United Nations CAC/COSP/IRG/I/4/1/Add.44

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
14 September 2016

Original: English

Implementation Review Group
Resumed seventh session
Vienna, 14-16 November 2016
Agenda item 2
Review of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

Contents

V.16-05773 (E) 220916 230916

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. Following the federal Parliament's ratification, the law for its approval was signed by the King on 8 May 2007, allowing its entry into force on 28 November 2008. Subsequent to the approval of the community-level parliaments, Belgium deposited its instrument of ratification with the Secretary-General on 25 September 2008.

Belgium is a federal parliamentary democracy under a constitutional monarchy and a federal state, composed of three communities and three regions. The communities and regions have the same standing as the federal authority and their legislation has equal force in law. While regions and communities to a large extent have devolved powers from the federal system, a certain number of laws, such as the Criminal Code (CC), the previous title of the Criminal Procedure Code (PT CPC), the Criminal Procedure Code (CPC) and the Anti-Money Laundering Law, are adopted at the federal level, but are applicable throughout Belgium. These laws, together with the Law on the Protection of Witnesses under Threat, the Law on Extradition and the Law on Mutual Legal Assistance form the anti-corruption legal framework in Belgium.

The authorities with relevant anti-corruption mandates include the Central Office for the Repression of Corruption (OCRC) within the Federal Police, the Financial Information Processing Unit (CFI-CTIF), the Central Body for Seizures and Confiscations (COSC), the Federal Prosecutor's Office and the Federal Public Service of Justice.

Belgium is a member of the European Union, the OECD, the Council of Europe's GRECO and FATF, among other international organizations.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials are criminalized (CC articles 246 and 247). The term "public official" is interpreted broadly and covers all persons who exercise public duties, including candidates for public functions who induce others to believe that they are in charge of these duties. Bribery committed by police officers, prosecutors, judges, arbitrators and jury members is considered an aggravating circumstance (CC arts. 248 and 249).

All the Convention's elements of active and passive bribery are present in the national definition. The definition explicitly covers third-party benefits. The "undue advantage" has a wide scope (CC art. 246) and includes any advantage, e.g. sexual favours, preferential treatment and symbolic and honorific advantages. While there are no established rules in relation to gifts given to public officials, case law

indicates that the threshold for what is deemed unacceptable could include gifts of nominal value. CC articles 246 and 247 cover both "wrongful" acts, i.e. acts outside of the official duties as well as "fair" acts, i.e. lawful actions that would have been carried out even in the absence of bribery. Active and passive bribery are seen as autonomous offences.

CC article 250, read in conjunction with articles 246-249, covers active and passive bribery of foreign public officials and officials of public international organizations.

Bribery in the private sector is criminalized (CC arts. 504bis and 504ter) and applies to, among others, the commercial sector, non-profit organizations, and volunteering and sports organizations. However, article 504bis limits the scope of application through the requirement that bribery be committed "without the knowledge and without the authorization, as the case may be, of the administrative board or the general meeting, the principal or the employer".

Trading in influence is partially criminalized (CC art. 247, para. 4), as only the use of influence by public officials is covered and does not extend to the private sector or the private sphere. The offence does not require the influence to produce the intended results.

Money-laundering, concealment (arts. 23 and 24)

Both money-laundering and concealment are criminalized (CC arts. 505 and 505bis, read with arts. 42 and 43bis on confiscation). Money-laundering is at times referred to as extended concealment. The CFI-CTIF was established as an administrative body through Law of 11 January 1993 on Preventing Use of the Financial System for Purposes of Money-Laundering and Terrorist Financing. Participation in and attempted money-laundering are covered by the general provisions of the CC (arts. 66 and 67). Any criminal offence according to Belgian legislation can constitute a predicate offence. Predicate offences committed abroad are subject to dual criminality. Nevertheless, Belgium always considers the underlying conduct in such cases. Despite the extensive reach of article 505 CC, in certain circumstances fiscal fraud is not criminalized and does not constitute a predicate crime. Self-laundering is criminalized.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The CC provides for the crimes of embezzlement, misappropriation and other diversion of property by public officials in articles 240-245. Belgium relies on a wide definition of property, which includes, among others, funds, documents, titles and acts, and real estate assets. In addition to articles 240-245, article 491 is a general provision on embezzlement of goods. There is no specific provision on embezzlement of property in the private sector, but the conduct could fall within the scope of article 461 on theft and article 492bis on abuse of corporate assets.

