



BELGIUM: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

FEBRUARY 2016

This report, submitted by Belgium, provides information on the progress made by Belgium in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 29 February 2016.

The Phase 3 report evaluated Belgium's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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SUMMARY AND CONCLUSIONS – PHASE 3 WRITTEN FOLLOW-UP BY BELGIUM

Summary of Findings

1. In October 2015, Belgium presented its written follow-up report to the Working Group on Bribery (Working Group) outlining its responses to the recommendations issued by the Working Group at the time of Belgium's Phase 3 evaluation in October 2013. Since Phase 3, Belgium has opened four new cases involving the bribery of foreign public officials (art. 250 of the Penal Code (CP)). The conviction of two individuals for bribery of public officials (art. 247 CP) was confirmed by a decision issued on 30 June 2015 by the Brussels Court of Appeal in the context of Case 2 – EU property transactions. The Belgian authorities indicate that the convictions were pronounced for foreign bribery, although article 250 CP is not specifically cited in the decision. The sanctions imposed were a one-year suspended prison sentence and a EUR 11 000 fine, while the total amount of bribes was evaluated at EUR 380 135.85 and the value of the contracts awarded at EUR 16 633 306. In addition, the limitation period had expired with respect to two individuals after their conviction at first instance, the companies involved were not prosecuted and confiscation of the instrument and proceeds of the foreign bribery was not ordered against the active bribers in this case.

2. The Working Group welcomed Belgium's efforts to communicate relevant information and numerous additional documents requested in the context of this Phase 3 written follow-up exercise, specifically those relating to reforms planned and awareness raising activities undertaken since the Phase 3 evaluation in 2013. Of the 30 Phase 3 recommendations, the Group considered that 5 are fully implemented; 8 partially implemented and 17 remain not implemented.

3. Firstly, in light of the number of participants and the content of trainings for members of the Belgian federal police, the Working Group welcomed the efforts of the Belgian authorities to raise awareness of the existence of extraterritorial jurisdiction in Belgian law for foreign bribery (recommendation 1).

4. While legislative reform of the liability of legal persons is underway, Belgium has not, to date, brought its legal framework in compliance with the Convention and 2009 Recommendation by clarifying the attribution of the intentional element of the offence of foreign bribery and eliminating the provision for mutually exclusive liability of natural and legal persons (recommendation 2). Draft Bill N°54 – K0816 proposing abrogation of the rule of mutually exclusive liability is promising. However the Working Group is disappointed that it does not also take the opportunity to clarify the attribution of the intentional element of the foreign bribery offence.

5. In relation to sanctions for foreign bribery, the creation of a Central Criminal Record for Legal Persons – previously announced to the Working Group – is still underway and the timeline for its adoption is not specified (recommendations 3(b)). Furthermore, the draft bill creating this Criminal Record does not appear to ensure its access by the various institutions in charge of public procurement, development assistance, export credit and other public financing (recommendation 13(a)). The Working Group welcomed the announcement of the forthcoming adoption of a draft bill aiming to triple the minimum and increase fivefold the maximum fines applicable to natural and legal persons for foreign bribery. It should nevertheless be noted that this draft bill does not contain any increase of the level of non-pecuniary sanctions (recommendations 3(a) and 3(b)). Circular N°11/15 published on 1 October 2015 (the Circular) raises awareness of prosecutors in some respects of the applicable sanctions in foreign bribery cases, without specifically insisting that these be effective, proportionate and dissuasive. In addition, practice is insufficient to assess whether sanctions applied in practice meet these criteria (recommendation 3(c)).

6. Concerning confiscation, the Working Group is encouraged by efforts demonstrated by the Belgian authorities to raise awareness of prosecutors and judges on the implementation of confiscation measures, in particular for the offence of bribery of foreign public officials, by way of several trainings carried out by the Institute of Judicial Training (Institut de formation judiciaire) (recommendation 3(d)(ii)). Although the Circular contains a provision on “the seizure of the proceeds of crime”, it does not refer to the confiscation of the instrument or proceeds of foreign bribery. In addition, as illustrated by the decision of the Brussels Court of Appeal of 30 June 2015, law enforcement authorities and prosecutors do not appear to routinely consider the confiscation of the instrument and proceeds of bribery of foreign public officials in practice (recommendation 3(d)(i)).

7. The Working Group examined Belgium’s progress in foreign bribery investigations and prosecutions. Considering the particularly onerous workload of Belgian law enforcement and judicial authorities, notably linked to cases involving the bribery of European officials referred by the European Anti-Fraud Office (OLAF), the Working Group considers that the available human and financial resources remain inadequate since Phase 3. In addition, the Working Group emphasises that there is insufficient priority placed on the fight against foreign bribery in Belgian criminal policy; the Belgian authorities were not able to confirm that it would feature in the list of criminal phenomena outlined in the National Security Plan 2016-19 (recommendation 4(a)).

