed by law, remained a concern. The mission of BEDA is to ensure a common and consistent approach to integrity management in the federal public administration, maintain an ethical organizational culture and foster trust in the federal public administration. Following several rounds of organizational restructuring, BEDA now ranks low in the organizational hierarchy. It was difficult to see how this unit's independence could be ensured and how the unit could fulfil the extensive coordinating role it has been assigned through its designation as the competent authority for prevention within the framework of article 6, paragraph 3, of the Convention (Official Gazette of 18 November 2008, page 61,347).

Belgium was reminded of its obligation to inform the Secretary-General of the authority or authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Directorate General for Organizational and Staff Development prepares policies, provides assistance and develops new tools for the federal administration. It has contributed to the development of the framework governing the specific regime applicable to senior public servants. The system governs the recruitment process and the appraisal of public servants.

SELOR is an independent agency responsible for the recruitment and selection of all federal, regional and community officials. There is no systematic approach to identifying posts particularly vulnerable to corruption.

The career track system, including pay scales, is determined centrally by the federal Government, after negotiation with the representative trade unions. The pay scales and allowances are subject to automatic indexation. Other changes to the pay and career track system are decided ad hoc (taking into account the social and

budgetary context) by the federal Government and are always negotiated with trade unions.

The Federal Training Institute organizes voluntary training for federal public servants. Issues related to the risks of corruption are included under the broader component of ethics.

The Act of 21 December 2013 is aimed at enhancing the transparency, independence and credibility of decisions and opinions in the fields of public health, health insurance, food security and the environment. Individuals working in these institutions submit a general declaration of interests when taking up their functions (art. 3).

Circular letter No. 573 of 17 August 2007 on the ethical conduct framework for federal public servants contains a chapter dedicated to the values of integrity, honesty and accountability within federal public agencies, those values being based on law and therefore binding. The Federal Ethics Commission, established by the Act of 6 January 2014, is responsible for issuing opinions, at the request of a public proxy, on particular issues of ethical conduct, ethics or conflicts of interest. The Commission is not empowered to impose penalties, but it formulates opinions or recommendations that may reveal unethical conduct and that must be taken into consideration. Since 1998, the Flemish government has had its own code of conduct, which its employees are obliged to comply with. The code was revised in 2006 and 2012 and is currently being updated.

Under article 29 of the Code of Criminal Procedure, public officials must report to the Prosecutor any crime they have become aware of. In addition, public officials must inform their superiors (art. 7 of the 1937 Decree on the Statute Governing Public Officials). In 2013, Belgium adopted the Act on the Reporting of Suspected Violations of Integrity in Federal Administrative Authorities, which gives federal staff the possibility to confidentially report violations of integrity, including acts of corruption, to the Integrity Centre, which is a division of the Federal Ombudsman's Office.

In Flanders, reports of integrity breaches can also be submitted anonymously and are dealt with by the competent divisions, such as the Internal Audit Division, Audit Flanders or the Ombudsman's Office. Anonymous reporting to the Flemish Ombudsman is not possible, but the Ombudsman can protect the identity of reporting persons in respect of third parties (such as the Government) on request.

The management of conflicts of interest of State officials is regulated in article 9 of the Royal Decree of 2 October 1937 on the Statute Governing Public Officials. That provision concerns only activities related to the professional activities of public officials. Where officials feel that they are or may be in a situation of conflict of interest, they are obliged to immediately inform their supervisor, who must acknowledge in writing that he or she has been provided with that information. In the event of a conflict of interest, the supervisor must take appropriate measures to resolve the conflict. The numerous conflict-of-interest regulations and systems in Belgium have raised concerns regarding their coherence in terms of both form and application vis-à-vis article 7 of the Convention.

Article 8, paragraph 3, of the Royal Decree of 2 October 1937 includes the rules governing gifts, gratuities and advantages. State public servants are forbidden from accepting or requesting gifts, gratuities or advantages of any kind, whether directly or indirectly.