Abuse of functions or "concussion" is criminalized (CC art. 243). Provisions on confiscation, the abuse of power, taking interest and the abuse of trust by public officials are also relevant (CC arts. 42, 151, 245 and 491). Illicit enrichment is not codified in a stand-alone provision in Belgian law; however, CC articles 43quater and 246-251 cover property derived from a criminal act and criminalize unjustified enrichment. The Court of Audit (Court des Competes) receives parliamentarians'

asset declarations as well as those for high-ranking public officials (e.g. Ministers, etc.). Their family members have no disclosure obligation.

Obstruction of justice (art. 25)

Obstruction of justice is criminalized through the CC provisions on false testimony and perjury (arts. 215-226), threats (arts. 327-330bis) and assaults on public officials (arts. 278, 279, 279bis and 280). Particularly relevant are articles 223 and 224 which criminalize bribery of witnesses, experts and interpreters, rendering the bribers liable to the same punishment as the person who provides the false testimony.

Liability of legal persons (art. 26)

Criminal liability of legal persons is established (CC art. 5). Article 5 provides for the possibility of the simultaneous prosecution of both the natural and the legal person involved. Sanctions include fines, confiscation, dissolution, closure of establishments, prohibition to exercise certain activities, or publication and dissemination of the judgment (CC arts. 7bis, 35-37bis and 41bis). However, article 5 stipulates that "only the person who committed the most serious offence may be sentenced", which renders the legal text uncertain and seemingly discretionary.

The correctional sanctions foreseen in the Criminal Code are converted into pecuniary sanctions through a schedule. Governmental, regional, communal and provincial bodies are not considered legal persons under article 5. Legal persons also have a civil liability.

Participation and attempt (art. 27)

Participation in corruption offences is covered by the general provisions of the CC (arts. 66 and 67). In the absence of explicit incrimination, attempt is not punishable in Belgian law. Belgium has not criminalized attempt legislatively in the context of corruption offences. However, in the application of the law, Belgium showed it is able to prosecute also attempted acts of corruption. Furthermore, attempt is criminalized in the case of money-laundering (CC art. 505). Preparation of corruption offences is not punishable.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Corruption offences are punishable by imprisonment, fines and confiscation (CC art. 42), as prescribed under the relevant provisions of the CC. Pecuniary fines are regularly updated through a schedule allowing for their multiplication by factors depending on the severity of the crime (the Law of 5 March 1952 on Surcharges on Criminal Fines with subsequent updates).

Article 88 of the Belgian Constitution establishes the King's absolute immunity during his reign and which does not extend to his family. Members of the federal, regional and community parliaments cannot be prosecuted without the consent of their respective Parliament (arts. 58, 59 and 120 of the Constitution). Following a legislative measure in 2014, a Federal Commission of Ethics and Integrity has been established with an oversight function for the bi-cameral Federal Parliament. It is in

the process of drafting internal regulations, a Code of Conduct and a Code of Ethics for parliamentarians. Public officials do not enjoy any immunities, other than as described above. The court of appeal has jurisdiction over cases against ministers, judges, and members of community and regional governments (Constitution arts. 103 and 125).

With regard to the discretionary legal powers of the prosecution authorities, the prosecutor applies the principle of opportunity for criminal proceedings. Any decision to halt or refrain from prosecution is subject to review by superiors and must be motivated as well as be in the interest of the public according to the criminal policy guidelines (CPC art. 28quater).

Release on bail (CC arts. 113-26) is possible at any stage of the criminal action and can be requested by the defendant; it is based on the considerations of the prosecutor (CC art. 114). Early release and conditional release are regulated by articles 24-28 and 47 of the 2006 Law on the External Legal Status of Persons Convicted to a Prison Sentence and the Rights Accorded to Victims in the Frame of the Modalities of Sentences. Due consideration shall be given to the gravity of the offence prior to any such release, including the attitude of the sentenced person with respect to the victims and efforts to compensate the civil party after conviction (CC art. 47).