8. With respect to detection, the Working Group deplores the lack of proactivity of the authorities in cases where information about foreign bribery is revealed in the context of international cooperation. Furthermore, the Working Group notes that while the Circular contains a provision on follow-up of mutual legal assistance requests, it is unfortunate that the Belgian authorities did not use this opportunity to include an instruction to prosecutors to analyse the involvement of Belgian nationals and companies in foreign bribery schemes revealed in this context (recommendation 4(b)). The Working Group nevertheless welcomed the development of training for law enforcement authorities on the specific aspects of foreign bribery investigations and prosecutions (recommendation 4(d)).

9. In the area of reporting of suspected foreign bribery, the Working Group welcomed the circulation of a Memorandum of Understanding (MOU) between the Federal Public Service (SPF) of Justice, SPF Foreign Affairs and law enforcement authorities to remind them of the obligation in article 29(1) of the Code of Criminal Procedure, to inform the prosecutor’s office of any foreign bribery offence of which they become aware in the exercise of their functions (recommendation 12(a)). The Working Group welcomed the proposal to extend protection to those who report suspected foreign bribery in a proposed amendment to Law of 15 September 2013 relating to the reporting of suspected harm to integrity within a federal administrative authority by a member of its staff. Nevertheless, the Working Group is disappointed that Belgium took no measures to guarantee protection against discriminatory or disciplinary acts for private sector whistleblowers (recommendation 12(b)). In relation to public advantages, the Working Group welcomed a draft letter from SPF Foreign Affairs to draw the attention of Finexpo and Ducreire on their reporting obligations (recommendation 13(b)).

10. With respect to anti-money laundering, the Belgian authorities published notices on the website of the Belgian Financial Intelligence Unit (FIU). However the Working Group regretted that insufficient action has been taken to raise awareness among reporting entities of the importance of detecting suspected foreign bribery-related money laundering (recommendation 8).

11. In relation to the statute of limitations, no actions have been taken to broaden the possibilities to suspend it and therefore allow sufficient time to conduct foreign bribery investigations and prosecutions (recommendation 6). The Working Group notes that the new Circular instructs prosecutors to be particularly attentive to the risks of exceeding the reasonable time limit and of the expiry of the statute of limitations (recommendation 4(c)). However, the reversal of the conviction of two individuals in Case 2 – EU property transactions due to the expiry of the limitation period demonstrates that this remains an issue.

12. In the area of settlements, Belgium had not modified the applicable publication rules and is not considering reforms in this respect (recommendation 5). Concerning the interpretation of this recommendation, the Working Group clarified that Belgium is requested to make such information public “as necessary and in compliance with the relevant rules of procedure”. For example, it would suffice to provide access to the principle elements of the settlement to relevant institutions and interested parties.

13. The Working Group noted the existence of a draft circular on statistics for criminal proceedings for foreign bribery and requests for mutual legal assistance that was scheduled for adoption at the end of December 2015. Although the Circular includes an instruction on “the electronic recording of files”, the Working Group is concerned that all bribery offences, whether domestic or transnational, will be recorded under the same code (recommendation 7).

14. In relation to accounting, the Working Group noted that the Circular mentioned the existence of accounting offences committed to conceal the payment of a bribe to a Belgian or foreign public officials. However, it is concerned that this is insufficient to draw prosecutors’ attention to the importance of vigorously prosecuting accounting offences (recommendation 9(a)). It is also unfortunate that Belgium took no measures to consider requiring external auditors to report suspected bribery of foreign public officials to the competent authorities, independent of the company, such as law enforcement and regulatory authorities, and to ensure that external auditors that report in good faith and on reasonable grounds are protected against any legal action (recommendation 9(b)). Finally, the Working Group noted little progress in the organisation of activities with business organisations to raise awareness of Belgian companies, specifically SMEs, and to encourage them to develop appropriate internal control and compliance mechanisms (recommendations 9(c) and 11(b)).

15. With respect to raising awareness of the foreign bribery offence, the Working Group welcomed the circulation of the abovementioned MOU between SPF Justice, SPF Foreign Affairs and law enforcement authorities which encourages Belgian overseas missions (i) to circulate the Convention and Good Practice Guidance to Belgian companies abroad, and (ii) to inform the SPF Foreign Affairs of bribery acts that may involve Belgian individuals or companies abroad (Recommendation 11(a)). The Working Group further recognised the work undertaken by the Belgian authorities to raise awareness and train the tax administration on issues of money laundering and terrorism financing, and welcomed the announcement of future trainings. It is nevertheless regrettable that the issues covered in these trainings do not specifically include the detection of foreign bribery (Recommendation 10).

Conclusions

16. Based on these findings of the Working Group on Bribery concerning the implementation of Belgium’s Phase 3 recommendations, the Working Group concluded that Belgium has fully implemented recommendations 1, 3(d)(ii), 4(d), 11(a), 12(a); that Belgium has partially implemented recommendations 3(c), 3(d)(i), 4 (b), 4(c), 9(a), 10, 12(b), 13(b); and that recommendations 2(i), 2(ii), 3(a), 3(b)(i), 3(b)(ii), 4(a)(i), 4(a)(ii), 5, 6, 7(i), 7(ii), 7(iii), 8, 9(b), 9(c), 11(b), 13(a) are not implemented. The follow-up issues remain relevant and will be evaluated, along with the implementation of partially and non-implemented recommendations, in the context of future evaluations by the Working Group.