The criteria for candidature for membership of the Chamber of Representatives are established in article 64 of the Constitution. The court can decide that a person be prohibited from standing for election under articles 31–34 of the Criminal Code on the basis of the duration of a prison sentence and/or at the discretion of the court.

Under the Electoral Code and the Act of 4 July 1989 on the limitation and monitoring of electoral expenses incurred during the election of members of the Chamber of Representatives, candidates must submit, within 45 days of the election, a statement

of their electoral expenses and the source of the funds spent. Failure to do so is punishable. There is no legal framework governing public funding for candidates in parliamentary elections.

The Chamber of Representatives grants a financial allocation to each political party represented in the Chamber. In return, those political parties must submit an annual financial report, including an auditor's report, to the Parliamentary Supervisory Committee, which requests an opinion from the Court of Auditors for its supervisory activities. The same Committee, together with the Court of Auditors, issues recommendations to parliamentarians on corruption risks. At the time of the country visit, a code of conduct for parliamentarians had recently been adopted.

The independence of the judiciary is established by article 151 of the Constitution. Judges enjoy lifetime tenure (art. 152) and abide by the Judicial Code and guidelines for judges. However, the guidelines do not have a legal basis. There is a system of substitute judges and there are specialized divisions with investigating judges responsible for the investigation of financial and economic crime cases.

The High Council of Justice was created on 20 November 1998 pursuant to article 151 of the Constitution. It provides advice to the Parliament and to the judiciary, plays a role in the appointment of judges and prosecutors, carries out special investigations relating to the ethical conduct of judges and prosecutors and conducts audits.

The Judicial Code (arts. 292–294) prohibits judges from combining their functions and addresses possible conflicts of interest. Articles 404–408 provide for a number of sanctions applicable to judges who do not perform their duties properly. Although the Code does not provide for an exhaustive list of acts, a broad range is covered. The same provisions apply to prosecutors.

Judgments are partially published online or made available publicly. There is an ongoing initiative to make judgments more easily accessible online through a database, but measures need to be taken to guarantee anonymity. A law authorizing such publication was published in May 2019.

Public procurement and management of public finances (art. 9)

The Act of 17 June 2016 states that contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner (art. 4). Article 5 of the Act guarantees fair competition.

Pursuant to article 8 of the Royal Decree of 18 April 2017, all public procurements must be advertised through the publication of a public procurement notice in the *Bulletin des Adjudications*. This is done through “e-notification” on an online platform dedicated to the advertising of all public procurement opportunities. On the basis of the estimated value of the public procurement, such notices are also published in the Official Journal of the European Union.

The public procurement notice establishes conditions for participation (art. 16 and annex 4 (11) of the Royal Decree of 18 April 2017) and other information such as price, award criteria and the description of the public procurement (art. 65 and annex 4 (18) (i) of the Royal Decree).

Pursuant to article 25 of the Act of 15 June 2006, contracts are awarded on the basis of the most economically advantageous tender, while additional award criteria such as quality, environmental characteristics and cost-effectiveness may be taken into consideration. Under the Act of 17 June 2013, the procuring authority shall communicate a reasoned decision to entities that have submitted unsuccessful tenders (art. 8). The Act of 17 June 2016 establishes grounds for the exclusion of tenders, including corruption, fraud and non-compliance with obligations relating to the payment of taxes or social security contributions (arts. 67–69).

The Act of 17 June 2013 establishes a standstill obligation on the basis of which, within a time frame of 15 days from the notification of the award decision to the

conclusion of the contract, a suspensive procedure before the Council of State or before the civil courts can be initiated (art. 11). Time limits are set out in article 23 of the same Act.

The Law of 17 June 2016 covers a wide range of situations of conflict of interest that may arise in respect of any public official involved in a procurement process or any other person linked to such an official (art. 6). Article 51 also prohibits such officials from taking up employment, within two years of leaving the public sector, with an economic operator that has been involved in a public procurement procedure.