The 1937 Royal Decree on the Statute of the Agents of the State sets out the disciplinary sanctions that may be imposed on public officials. These include, among others, relocation, temporary suspension, demotion and removal (arts. 77-81bis). The Decree requires that disciplinary proceedings be suspended if criminal proceedings are initiated (art. 81, para. 3) and that they only continue once the results of the criminal proceedings are communicated to the relevant minister (art. 81, para. 5). The CC includes additional sanctions, such as the prohibition to serve in public functions, including state owned enterprises, and to be elected (arts. 31-34).

Belgium does not provide for any specific immunities or incentives for persons who cooperate with law enforcement in corruption cases. However, based on the judges' discretion and appreciation of any mitigating circumstances (such as cooperation) the CC foresees the reduction or modification of the criminal penalties (arts. 79-85). There is also a general provision in the CPC on the possibility of out-of-court settlements between the defendant and the prosecutor (CPC art. 216bis), where criminal liability need not be accepted, but civil liability shall be imposed. The latter includes indemnification of victims and the returning of any proceeds of crime. Such an agreement must be validated, but cannot be amended, by a judge. On 2 June 2016, the Belgian Constitutional Court in its decision No. 83/2016, found the limited involvement and role of the judge in this proceeding unconstitutional (Constitution arts. 10, 11 and 151). Steps are taken to amend the law.

Protection of witnesses and reporting persons (arts. 32 and 33)

The 2002 Law on the Protection of Witnesses under Threat establishes various measures for physical protection, identity protection, relocation and safe integration of witnesses and their families, as well as victims and experts. The Witness Protection Commission is in charge of granting protection measures. Witnesses can be granted anonymity during the criminal proceedings (CPC art. 75bis) and can be

allowed to give evidence through videoconference or closed-circuit television (CPC art. 112). In addition, numerous rights are accorded to victims at various stages of the criminal proceedings (see e.g. CPC arts. 63 and 67).

Belgium has entered into agreements with several States for the reciprocal relocation of witnesses.

Under article 29 of CPC, all public officials must report to the Prosecutor any crime they have become aware of. In addition, public officials must also inform their superiors (art. 7 of the 1937 Decree on the Statute of the Agents of the State), but they can opt for a confidential reporting. In 2013, Belgium has adopted the Law on the Reporting of Suspected Violations of Integrity in Federal Administrative Authorities, which gives the federal staff the possibility to confidentially report violations of integrity, including corruption to the Integrity Centre as a division of the federal Ombudsman. Federal staff that make use of this procedure are relieved from the obligation to report to the prosecutor. In order to improve the accessibility of this procedure, each federal service is required to establish one or more "Persons of Confidentiality" per language group. The law includes automatic protection from sanctions or retaliation for the whistle-blower, the persons involved in the investigation of the reported wrongdoing and their counsellor. Abusive reports are sanctioned.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The direct confiscation of proceeds of crime as well as confiscation of property of a corresponding value to that of the proceeds of crime ("value confiscation") are foreseen through CC articles 42 and 43bis/ter. These provisions also cover the confiscation of instrumentalities, as well as objects of crime and proceeds of crime that are transformed, converted into or intermingled with other property. All confiscation must be based on a prior conviction and is deemed a penalty. The Law of 11 February 2014 on the facilitated execution of pecuniary penalties and recovery of trial costs establishes asset tracing for the purposes of confiscation pre- and post-sentencing (e.g. in order to pay for any outstanding confiscations, penal fines and trial costs).

CPC articles 35, 35bis and 35ter regulate the seizure procedures. The Central Office for Seizure and Confiscations (COSC) has been established within the judiciary as a principal public institution responsible for the execution of confiscation orders and the management of seized assets. However, there is no reliable centralized database of confiscated assets, and consequently no statistics and data on confiscation in general are available yet. The Belgian Ministry of Justice is currently developing a computerized accounting system (NAVISION).