17. Given the inadequate implementation of the Working Group’s Phase 3 recommendations, the Group considered that Belgium persists in insufficiently implementing the Convention and decided to issue a public statement (available online at: xxx) stating that Belgium was not sufficiently compliant with the Convention and 2009 Recommendation and asking Belgium to implement the Convention without delay. The Working Group also decided that Belgium would present a written report in October 2016 on the implementation of recommendations found to be partially or not implemented in the present Phase 3 written follow-up report. These measures aim to encourage Belgium to pursue its efforts to reform and reinforce its framework for fighting foreign bribery.

PHASE 3 FOLLOW-UP: TWO-YEAR WRITTEN REPORT BY BELGIUM

Name of country: Belgium
Date of approval of Phase 3 evaluation report: 11 October 2013
Date of information: 7 September 2015

PART I: RECOMMENDATIONS FOR ACTION

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

Text of recommendation

1. With respect to Belgian jurisdiction over the foreign bribery offence, the Working Group recommends that Belgium promptly raise awareness among the Belgian federal police, and especially the OCRC, of the existence of the extraterritorial jurisdiction of Belgian law in cases of foreign bribery [Convention, Article 4.2; 2009 Recommendation, V.].

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

On 23 June 2015, a training session on this particular issue was held on the premises of the *Office Centrale pour la Répression de la Corruption* (Central Office for the Repression of Corruption – Federal Police) and attended by 62 people.

If no action has been taken to implement the first 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:

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:

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:

A bill (No. 54 – K0816) 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 (and abolishing mutually exclusive criminal liability). At this stage, the bill has been submitted to the Council of State for an opinion. The Minister of Justice’s office also requested the opinion of the College of General Prosecutors, which has approved the abolition of mutually exclusive criminal liability.

(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) 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.

Text of recommendation:

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

a) Increase the level of sanctions applicable to natural persons [Convention, Article 3];

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

A bill has been drafted to increase sanctions for acts of foreign bribery. Until now, the sanctions for domestic and foreign bribery have been the same. There is now a provision to increase the minimum fine for acts of foreign bribery threefold and to increase the maximum fine fivefold.

This bill is part of a “miscellaneous provisions” draft bill which has been approved by the Council of Ministers and submitted to the Council of State for opinion (expected in mid-September). It will be brought before the Federal Parliament at the start of October.

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:

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:

(i) Connection with recommendation 3(a): Because the penalties for legal persons are calculated on the basis of the penalties for natural persons, increasing one will automatically lead to an increase in the other.

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:

(ii) The Minister of Justice’s office has issued instructions to adapt the existing criminal record bill.

Belgium wishes to underline that, in practice, a register of criminal records does exist, and individuals may request copies from it.

The *Service du Casier judiciaire central* (central criminal records service) currently registers the convictions of legal persons. Since the Act of 4 May 1999 instituting the criminal liability of legal persons, businesses are required to provide copies of criminal records, especially in the public procurement process, which is why the *Service du Casier judiciaire central* started to register the

convictions of legal persons. The law enforcement authorities and judicial services also ask for copies of the criminal records of legal persons.

So convictions of legal persons are indeed currently being registered in the central register of criminal records, but there is nonetheless a legal vacuum.

The bill creating a central register of criminal records for legal persons exists but it still needs to be adapted to take into account IT considerations.

The bill is a logical extension of the Act of 8 August 1997 on the central register of criminal records and the Act of 4 May 1999 instituting the criminal liability of legal persons. The purpose of the Act of 8 August 1997 was to enshrine in law the existence of the central register of criminal records, which has existed for over a century. The purpose of the Act of 4 May 1999 was to allow more effective action against bribery and organised crime by enabling the initiation of criminal proceedings against legal persons.

The introduction of the criminal liability of legal persons into Belgian law was based on the baseline option that, wherever possible, legal persons should be equated with natural persons. The aforementioned bill was designed with this in mind. The judicial and administrative authorities need to be able to check the criminal records of legal persons, just as they do natural persons.

Text of recommendation:

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

c) Ensure that penalties imposed in practice in foreign bribery cases are effective, proportionate and dissuasive, and take steps to raise awareness among prosecutors, in particular in the framework of the ongoing drafting of the circular on this point [Convention, Articles 2 and 3]; and

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

A circular approved on 10/09/2015 by the College of General Prosecutors and disseminated to the targeted audience covers this aspect.

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:

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

d) In relation to confiscation, make full use of the confiscation measures available in the law to ensure the application of effective, proportionate and dissuasive sanctions and, in this context (i) to ensure that its law enforcement authorities routinely consider confiscation of the instrument and the proceeds of bribery of a foreign public official; and (ii) continue its initiatives to train prosecutors and judges provide training in order to improve the implementation of confiscation, especially of the proceeds of active bribery of foreign public officials [Convention, Article 3].