The Act of 22 May 2003 on the organization of the budget and accounts of the federal State regulates the preparation and adoption of the budget of the central government. The budget draft is prepared by the Government (art. 44) and then submitted to the Chamber of Representatives for approval (art. 48). The draft and final versions of the budget are published on the website of the Chamber of Representatives.

The Council of Ministers is responsible for monitoring the implementation of the budget (art. 32). The Royal Decree of 16 November 1994 on administrative and budgetary control provides for a system of internal and external, as well as ex ante and ex post, control over the budget. Additionally, the Royal Decree of 4 May 2016 established the Federal Internal Audit Service to assess the reliability of internal control, risk management and good governance in each department.

According to articles 12, 14 and 15 of the Act of 22 May 2003, supporting documentation, including accounting books and records, must be kept and classified in an organized manner.

Public reporting; participation of society (arts. 10 and 13)

All information in the public sector is publicly available unless classified (art. 32 of the Constitution), and laws, decrees, ordinances and all parliamentary discussions and documents are made available as a matter of course, notably through various e-platforms. E-government is expanding in Belgium and, in line with the principle of “asking only once”, individuals turning to such outlets should be able to directly access all available information electronically.

The various parliaments in Belgium conduct their legislative processes and consultations online and endeavour to inform the public of new and upcoming legislation.

Wallonia has taken measures to simplify access to information and a short video has been produced and disseminated for public awareness purposes. E-Wallonie-Bruxelles Simplification (eWBS), created in 2013, is the body responsible for administrative simplification and e-government in the Walloon Region and the French Community. The German-speaking Community has undertaken a similar initiative – the Kaleido project – to centralize all information relating to children and young people, from prenatal care up through completion of schooling. At the time of the country visit, the French Community Commission (COCOF) was in the process of linking various databases to provide one-stop access through the portal “My COCOF”.

The participation of society at the federal level occurs on an ad hoc basis owing to a lack of resources. However, several regional initiatives, including those cited above, have been developed to ensure and enhance dialogue with all external partners, from civil society to the private sector. One such example is the cost-free information number (1700) operated by the government of Flanders. Any question concerning the Flemish government can be asked through that service as well as via email or an online discussion forum, including questions or reports relating to integrity.

Appeals against the rejection of a request for access to information are rare and entail a complex procedure involving the filing of two applications, one to the administrative body to which the initial request had been submitted and another to the

Commission on Access to and the Use of Public Sector Documents. These two applications must be made simultaneously; otherwise, the request is rejected.

The government of Flanders, following a public consultation in late 2016, adopted in July 2017 a white paper entitled “Open and agile government” which outlined measures to strengthen public integrity in Flanders. Applications to access information in Flanders are made through a review body, following a decision by the Flemish government on the accessibility of the public administration and the re-use of public sector information, issued on 19 July 2007.

No specific public reports on the risks of corruption have been prepared in Belgium, but audit services have been created at different levels to determine potential risks and prepare reports. Additionally, many public services are required to perform a risk management analysis.

Private sector (art. 12)

The Act of 6 April 2010 is aimed at strengthening the corporate governance of listed and autonomous public companies, requiring them to include in their annual report a statement on the application of corporate governance recommendations (art. 3).

Under the Economic Law Code (art. III.15), every business based in Belgium must be registered with the Banque-Carrefour des Entreprises databank, a register centralizing all basic data concerning companies and their business units. Non-compliance with those provisions entails administrative and criminal sanctions (book XV of the Economic Law Code). The articles of association published by companies since 1997 and by associations and foundations since 2003 are available on the website of the Official Gazette.

A central register of beneficial owners has been established pursuant to the AML Act. The register requires companies established in Belgium to obtain and retain adequate, accurate and up-to-date information on their beneficial owners (art. 73). Such information must be retained for a period of 10 years from the date on which a company loses its legal personality or definitively ceases its activities.