Once a person is convicted of a corruption offence, the division of the burden of proof is used for extended confiscation (CC art. 43quater). Confiscation from a third party is legally possible but shall not prejudice the rights of bona fide third parties. Articles 44 and 43bis of CC and articles 1382 and 1383 of the Civil Code safeguard the rights of bona fide third parties to claim restitution and damages.

The prosecutor can request the production of bank and financial records directly from any financial institution (CPC art. 46quater) as well as initiate tracing of assets. The Belgian National Bank has established a register of all bank account holders' names. However, at present only COSC and fiscal authorities can consult

the list and thereby know from which financial institutions they must request information (1992 Tax Code art. 322, para. 3) and the register is only updated annually. New legislation has been enacted (Law of 1 July 2016). Under the new legislation the Belgian CFI-CTIF, prosecutors, (investigating) judges and notaries also have access to the central register of bank accounts.

Statute of limitations; criminal record (arts. 29 and 41)

The length of the statute of limitations for corruption offences varies between five and ten years starting from the day when the offence was committed (CPC arts. 20-29). The statute of limitations can be interrupted (art. 22) or suspended (art. 24), which in turn can lead to considerably protracted investigations and prosecutions. Such delays have also resulted in more lenient sentencing by the judges.

With regard to consideration of previous convictions for the purpose of using such information in criminal proceedings, Belgium participates in the European Criminal Records Information System (ECRIS). ECRIS allows for the information exchange on convictions within the European Union. Belgium stated that due to the transnational nature of corruption, the Prosecution would always seek to present any previous conviction also in jurisdictions outside the European Union as part of the case.

Jurisdiction (art. 42)

Acts committed within Belgium or on board Belgian vessels or aircrafts fall within Belgian jurisdiction. The active and passive personality principles and the principle of State protection are established (PT CPC arts. 7, 10quater, 11, 12 and CC arts. 3 and 4). In order to exercise extraterritorial jurisdiction based on active and passive personality principle, the dual criminality requirement needs to be fulfilled.

With regard to jurisdiction over preparatory acts to money-laundering, Belgium applies the doctrine of ubiquity which allows for an offence to be considered in Belgium if a part or consequences of the offence take place in Belgium (CC art. 3).

Belgium consults with other States when it becomes aware of a relevant foreign investigation or proceeding, in particular in the context of Eurojust and the European Judicial Network on Criminal Matters.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Royal Decree No. 22 of 24 October 1934 as well as the Laws on Public Procurement (15 June 2006) and Awarding of Public Contracts (15 July 2011) contain a wide range of applicable measures where corruption offences have been involved. These range from interdiction to hold certain professional functions, to prohibition to seek public contracts.

A person who suffered damage as a result of crime can claim damages within criminal proceedings (CPC art. 3) or in separate civil proceedings (Civil Code arts. 1382-1387). The plea-bargaining procedure (CPC art. 216bis) requires that victims be restituted whatever assets they may have lost and be duly compensated.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The Central Office for the Repression of Corruption (OCRC) is the principal investigative anti-corruption agency and is located within the federal police. The OCRC is empowered to coordinate national operations, support police services, and carry out research and monitoring functions. Special training is provided to OCRC investigators.

The Federal Prosecutor's Office is responsible for dealing with crimes exceeding the competence of local prosecutors, including money-laundering, organized crime, as well as federal and international corruption. The College of Prosecutors General has established a specialized network of prosecutors with anti-corruption expertise.

Exceptions exist for the officials of tax authorities who cannot report a crime to the Prosecutor without prior notification to their regional director. The regional director collects and assesses the reports and, as a public official, is still obliged to report crimes to the Prosecutor.

The Financial Information Processing Unit (CFI-CTIF), established by the Royal Decree from 11 June 1993, is an independent administrative FIU in charge of analysing suspicious financial transactions for money-laundering and terrorist financing. CFI-CTIF guides the national anti-money laundering and anti-terrorist financing plans.