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

(i) Confiscation is provided for in the circular mentioned above in relation to recommendation 3(c).

(ii) – The *Institut de Formation Judiciaire* (Judicial Training Institute) is organising training sessions on money laundering (the connection with bribery is inferred) on 18/11/2015 (FR) and 23/10/2015 (NL). They are aimed at first instance and appeal prosecutors and judges dealing with illegal material benefits; law enforcement officials who may have to deal with the confiscation/seizure of illegal assets; prosecutors, investigating magistrates and judges dealing with financial criminal cases of money laundering (ecofin); and any interested legal trainees. One hour of the day-long course is specifically devoted to the practical possibilities available to the prosecution service, investigating magistrates and trial judges in terms of confiscation and seizure

- Every year, the Judicial Training Institute organises a training session on seizure and confiscation. It is aimed at prosecutors, investigating magistrates and judges sitting on criminal cases, legal trainees in their second year, for whom this training is mandatory, legal experts from public prosecutors' offices, and legal secretaries. The purpose of this training is to provide the participants with the knowledge required to properly use the legal instruments at their disposal for seizing and confiscating the material proceeds of criminal activity.

The training course lasts for 2 days:

- Day 1: Provide a basic understanding of the criminal seizure and confiscation of assets derived from an offence.
- Day 2: Examine specific issues related to seizure and confiscation.

Forthcoming sessions: 7 and 8 March 2016.

Previous sessions:

- 14 and 15 March 2013 (trainees on a long course for the judiciary)
- 28 and 29 November 2013 (trainees on a short course for the prosecutor's office)
- 27 and 28 March 2014 (trainees on a long course)
- 24 and 25 November 2014 (trainees on a short course)
- 23 and 24 March 2015 (for both categories)

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:

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)

The issue of priority is referred to in the draft circular.

1. Two new prosecutors have been appointed to the Brussels prosecutor's office to handle cases of tax fraud.

2. No additional resources are planned for the OCRC (Central Office for the Repression of Corruption). Nevertheless, as part of efforts to optimise the Federal criminal police, the decision has been taken to boost numbers. In practical terms, this will mean an increase in the number of investigators in the service from 49 to 64. An in-house drive has already helped attract six new members who will work at the OCRC between 1 September 2015 and 2 February 2016.

The optimisation programme also involves a rethink/refinement of current procedures. Consideration is currently being given to improving the positioning of the OCRC and to the powers assigned to it. Guidelines on how to process new cases according to their nature are being drawn up.

In principle, cases are referred to the OCRC by the FPS Justice. The new forthcoming circular will also affect the criteria used for assigning cases to the OCRC.

(ii) With a view to preparing the next National Security Plan (PNS), the strategic review service of the federal police has, just as it has done in the past, reactivated the working group for the "National Police Security Image".

The National Security Plan (PNS) is expected to be ready by December 2015. There may be a meeting of the working group responsible for its preparation in October.

The "National Police Security Image" (INPS) study collates police data and is used to prepare the PNS. The Information and ICT directorate (DRI) of the federal police is responsible for putting together the INPS, which is not ready at this stage (scheduled for end-October). At present, there is therefore no definitive ranking of criminal phenomena. However, at this stage in the data processing procedure, bribery is in the list. However, it is too early to tell whether (foreign) bribery will be regarded as a priority for criminal justice policy in the next PNS.

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:

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 MOU between the FPS Justice, the FPS Foreign Affairs and the law enforcement authorities was sent at the beginning of October 2015. The purpose of the MOU is first and foremost to encourage Belgian diplomatic missions in foreign countries to promote the Convention and the Good Practice Guidance among Belgian companies based abroad. Secondly, under the MOU, if Belgian diplomatic missions in foreign countries obtain information about foreign bribery potentially concerning Belgian companies based abroad, they must inform the FPS Foreign Affairs. This information is then transmitted to the FPS Justice, which in turn reports it to the federal prosecutor in order to prepare for possible legal action.

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:

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.]; and

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

Referred to in the circular – See Recommendation 3(c).

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:

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

d) Develop training for law enforcement authorities on the specific aspects of foreign bribery investigations and prosecutions [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:

A date has yet to be set but the Judicial Training Institute is going to organise a study day on bribery in spring 2016. The final programme has not yet been agreed, but it has been suggested that a specific section be devoted to foreign bribery.

Every year, the Institute organises a three-day course on "International co-operation in criminal matters". It is aimed at legal trainees in their second year (these are law enforcement officials under training and for whom this training is mandatory), first instance prosecutors appointed after 1 March 2012 provided they have passed the examination of professional competence or the oral examination (for whom this training is mandatory if they have not already taken the course), law enforcement officials at the start of their career and law enforcement officials who have recently changed post. The purpose of the course is to provide basic training with the following objectives:

- Provide basic knowledge on mutual legal assistance and extradition;
- Present recent developments in this field;
- Specify the role of some specific actors in this field.