Public-interest companies with more than 500 employees and a certain turnover are required to declare in their management report non-financial statements regarding, inter alia, their efforts to prevent corruption (arts. 96 and 119 of the Company Code).

The Royal Decree of 18 April 2017 on public procurement provides for a two-year “cooling-off” period from the time a public official leaves his or her post to the time he or she joins a private sector company if there is a direct link between that person’s new activities and his or her previous activities as a public official (art. 51). Any infringement of this rule is sanctionable and may result in termination of the contract with the private sector company (art. 9 of the Act of 15 June 2006 on public procurement).

The Company Code and its provisions relating to the operations to be recorded in a company’s annual accounts establish that general accounting and control requirements must be entrusted to one or more auditors who must be independent of the company’s management (Act of 7 December 2016 governing the profession and public supervision of auditors).

Article III.82 of the Economic Law Code regulates the accounting of certain companies and non-compliance is subject to criminal, civil and administrative penalties.

Tax deductibility of expenses incurred through corruption, whether in the public or the private sector, is prohibited (art. 53 (24) of the Income Tax Code of 1992).

Measures to prevent money-laundering (art. 14)

The prevention of money-laundering is governed by the Act of 18 September 2017 on the prevention of money-laundering and terrorist financing and on the restriction of

the use of cash (AML Act) and its implementing regulations, and by relevant European Union regulations.

Article 85 of the AML Act designates the competent supervisory authorities in the area of money-laundering and financing of terrorism, namely the Ministry of Finance, the Administration of Treasury, the National Bank of Belgium, the Financial Services and Markets Authority, the Supervisory Board of Auditors and the Presidents of the Bar Associations, among other authorities.

CTIF-CFI is entrusted under the AML Act with receiving and analysing suspicious transaction reports and forwarding the analysis results to the Crown Prosecutor or the Federal Public Prosecutor (art. 58).

All authorities responsible for combating money-laundering cooperate and exchange information at the domestic and international levels, including through a national cooperation committee.

All of the entities listed in article 5 of the AML Act must have in place internal AML systems or mechanisms that include: customer and beneficial owner identification; ongoing monitoring of transactions; enhanced due diligence in respect of high-risk customers, accounts and transactions; record-keeping; and reporting of suspicious transactions (see art. 52 of the Convention). Substantial changes were introduced as a result of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, including the adoption of a risk-based approach as part of the framework for combating money-laundering and the financing of terrorism and the establishment of the Beneficial Owners Register (arts. 73–75).

Requirements related to the electronic transfer of funds were implemented through Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds, in line with the Convention.

Belgium has a dual regulatory system for the control of cross-border movements of cash and bearer negotiable instruments, implemented through Regulation (EC) 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community and the Royal Decree of 26 January 2014. The system consists of a declaration system for the movement of sums of money exceeding 10,000 euros into or out of the European Union and a system of disclosure on request for the movement of money within the European Union.

Belgium completed its second national money-laundering risk assessment in December 2017.

Follow-up reports submitted to FATF show that Belgium has made significant overall progress in resolving the technical compliance shortcomings identified in the FATF evaluation report of 2015, including those related to preventive measures and supervision.

Belgium actively contributes to the development and strengthening of regional and international cooperation in the fight against money-laundering, particularly through its participation in FATF and the Egmont Group.

2.2. Successes and good practices

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

- BEDA and the University of Louvain cooperated in conducting a survey on integrity at work in a large number of public sector agencies. The results of the survey have given impetus to the implementation of concrete actions aimed at establishing an effective federal integrity policy (art. 6, para. 1).

- Under the Flemish government's integrity policy regarding sensitive positions, it is mandatory to offer training on the topic of integrity and to review organizational processes by introducing a double signature system, segregation of duties and job rotation (art. 7).
- Establishment of a mechanism whereby acts committed by Belgian companies abroad and that may constitute corruption offences may be reported through the relevant Belgian embassy, which transmits the report to the Federal Public Service for Foreign Affairs, from where the report is transmitted to the Federal Prosecutor's Office (art. 13, para. 2).
- The active role that Belgium is playing in promoting regional and international cooperation in the fight against money-laundering (art. 14, para. 5).