Financial institutions, insurance companies, real estate agencies, investment companies, notaries, lawyers, auditors and judicial officers must report suspicious financial transactions to the CFI-CTIF (art. 2 of the 1993 Law on the Prevention of the Use of the Financial System for the Purposes of Money-Laundering and Terrorist Financing).

2.2. Successes and good practices

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

- In seizure matters, Belgium allows the suspect to reclaim the seized asset in exchange for money. This approach lifts the burden of managing and maintaining the seized property from national authorities (art. 31).
- The broad range of protection measures available under the 2002 Law on the Protection of Witnesses under Threat (art. 32).

2.3. Challenges in implementation

The following actions are recommended to further strengthen the existing anti-corruption framework:

- Establish clear rules on public officials receiving gifts and consider introducing a system through which public officials record any gifts received (art. 15).
- Consider extending the scope of the offence of trading in influence (CC art. 247, para. 4) to also include the private sector and the private sphere (art. 18).

- Consider including the element of third party benefits in the definition of abuse of functions (CC art. 243) (art. 19).
- Continue strengthening legislative and other measures concerning illicit enrichment in line with the Convention, including broadening the obligation to disclose and declare assets to also include family members of public officials (art. 20).
- Remove from CC article 504 bis the requirement that bribery be committed "without the knowledge and without the authorization, as the case may be, of the administrative board or the general meeting, the principal or the employer" (art. 21).
- For the sake of legal clarity, ensure that the definition of embezzlement of property in the private sector is enhanced in line with the Convention (art. 22).
- Amend CC article 505 to ensure that fiscal fraud is not excluded from the scope of predicate crimes and cannot be used to avoid prosecution for money-laundering and its predicate offences (art. 23, para. 2(a)).
- Consider removing from CC article 5 "only the person who committed the most serious offence may be sentenced" in order to enhance legal clarity (art. 26, para. 1).
- Ensure that the application and practice regarding the statute of limitation does not pose an impediment to the expedience and efficiency in the administration of justice and, to this end, continue to monitor its application (art. 29).
- Ensure adequate transparency, predictability and proportionality in entering into plea bargains and out-of-court settlements (art. 30, para. 1).
- Continued vigilance is required to ensure that the far-reaching immunities of parliamentarians do not present an obstacle to the prosecution of corruption cases (art. 30, para. 2).
- Consider enhancing the current COSC-managed central database of seized and confiscated property and assets, and ensure it is updated regularly (art. 31, para. 3).
- Consider taking measures to provide protection for "any person" who reports to the competent authorities, and not only civil servants (art. 33).
- While welcoming the recent legal amendment to broaden access to the Belgian National Bank's register of all bank account holders' names, which took place after the country visit, Belgium is encouraged to ensure that the register be kept up to date (art. 40).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Belgium regulates extradition through the 1874 Law on Extradition (LoE), article 6 of the 1833 Law on Extradition and case law of the Belgian Supreme Court. Belgium makes extradition conditional on the existence of a treaty (LoE art. 1).

However, the treaty requirement is applied in a broad sense and the Convention can serve as a legal basis for extradition in the absence of applicable treaties or where bilateral treaties have become inadequate in terms of extraditable offences.

Belgium is a party to the Council of Europe (CoE) European Convention on Extradition (1957) and its first two supplementary protocols (1975 and 1978). At the European Union (EU) level, the Council Framework Decision on the European Arrest Warrant is applicable. Belgium has also concluded bilateral extradition treaties with 41 States, although some are obsolete which limits the scope and legal basis notably outside of EU.

The LoE relies on the principle of reciprocity. The minimum penalty requirement for extradition is twelve months and captures most offences under the Convention. While Belgium applies the dual criminality principle without exceptions (LoE art. 1§2), it focuses on the underlying conduct of the offence and not its qualification.

Extradition for accessory offences is possible (LoE art. 1, para. 3). The Convention offences are not considered political offences (art. 6 of the 1833 LoE).

The Global Ministerial Circular on Extradition (2005) provides for simplified proceedings in cases where the person, whose extradition is sought, gives their consent. The planned ratification of the third Protocol to the CoE Convention will allow for further expediting of extradition proceedings.