In 2016, the course is scheduled for 13 and 20 January (FR), 11 and 18 January (NL) and 25 January (FR + NL). It is an annual course, which always takes place in January, and was previously organised in 2013, 2014 and 2015.

- At the start of October every year, the Institute also organises a 5-day autumn seminar for legal trainees. One of the modules on the course covers the topic of "Investigating economic and financial crime" (duration: 4.5 hours).

It covers four themes:

- 1) Bankruptcy offences and related crimes;
- 2) Tax evasion – tax fraud;
- 3) Money laundering;
- 4) The criminal liability of legal persons.

If no action has been taken to implement the recommendation 3(c), 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:

5. With respect to settlement, the Working Group recommends that Belgium make public, as necessary and in compliance with the relevant rules of procedure, the most important elements of settlements concluded in foreign bribery cases, in particular the main facts, the natural or legal persons sanctioned, the approved sanctions and the assets that are surrendered voluntarily [Convention, Articles 1, 2, 3 and 5].

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

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:

At the moment, there is not traceability of settlements. In order to comply with this recommendation, Belgian policy on settlements would have to be amended in that publishing the elements of settlements contradicts the very principles on which the settlement system is based. Belgium considers that this recommendation is not in compliance with the relevant rules of procedure.

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:

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:

On 21 May 2015, responsibility for combating tax fraud was transferred from Secretary of State Elke Sleurs to Minister of Finance Johan Van Overtveldt, who is currently preparing a comprehensive plan to combat tax fraud. Elke Sleurs had already put together a 15-point action plan, which focused attention on the limitation period.

We will send you a copy of the plan as soon as it has been finalised.

Recommendations for ensuring effective prevention, detection, and reporting of foreign bribery

Text of recommendation:

7. With respect to statistics on the implementation of the Convention, the Working Group recommends that Belgium maintain detailed statistics on (i) investigations, prosecutions, closing of cases and convictions for the foreign bribery offence; (ii) sanctions; including in the framework of confiscation and settlement, imposed in foreign bribery cases; (iii) MLA requests received, sent, granted and rejected, in order to identify the proportion of such requests which concern bribery of a foreign public official, including in relation to requests from EU member countries [Convention, Article 3 and 9].

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

(i) (ii)

In the list of *codes de prévention* (offences) currently in force, code 25B is entitled *corruption*.

According to the current wording of the working group's draft circular, code 25B will be broken down into three different offences:

25B: public bribery, except bribery of foreign public officials

25H: bribery of foreign public officials

25I: private bribery

In addition to 25B, the current list of offences already includes 25A (misappropriation), 25C (prevention of postal dispatches), 25D (interception or theft by a public official), 25E (taking of interest by a public official) and 25F (forgery committed by a public official in the performance of his or her duties).

Timing of the draft circular: the draft has been written but has yet to be submitted to the nomenclature board, and then to the College of General Prosecutors. The aim is to have final approval by the end of December 2015.

(iii) Referred to in the circular – See Recommendation 3(c).

On 3 September 2013, the Minister for Justice wrote to the College of General Prosecutors informing it that electronic copies of international letters rogatory and European arrest warrants must systematically be passed on to the FPS Justice. In October 2013, contact prosecutors were asked to ensure that their offices adhered to this rule. In 2015, the College of Prosecutors sent another reminder to prosecutors' offices which were not sharing this information automatically.

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:

8. With respect to anti-money laundering, the Working Group recommends that Belgium step up its measures to raise awareness of the detection of facts that may constitute foreign bribery among the professions, including non-financial professions, subject to the requirement to report suspicious transactions [Convention, Article 7].

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

The Belgian financial intelligence unit (CTIF) has drafted and posted several warnings on its website for the financial sector and non-financial businesses subject to the Act of 11 January 1993.

Between 2011 and 2014, several warnings were posted on the CTIF's website, www.ctif-cfi.be.

On each occasion, the bodies and people covered by the Act were asked to be especially vigilant concerning financial operations carried out by people coming from or with connections to countries that posed a particular risk of corruption and embezzlement of public funds at the time the warning was published:

25/01/2011 – Tunisia – Increased vigilance required for politically exposed people

21/02/2011 – Egypt - Increased vigilance required for politically exposed people

01/03/2011 – Libya - Increased vigilance required for politically exposed people

28/03/2013 - Cyprus

03/03/2014 – Ukraine

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:

9. With respect to accounting requirements, external audit and corporate compliance and ethics programmes, the Working Group recommends that Belgium:

a) Draw the attention of prosecutors to the importance of vigorously pursuing accounting violations that could conceal the payment of a bribe to a foreign public official [Convention, Article 8];

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

Referred to in the circular – See Recommendation 3(c).