2.3. Challenges in implementation

To further strengthen the existing anti-corruption framework, it is recommended that Belgium:

- Finalize and adopt the new integrity plan of action and ensure that it is in line with the Convention (art. 5, para. 1).
- Ensure the independence of a mandated coordinating entity for the plan of action in line with the Convention, and ensure that that entity is adequately staffed and resourced (art. 6).
- Ensure organizational, financial and operational independence of both BEDA and SELOR given their quality control functions vis-à-vis other government ministries, agencies and departments (art. 6 and art. 7, para. 1).
- Through the plan of action, ensure that adequate training programmes on the new policy are implemented and resources are provided to that end (art. 7).
- Encourage the implementation of the Code of Conduct and the training of parliamentarians (art. 7).
- Identify posts particularly vulnerable to corruption and ensure increased levels of relevant specialized training and internal control (art. 7, para. 1 (b)).
- Streamline, centralize and strengthen requirements applicable to public officials in relation to the verification and disclosure of possible conflicts of interest, such requirements to also cover non-remunerated mandates and employment outside the public sector (art. 7, para. 4, and art. 8, para. 5).
- Consider ways to encourage and promote integrity among its public officials (art. 8).
- Enhance the scrutiny and verification of asset declarations of public officials, and consider including declarations of family members such as spouses and children under the age of 25 (art. 8, para. 5, and art. 52, para. 5).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Mutual legal assistance, including in relation to asset recovery, is provided for primarily in the Mutual Legal Assistance Act (MLA Act, 2004), the Act on International Cooperation in Connection with the Enforcement of Seizure and Forfeiture Orders, the European Convention on Mutual Legal Assistance in Criminal Matters (ECMLA, adopted in 1959) and several bilateral treaties. Such assistance, except for the enforcement of foreign orders, can be granted on the sole basis of reciprocity (MLA Act, art. 4, para. 1). The Federal Public Service for Justice is the central authority for mutual legal assistance, including asset recovery requests.

In 2003, Belgium established the Central Office for Seizure and Confiscation (OCSC). OCSC is part of the Public Prosecutor's Office and its work is governed by a new law: the Act of 4 February 2018, which entered into force on 1 July 2018.

OCSC has been designated as the asset recovery office and is the national point of contact for that purpose.

Within the framework of the Convention, informal requests by States for facilitation of the submission of MLA requests may be addressed to the Global Governance Directorate of the Directorate General for Multilateral Affairs and Globalization within the Federal Public Service for Foreign Affairs.

The Federal Public Service for Foreign Affairs, with the support of its diplomatic network, facilitated the provision of legal assistance to China in the context of an organized financial crime case.

Belgium has responded positively to many asset recovery and asset return requests. However, it does not have a system in place that enables the generation of comprehensive statistics on asset recovery.

Belgium is a member of several international cooperation networks, including the Camden Asset Recovery Inter-Agency Network (CARIN) and the Stolen Asset Recovery (StAR) initiative/INTERPOL Asset Recovery Focal Points Network.

The spontaneous transmission of information is regulated and is subject to confidentiality requirements (MLA Act, art. 2, paragraph 7, and the second protocol to ECMLA). Such transmission of information is routine. CTIF-CFI also exchanges, both spontaneously and upon request, information with its foreign counterparts pursuant to article 123, paragraph 1, of the Anti-Money-Laundering Act. Information is exchanged between financial intelligence units through the Egmont Secure Web and INTERPOL I-24/7 systems, among other channels.

Belgium has concluded numerous bilateral and multilateral international cooperation agreements in the areas of crime control and the tracing of criminals and proceeds of crime. It has also entered into several bilateral law enforcement cooperation agreements, but frequently relies on ad hoc and case-by-case arrangements.