Provisional arrest of a person sought can be ordered on a case by case basis (LoE arts. 3 and 5) and an INTERPOL Red Notice can serve as a sufficient basis for provisional arrests. In exceptional cases it is possible to order the release on bail or to take other alternative measures, such as passport confiscation or regular police monitoring.

Belgium does not extradite its nationals (LoE art. 1). In cases involving its nationals, the requesting State Party is informed and simultaneously invited to denounce the acts and transmit all usable elements (the case file) with the purpose to initiate domestic prosecution against them in Belgium, in line with the principle aut dedere, aut judicare. The only exception is the scheme of European arrest warrants (EAWs), which allows for the extradition of Belgian nationals to other EU member States as long as the prescribed conditions are met.

Enforcement of foreign sentences in cases where extradition is refused is possible under the Convention on the International Validity of Criminal Judgments (1970), the Protocol to the 1983 CoE Convention of Transference of Sentenced Persons (1997) and the Convention implementing the Agreement of Schengen.

Fair treatment of the persons whose extradition is sought is ensured through the general provisions of CPC. The reasons for refusal of extradition include discrimination on the grounds of race, religion, nationality or political opinions (LoE art. 2bis; ECHR arts. 3, 6, 8n and 14), but the grounds of ethnic origin and gender are not explicitly mentioned. The extradition is not refused on the ground that the offence involves fiscal matters (European Extradition Convention 1957 and its Second Protocol of 1978). In practice, Belgium has refused extradition because the prosecution of the requested person would be time-barred according to Belgian law.

Transfer of sentenced persons is possible under the Law on the Transfer between States of Sentenced Persons (1990), the CoE Convention on the Transfer of Sentenced Persons (1983), the EU Council Framework Decision on the Application of the Principle of Mutual Recognition to Judgments in Criminal Matters (2008) and a bilateral treaty concluded with Morocco on the transfer of sentenced persons. Dual criminality and the person's consent are required for the transfer.

Transfer of criminal proceedings is conditional on the existence of a treaty. The European Convention on Mutual Legal Assistance in Criminal Matters (1959, ECMLA) and bilateral agreements with Algeria and Thailand are relevant in this regard.

Mutual legal assistance (art. 46)

Mutual legal assistance (MLA) is provided on the basis of the Law on MLA (2004, LMLA), the European Convention on MLA in criminal matters (1959, ECMLA) and several bilateral MLA treaties. MLA can also be granted on the sole basis of reciprocity (LMLA art. 4, para. 1). In addition, the Convention can serve and has been already used as a legal basis for MLA. Belgian authorities render MLA on the basis of dual criminality. The only exception exists for EU, CoE and several States that Belgium has bilateral MLA treaties with, where Belgium may provide non-coercive MLA in the absence of dual criminality.

Article 3 of LMLA states that MLA is to be provided in the "broadest terms possible", and can encompass all the purposes listed in the Convention's subparagraph 3 a-i of article 46 and to provide MLA with regard to offences involving legal persons.

The Federal Public Service of Justice is the central authority for MLA and extradition requests.

Spontaneous transmission of information is regulated and is subject to confidentiality (LMLA art. 2/7 and the second Protocol to ECMLA). Such transmissions occur as a matter of routine on a daily basis.

Bank secrecy is not a ground for refusing MLA requests (CPC art. 46quater). While the LMLA does not include the lack of dual criminality among the grounds for refusal of MLA (article 4, §2), several bilateral MLA treaties include it among mandatory or optional grounds for refusal. Dual criminality remains a fundamental principle in Belgian international cooperation and in the context of MLA as well as extradition, it is the underlying conduct and not the classification of the offence or the coercive measure requested that is considered.

Transfer of detainees for the purpose of providing MLA is possible under the ECMLA and several bilateral treaties. The safe conduct of witnesses and experts, while not foreseen expressly in Belgian law, is safeguarded in several of its bilateral treaties (e.g. ECMLA art. 12). In addition, Belgium would provide assurances of safe conduct in the absence of a treaty.