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:

9. With respect to accounting requirements, external audit and corporate compliance and ethics programmes, the Working Group recommends that Belgium:

b) Consider requiring external auditors to report suspected acts of bribery of foreign public officials to competent authorities independent of the company, such as law enforcement or regulatory authorities, and, as appropriate, ensure that external auditors who make such reports in a reasonable manner and in good faith are protected against any legal action [2009 Recommendation, X.B(v)]; and

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

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:

9. With respect to accounting requirements, external audit and corporate compliance and ethics programmes, the Working Group recommends that Belgium:

c) In cooperation with business organisations, take steps to encourage companies, especially small and medium-sized enterprises, to develop appropriate internal control and compliance systems [2009 Recommendation, X.C(i) and Annex II].

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

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:

The Belgian contact point organised an initial working session with the Belgian business organisation *Fédération des entreprises de Belgique*, the ICC and Transparency International for the implementation of guidelines for OECD multinationals in mid-May 2015.

The aim is to hold a seminar targeted at SMEs with very concrete working tools towards the end of 2015 or early 2016. Belgium indicates that a second meeting was planned on 23rd October.

Text of recommendation:

10. With respect to tax-related measures, the Working Group recommends that Belgium persevere in its efforts to raise awareness and train tax officials on issues related specifically to the detection of foreign bribery [2009 Recommendation, VIII; 2009 Tax Recommendation].

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

Officials at the Special Tax Inspectorate (ISI) (General Administration of the FPS Finance) were given training on money-laundering and terrorist financing (awareness-raising) at the end of June 2015. There are also plans to give this training to senior officials – regional directors and general councillors in the General Tax Administration in mid-October 2015 and to officials in the Enquiries and Research Unit of the General Customs and Excise Administration in 2016.

Advanced training, covering types of tax fraud, money-laundering, tax havens, etc., is planned for 2016.

Also in 2016, there are plans for training to raise awareness of corruption among tax officials and of integrity and ethics policies (current rules governing procedures concerning conflicts of interest, gift policy, bribes, etc.).

In relation to raising awareness of corruption, ethics and integrity, etc. it is important to highlight the central role played by the Chairman of the FPS Finance Managing Committee in recent years.

Under his initiative, various steps have been taken in this area:

- creating an ethics section on the FPS Finance intranet;

- producing and publishing a "Guide to the ethics framework", which aims to give a clearer picture of the rules of conduct that apply to federal officials, as defined in the ethical framework of 17 August 2007, to communicate the mission, vision and four key values (INTEGRITY, PROPRIETY, SERVICE, COMMITMENT) of the Finance department, and to focus attention on the first of these.

This guide also explains that:

"[We are] aware of the societal role that we play as a public service and attach particular importance to the bond of trust between citizens and government. Integrity is a major quality requirement, and the main condition for securing and maintaining people's trust in our service. We therefore always act with integrity and honesty and avoid any form of corruption, notably by:

- stimulating the involvement of leaders, managers and staff in helping the FPS Finance become a public administration of integrity;
- highlighting the importance of treating everybody in a proper, impartial manner. This means taking account of current laws and regulations and paying enough attention to the equality and equivalence of citizens and colleagues. We take rational decisions, encourage dialogue and trust and we are transparent about our stated objectives and results. Our behaviour towards both colleagues and the public is above reproach and we have respectful relations with both;
- offering high-quality service that is as accessible as possible to both the public and our colleagues;
- helping us strive for professional excellence and the motivation to run our public service in an optimal manner. We are motivated, dedicated, assiduous and committed, and we are open to modernisation and change. In reaching for our goal of fulfilment, we strive to learn, to be flexible and brave enough to assess both the operation of our organisation and our own performance;
- offering pointers by outlining, for example, the duty of confidentiality, freedom of speech, risks

of conflicts of interest, exercising more than one gainful activity, invitations to conferences, events, meals and receptions, etc."

- producing and publishing the "Code of ethics governing the use of IT and electronic data" (ICT Ethics Code);
- producing an integrity policy plan and an integrity action plan for 2015;
- designating a person of integrity – in compliance with the Act of 15 September 2013 (MB 4.10.2013) on the reporting of suspected wrongdoing within a Federal administrative authority by a member of its staff and with the Royal Decree of 9 October 2014 that sets out the practicalities of internal whistleblowing;
- setting up an internal control system designed to provide full internal coverage of the risks within the organisation and a conscious approach thereto.

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:

11. With respect to raising awareness of the foreign bribery offence, the Working Group recommends that Belgium:

a) Persevere in its efforts to raise awareness within its administration, treating more specifically the question of the risk of bribery of foreign public officials by Belgian nationals and companies , and in particular among officials in SPF Foreign Affairs and public procurement authorities, and other officials likely to play a part in the detection and reporting of acts of transnational bribery, and those coming into contact with Belgian businesses operating abroad [2009 Recommendation, III.(i) ; Phase 2 Recommendation 1(a)]; and

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

The FPS Foreign Affairs recalls that it sent an email instructing all foreign missions to raise Belgian businesses' awareness of the issue of the bribery of foreign public officials in 2013. This information was passed on to Belgian companies and the missions posted copies of the Convention and all the information required to denounce corruption on their websites.