The Convention is directly applicable and can be used as a legal basis for cooperation, but it had not yet been used as such at the time of the country visit.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Pursuant to the AML Act, reporting entities must identify and verify the identity of their customers (art. 21) and the beneficial owners of such customers (art. 23) and determine whether the individuals identified are politically exposed persons, members of such a person's family or close associates (art. 34). Identificatory documents should be kept for a period of 10 years after the end of the business relationship or after the date of a one-time transaction (art. 60).

Reporting entities are required to assess each customer's profile and the purpose and nature of the business relationship or of the intended one-time transaction. Due diligence requirements stipulate that such information must be kept up to date (arts. 7, 34 and 35).

The AML Act requires enhanced due diligence, in particular as regards business relationships with entities based in high-risk countries (art. 38) and politically exposed persons and persons linked to them (art. 41).

Pursuant to article 40, paragraph 2, reporting entities cannot establish or continue a correspondent relationship with shell banks, which are defined in article 4, paragraph 37. To prevent the establishment of shell banks, article 43 of the Act of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms obliges credit institutions to have their central administration in Belgium.

Non-compliance with the legal requirements set out in the AML Act may lead to sanctions ranging from administrative to criminal sanctions (book V).

The 1995 Act on the Obligation to Submit a List of Mandates, Functions and Occupations and a Declaration of Assets (amended in 2004) requires senior public officials (listed in art. 6) to declare their assets and liabilities. Ministers and Members of Parliament are required to make declarations only upon first taking office, while civil servants must report any changes in disclosure statements to their superior immediately. The Act provides for criminal penalties (imprisonment and/or fines) for failure to submit a declaration or the submission of a false declaration. The Court of Auditors is responsible for receiving and verifying submissions and enforcing disclosure legislation (art. 4). No institution is charged with verifying the accuracy of declarations, which do not include assets of spouses and minor children.

Belgium does not make declarations public and the confidentiality of declarations as required in article 3, paragraph 3, of the Act precludes the possibility of sharing relevant information with foreign authorities.

Belgium does not require public officials having signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities.

CTIF-CFI was created in 1993 as an independent administrative authority with legal personality and supervised by the Ministers of Justice and Finance. It is led by a judge and its composition, organization, operation and independence are governed by articles 76–84 of the AML Act. CTIF-CFI is responsible for receiving and analysing suspicious transaction reports and in doing so can obtain information from an extensive list of institutions and persons, including reporting entities (art. 81). CTIF-CFI transmits the information concerned to the Crown Prosecutor or the Federal Public Prosecutor for the investigation of strong evidence of money-laundering or terrorist financing (art. 82, para. 2). CTIF-CFI is authorized to sign memorandums of understanding and to exchange information with other entities and units inside and outside Belgium. It is also a member of the Egmont Group.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

At the time of the country visit, no foreign State had initiated civil action in a Belgian court. However, it was explained that States would be treated as legal persons and would therefore have the right to initiate civil action to establish title to or ownership of property (art. 544 of the Civil Code) or to claim compensation or damages in relation to Convention offences (arts. 1382 and 1383 of the Civil Code).

Foreign States are also able to claim legitimate ownership through third-party intervention in criminal proceedings (arts. 63–70 of the Code of Criminal Procedure or through a restitution procedure following confiscation (art. 43 (a) of the Criminal Code in conjunction with arts. 1–4 of the Royal Decree of 9 August 1991).

Conviction-based foreign confiscation orders can be enforced directly in Belgium following a decision by the correctional court (exequatur), a hearing conducted by the Public Prosecutor's Office and, if necessary, a hearing with the participation of the sentenced person, and following verification that, inter alia, the decision is final and the dual criminality requirement is fulfilled (arts. 4–8 of the International Cooperation Act). The correctional court is bound by the facts as stated in the confiscation order.

Property linked to corruption offences committed abroad can also be confiscated by adjudication of an offence of money-laundering (art. 505, paras. 1, 2 and 5–7, of the Criminal Code).