Article 7 of the LMLA, the Ministerial Guideline 15/99 on Good Practices in MLA in Criminal Matters with other EU members and several bilateral treaties set out the requirements concerning the format, content and languages of MLA requests. Belgium has notified the Secretary-General that the acceptable languages for MLA requests are English, French and Dutch.

Outgoing MLA requests are generally executed in accordance with the domestic law of the requested State, and incoming requests in line with the instructions from the requesting State, unless it is contrary to Belgian law (LMLA arts. 3 and 6, bilateral treaties). Hearing of witnesses via videoconference is possible (CPC arts. 112 and 112bis; ECMLA art. 9 and bilateral treaties). Belgium respects the rules of specialty and confidentiality in the transmission of information (LMLA art. 2, para. 4; ECMLA arts. 25 and 26 and bilateral treaties).

Belgium provides a requesting State with reasons for refusing a MLA request (LMLA art. 6, para. 4; ECMLA art. 19 and bilateral treaties). However, Belgium would always consult a requesting State before refusing the MLA request (ECMLA art. 7).

Belgium is able to provide copies of government records and documents (LMLA art. 1, para. 1).

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The federal police, under the guidance of the Federal prosecutor, is responsible for the facilitation of law enforcement cooperation. Belgium cooperates through organizations and networks such as the EU Task Force of Chiefs of Police, the European Police College, Frontex, Europol, Eurojust, the European Anti-Fraud Office, the European Crime Prevention Network, CARIN and INTERPOL. Belgium maintains a network of liaison law enforcement officials abroad and, likewise, numerous foreign liaison officers are posted in Belgium. Belgium has also entered into several bilateral law enforcement cooperation agreements, but frequently relies on ad hoc and case-by-case arrangements.

Belgium has further established several different platforms for joint trainings for Belgian law enforcement and its foreign counterparts including exchange programmes. Furthermore, Belgium has established training programmes and other integrity initiatives for law enforcement with, inter alia, the Universities of Ghent and Leuven in Belgium and Strasbourg in France.

The Federal Computer Crime Unit and the Regional Computer Crime Unit support national authorities in the identification and prosecution of offences committed though the use of modern technology. Further measures are foreseen in the Belgian Strategy on Cybercrime.

Belgium has already established joint investigative teams on a number of occasions (LMLA arts. 8-10 and ECMLA art. 20), including one with France in a corruption case. When a joint investigation team includes officials from other EU member States, the federal prosecutor needs to notify Eurojust and Europol of the establishment of such a team.

The investigating judges can order the use of special investigative techniques, namely wiretapping, recording of communications, surveillance and controlled delivery within the Belgian territory (CPC art. 90ter and ECMLA art. 18). The Criminal Procedure Code article 90ter also permits a foreign authority to carry out special investigative measures on Belgian territory, subject to the prior authorization by a competent Belgian judicial authority.

3.2. Successes and good practices

The following successes and good practices in implementing chapter IV of the Convention are highlighted:

- Belgium systematically transmits information relating to criminal matters to other States, even when there has been no prior request (art. 46, para. 4).
- Significant efforts have been undertaken to strengthen cross-border law enforcement cooperation, such as through the organization of joint anti-corruption training workshops and exchange programmes (art. 48).
- Belgium can allow foreign authorities to use special investigative techniques on Belgian territory (art. 50).

3.3. Challenges in implementation

The following actions are recommended to further strengthen the existing anti-corruption framework:

- Consider taking further steps to ensure that all United Nations Convention against Corruption offences are extraditable in light of the dual criminality requirement and applicable punishment for certain corruption offences by imprisonment of less than 12 months (art. 44).
- Enhance the scope of article 2bis of the 1874 LoE to include gender and ethnic origin among the grounds for refusal of extradition (art. 44, para. 15).
- Consider adopting such measures as may be necessary to enable the provision of a wider scope of assistance pursuant to article 46 in the absence of dual criminality (art. 46, para. 9(c)).
- Continue broadening Belgium's treaty-basis to further enhance the Convention's scope of application in the areas of both extradition and law enforcement cooperation, for instance by ratifying the third and fourth Protocol to the European Convention on Extradition (art. 44, para. 18, and art. 48).