In 2015 it sent a reminder, in which it asked foreign missions to raise awareness among their officials and give copies of the Convention and the best practice guide to Belgian businesses they knew to be operating within their jurisdiction. The explanatory document provided to the missions can help them to provide an initial response to any questions put to them by these companies.

At the beginning of October, the MOU between the FPS Justice, the FPS Foreign Affairs and judicial authorities was sent. This MOU aims at incentivising Belgian foreign missions to communicate the Convention and the Good Practice Guidance to Belgian companies abroad and to inform the FPS Foreign Affairs of alleged facts of corruption that may involve Belgian companies abroad, for them to be communicated to the FPS Justice.

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:

11. With respect to raising awareness of the foreign bribery offence, the Working Group recommends that Belgium:

b) Take the necessary measures, in cooperation with business organisations, to raise awareness of Belgian companies, and particularly SMEs, of the offence of bribery of foreign public officials [2009 Recommendation, III.(i), (iv) and (v); Phase 2 Recommendation 1(b)].

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

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:

See Recommendation 9(c).

A first working meeting with the Federation of Belgian Companies, the ICC and Transparency International was organised by Belgium national contact point for the MNE Guidelines mid-may 2015/ The goal is to organise a seminar with very concrete working tools toward the end of 2015 or beginning of 2016. The targeted audience is SME. A second working meeting was planned on 23rd October.

Text of recommendation:

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

a) Remind all public officials, including officials at Belgian overseas missions, of their obligation under Article 29, paragraph 1 of the Criminal Investigation Code to inform the Prosecutor's Office of any offence of bribery of foreign public officials that comes to their knowledge in the performance of their functions, and examine the appropriateness of instituting a comprehensive system of sanctions for non-compliance with this obligation [2009 Recommendation, IX.(i) and (ii); Phase 2 Recommendation 3(b)]; and

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

1. See Recommendation 11(a), article 29. The Criminal Investigation Code (CIC) is explicitly referred to in the emails.

2. As to the FPS Finance:

The Article has been briefly described during the training course on "Ethics and integrity" since the beginning of this year. This training course is taken by legal trainees and (new) managers.

The Act of 15 September 2013 (whistleblowing law) is discussed and instructors also explain that Article 29 of the CIC does not apply if the report is made within the framework of that legislation.

Further communication will soon be made concerning the entry into force of the internal provisions (advisor's integrity). This will certainly include a reminder of the content of article 29 of the CIC.

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:

1. A plan to amend the Act of 15 September 2013 on the reporting of suspected wrongdoing is underway, allowing the possibility of extending the protection granted under the Act in the event of the reporting of cases of bribery of foreign public officials to be examined.

2. We would nevertheless like to stress that integrity is an important issue for the Federal Public Services. By taking action against integrity failures, the administration asserts the importance it attaches to values and standards. In every organisation, staff wishing to report an unacceptable situation or integrity violation have been able to apply to the Integrity Centre of the Federal Mediator since 4 April 2014. Soon they will also be able to approach the "person of integrity" in their own organisation. The person of integrity helps to foster ethical behaviour and therefore a culture of integrity within the organisation.

Management is primarily responsible for the policy of integrity in an organisation. Managers are important because they lead by example. But other parties also play a significant role here: the integrity co-ordinator, the well-being contact, the prevention advisor, etc. A new role will soon be added to this list – the person of integrity (under the Act of 15 September 2013 and the Royal Decree of 9 October 2014).

The person of integrity is a colleague with whom staff may broach questions of integrity in the workforce, ethical dilemmas and suspicions about integrity violations. Integrity violations may include deliberate falsification of files, accepting gifts, abuse of power, conflicts of interest, etc.

In practical terms, the person of integrity:

- informs staff about the issues surrounding integrity, dilemmas, the law and the procedures to be followed to report (suspected) wrongdoing.
- guides their colleagues, and records and draws up an anonymised report of questions and (suspected) wrongdoing for the Minister of the Civil Service, the Minister responsible for preventive control of integrity and the federal mediators.
- gives a prior opinion to potential whistleblowers on the next steps to take (making the report or not). The inquiry into the (suspected) wrongdoing is not conducted by the person of integrity but falls within the remit of the federal mediator.

The recruitment of persons of integrity is currently underway. Some Federal Public Services have already made their appointments, such as the FPS Foreign Affairs, the FPS Social Affairs and Public Health, the FPS Justice, the Buildings Agency and the FPS Mobility and Transport.

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 :

13. With respect to public advantages, the Working Group recommends that Belgium:

a) Ensure that, in the framework of the bill to establish a central register of criminal records for legal persons, the agencies responsible for public procurement, ODA and export credit and all other public subsidies, have access to this register [Convention, Articles 2 and 3.4; 2009 Recommendation, XI.(i), (ii) and XII.]; and

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

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:

See Recommendation 3(b) (ii).