Belgian legislation does not provide for non-conviction-based confiscation.

The International Cooperation Act provides for the possibility of freezing or seizing property on the basis of a freezing or seizure order issued by a foreign judicial

authority if, inter alia, the dual criminality requirement is fulfilled (art. 9). The court of first instance within the jurisdiction of which the property is located enforces the interim measure or seizure after verifying that the applicable conditions are met (art. 10). Urgent provisional measures may be taken by order of the investigating judge of the place where the property in question is located. Such measures are lifted if they are not confirmed by the court of first instance within five days (art. 11).

Requests for the enforcement of foreign seizing or confiscation orders must be based on a treaty (art. 2 of the International Cooperation Act) and the Convention can serve as a legal basis for such requests.

Requests based on the Act on the Application of the Principle of Mutual Recognition of Judicial Decisions Relating to Criminal Matters between the Member States of the European Union are executed in a similar manner.

OCSC is the main institution that manages retained funds and is responsible for executing confiscation orders and managing seized assets.

The Belgian competent authorities can freeze, seize (arts. 35, 35 bis and 35 ter of the Code of Criminal Procedure) and confiscate (arts. 42, 43 bis and 43 ter of the Code) property on the basis of a foreign request where the same measures and procedures available in domestic criminal proceedings are available in the context of mutual legal assistance, subject to the dual criminality requirement.

Belgian legislation does not require that property be of a *de minimis* value in order for cooperation to be granted, but execution of a request can in practice be refused on the basis of lack of proportionality.

Return and disposal of assets (art. 57)

According to article 44 of the Criminal Code, confiscated assets are transferred to the public treasury, without prejudice to any compensation and damages that may be due to the parties. The aim of this article, as explained by the Court of Cassation in a 2013 judgment, is “to restore the de facto situation as it existed before the commission of the offence”. Furthermore, the court can allocate the confiscated property, in whole or in part, to the requesting State taking into account expenses incurred. Where it is not possible to determine the allocation of the confiscated property, that property is transferred to the Belgian Treasury (article 8 of the International Cooperation Code).

Articles 43 bis and 44 of the Criminal Code and articles 1382 and 1383 of the Civil Code safeguard the rights of bona fide third parties to claim compensation and damages. These articles also apply within the framework of international cooperation for purposes of asset recovery.

The provisions of the Convention are directly applicable in cases where no relevant agreement applies, and requests received from another State party in accordance with article 57 are executed accordingly. Nevertheless, agreements on a case-by-case basis are in practice concluded for the purposes of final disposal of confiscated property. Belgium does not impose any conditions on the final disposal of real property.

3.2. Successes and good practices

- The establishment of OCSC and the active role of Belgium in international cooperation, exchange of information and asset recovery (art. 51).
- Belgium has detailed and comprehensive legislation on the enforcement of foreign seizure and confiscation orders (art. 54).

3.3. Challenges in implementation

It is recommended that Belgium:

- Consider enhancing its data-gathering system with a view to generating comprehensive statistics on asset recovery (art. 51).

- Develop its financial disclosure system in the light of relevant international good practices in order to ensure, inter alia, the verification of declarations, and consider taking such measures as may be necessary to permit its competent authorities to share relevant information with foreign competent authorities (art. 52, para. 5).
 - Consider requiring appropriate public officials having signature or other authority over a financial account in a foreign country to report that relationship to the appropriate authorities (art. 52, para. 6).
 - Consider taking such measures as may be necessary to allow confiscation of property acquired through or involved in the commission of an offence, without a criminal conviction, in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases (art. 54, para. 1(c)).
 - Ensure that foreign States are in practice granted locus standi in civil proceedings in order to claim compensation or damages and to claim ownership of assets acquired through the commission of a Convention offence; similarly, ensure in such cases that foreign States may be considered as possible rightful claimants in restitution proceedings (art. 53 (a) and (b)).
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