Text of recommendation:

13. With respect to public advantages, the Working Group recommends that Belgium:

b) Put in place a reporting requirement for officials of the Ducroire and Finexpo, similar to the one in place for Belgian public officials [2009 Recommendation, XII; 2006 Export Credit Recommendation].

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

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:

Belgium explained the status of Finexpo and Ducroire agents and specify that they are public officials.

1. The FPS Foreign Affairs is writing to these organisations to draw their attention to the Working Group's recommendation.

2. Finexpo staff are in fact public officials (employed by the Belgian State and the regions). Finexpo is an inter-ministerial advisory committee under the management of the Administration of Foreign Affairs.

The Royal Decree of 25 February 2003 amending the Royal Decree of 15 July 1997, which sets out the composition and operation of the Committee for Financial Aid to Exports created by the Royal Decree of 30 May 1997 to increase the effectiveness of instruments to develop financial aid to exports in application of article 3, section 1, paragraphs 1 and 6, of the Act of 26 July 1996 passed to create the budgetary

conditions for Belgium's participation in European economic and monetary union, which sets out some of the terms governing the management of foreign exchange and interest rate risks, states in article 1 that:

"The Committee referred to in article 3 of the Royal Decree of 30 May 1997 to increase the effectiveness of instruments to develop financial aid to exports in application of article 3, section 1, paragraphs 1 and 6, of the Act of 26 July 1996 passed to create the budgetary conditions for Belgium's participation in European economic and monetary union, is composed of:

- two representatives of the Federal Minister for Foreign Affairs, including the Director General of External Economic and Bilateral Relations of the Federal Public Service Foreign Affairs, Foreign Trade and Development Co-operation or their delegate;*
- two representatives of the Federal Minister for Finance, including the General Administrator of the Treasury Administration of the Federal Public Service Finance or their delegate;*
- a representative of the member of the federal government responsible for foreign trade;*
- a representative of the Federal Minister of the Economy;*
- a representative of the member of the federal government responsible for development co-operation;*
- a representative of the Federal Budget Minister;*
- a representative of the member of the federal government responsible for small and medium-sized enterprises;*
- a representative of the national Ducroire office;*
- two representatives of the government of the Flemish Region;*
- two representatives of the government of the Walloon Region;*
- two representatives of the government of the Brussels-Capital Region; one French-speaking and one Flemish-speaking."*

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

14. The Working Group will follow up the issues below as case law and practice develop:

a) The exercise of Belgium's extraterritorial jurisdiction in foreign bribery cases and in particular the application of the distinction based on the origin of the bribed foreign public official [Convention, Article 4.2];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up:

14. The Working Group will follow up the issues below as case law and practice develop:

b) The application of the regime for corporate liability for foreign bribery to federal and local public enterprises, in order to ensure that the exemption of certain public entities from the application of criminal law in this area does not prevent full enforcement of the Convention [Convention, Article 2];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up:

14. The Working Group will follow up the issues below as case law and practice develop:

c) The practical application of settlement in foreign bribery cases, in order to ensure the predictable and transparent nature of the procedure and that the sanctions imposed in the context of the settlement procedure are effective, proportionate and dissuasive [Convention, Articles 3 and 5];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

See Recommendation 5.

Text of issue for follow-up:

14. The Working Group will follow up the issues below as case law and practice develop:

d) The application in practice of the offence of money laundering where foreign bribery is the predicate

offence in order to ensure that the money laundering offence can be prosecuted and sanctioned "without regard to the place where the bribery occurred"[Convention, Article 7];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up:

14. The Working Group will follow up the issues below as case law and practice develop:

e) Belgium's ability to respond to MLA requests, to ensure (i) that Belgium promptly and effectively provides MLA, insofar as its laws and the relevant international instruments allow; (ii) that use of the exception of "Belgium's essential interests" as an exception to obligations to provide MLA is made in accordance with the obligations of Article 5 of the Convention; and (iii) that Belgium can provide prompt and effective MLA to States whose legal systems do not have criminal liability for legal persons [Convention, Article 9]; and

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Text of issue for follow-up:

14. The Working Group will follow up the issues below as case law and practice develop:

f) The impact of provisions in article 219 CIR and the Law of 11 July 2013 on the effective detection and reporting of foreign bribery by tax officials [2009 Recommendation III (iii); 2009 Tax Recommendation II].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

It is important to clarify that the regime of secret commissions was first substantially modified by the law of 17 June 2013 (MB, 28.6.2013) relating to various tax and financial provisions. This law permitted the avoidance of separate contributions subject to three conditions:

1. the amount or advantage that has not been adequately justified by the production of an individual file is imposed as taxation on the beneficiary;
2. the beneficiary has agreed to the taxation and
3. the taxation is imposed within three years as set out in article 354 subsection 1er, CIR92.

The regime was modified a second time by the Program Law of 19 December 2014 (MB, 29.12.2014), which significantly reduced the tax applicable to the contribution (from 309% to 103% and 51.5%) – Circular AGFisc No. 24/2015 (no. Ci.RH.241/636.468) dd.11.06.2015 provides a commentary to this law.