

PRESENTATION

The pages regarding the **Central Office for the Repression of Corruption (called in French: “Office Central pour la Répression de la Corruption” - OCRC)** of the Belgian Federal Judicial police are aimed at enlightening you about the activities of the office.

Through reading these pages you will find various headings related, among other things, to the partners and to the structures and tasks of the OCRC.

Through these pages you will also be familiarized with the several supporting facilities that this service can provide.

HISTORICAL BACKGROUND INFORMATION

In its actual form the OCRC has existed for about ten years, but its origin goes back to far more long ago.

At the beginning of the last century serious irregularities have been brought to light within the then existing railway management. In order to face the situation and prevent the occurrence of new violations it was then decided to create a controlling organism. This organism, which was set up by a Royal decree dated 30th of October 1910 (MB 05-11-1910), will be called « Superior Control Committee » (C.S.C.).

This control committee, at first formed of 3 high-ranking public officials and 3 magistrates, rapidly received the assistance of an investigation service. Its members then had the authority to investigate within the Belgian Ministry for the railway and the postal and telegraphic services. The first Belgian « incorruptibles » were born!

Rapidly, as soon as 1921, the scope of activities of the CSC was broaden to all the ministerial departments as well as to the public bodies, such as the national society of Belgian railway networks (SNCB) founded in 1926 and the Post Office administration (RTT) founded 4 years later. In 1940, the CSC was incorporated into the services of the Prime Minister.

Much later, as a result of several reforms introduced between 1962 and 1970, the position of officer to the judicial police, assistant to the King’s prosecutor and to the military auditor was attributed to the investigators of the CSC and their scope of activities was broadened to the provinces and villages. Their mission then mainly consisted of the search for fraud and irregularities committed by members of the management or by third parties as well as of controlling the attribution and execution of public work, supplying or services markets.

As the years go, the CSC has thus presented itself as a police force specialized in bribery, procurement contracts fraud and grant fraud.

In 1998, the investigation service of the CSC was incorporated into the federal judicial police. As a result of this, it was lacking in its administrative attributions and from then on its members were only empowered to carry out judicial investigations. And that is how the so-called OCRC or Central Office for the Repression of Corruption was born.

At the time of the reform of the police services, on 1st of January 2001, the OCRC joined the Directorate for the fight against financial and economic crime (DJF), that is part of the General Directorate for Federal Judicial Police (DGJ).

MISSION STATEMENTS

Within the federal police services the OCRC represents a central service endowed with operational powers. This means that its members can lead judicial investigations (searches, seizures, auditions, arrests, fines, and so on), either autonomously, or with the support or collaboration of the judicial directorates that are

decentralised in districts according to the seriousness of the investigation, its sensitivity, the position of the offenders, the complexity of the required actions, and so on.

More precisely, « the OCRC is in charge of investigating and supporting the investigation of crimes to the prejudice of the state's interests, as well as to crimes of complex and serious corruption. Besides, it fulfils a pilot function within the context of the fight against criminal abuses and attitudes regarding public sectors markets, and regarding grant, assents and permit legislation.»

Thus, the investigations of the OCRC particularly concern the crimes of bribery, misappropriation of public funds, conflicts of interest and embezzlement with public procurement contracts, grants, permits and approvals. The corruption in question must therefore be viewed in its broad sense, especially violations cracking down on by the Law of 10 February 1999 on the fight against corruption.

The existence of this operational capacity at central level is indispensable for the following reasons:

- The district (and local) authorities cannot always attach a major importance to the fight against corruption (given the other criminal phenomena to fight against).
- In some districts we are stating a lack of expertise and, above all, of capacity.
- It is necessary to have a specialised investigation service that is sufficiently autonomous and capable of leading complex and delicate or international investigations.

Furthermore, as a central service the OCRC also carries out the following tasks:

- At operational level:
 - The coordination of operations on a national scale.
 - Assistance to the other police services (support, avis, advice, and so on).
- At strategic level:
 - The management of the priorities as planned within the National Plan for Security.
 - Research and development.
 - The follow-up of phenomena.

STRUCTURE

The OCRC currently employs 63 investigators and is led by a head of unit and assisted by a secretariat and by a strategic analyst.

The head of unit leads the activities of the service and coordinates in particular the operational missions in collaboration with the section heads and their assistants.

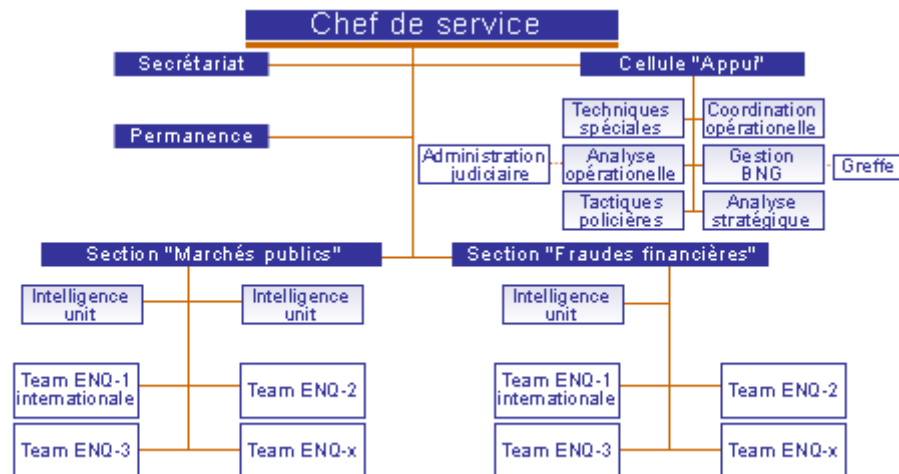
As a matter of fact, the OCRC is organised in 2 sections, each one of them employing investigators who belong to the French and Dutch speaking roles:

- The « **public procurement contracts** » unit employs 26 investigators and mainly deals with files regarding the fight against fraud in public procurement.
- The « **financial fraud** » unit employs 32 investigators and deals with all the other fraud files given to the OCRC (in particular grant fraud or permit or approvals' fraud).

Each section is split up into various investigation teams the size of which varies according to the importance and the significance of the file.

Moreover, some investigators have become specialists in certain domains in order to assist their colleagues, for instance regarding criminal analysis, particular police techniques, police tactics, or regarding the management of the police data bases.

Organization chart



PHENOMENA

The OCRC mainly deals with 3 phenomena:

- **Corruption in its broad sense**, especially acts repressed by the Law of 10 February 1999 on the fight against bribery: passive and active corruption, public and private, misappropriation of public funds, conflict of interest, embezzlement committed by a public official.
- **Public grants fraud.**
- **Public procurement contracts fraud.**

Corruption in its broad sense

Public passive corruption refers to « *the fact that a person holding a public office (or who applied for such a position, or who makes one believe he or she will fulfil such a function, or who, by using untrue skills, makes one believe he or she fulfils such a position) to apply for or to accept, directly or through intermediaries, an offer, a promise or an advantage whatever the nature of it, for him- or herself or for a third party, in order to adopt one of the attitudes stated at article 247 of the penal code (especially in order to accomplish or to refrain from accomplish an act in the discharge of his duties, or yet in order to make good use of his or her influence to that effect, and so on).* » [art. 246 §1 of the Belgian penal code]

Public active corruption refers to « *the fact of proposing (or granting), directly or through intermediaries, to a person holding a public office (or who applied for such a position, or who makes one believe he or she will fulfil such a function, or who, by using untrue skills, makes one believe he or she fulfils such a position), to apply for or to accept, directly or through intermediaries, an offer, a promise or an advantage whatever the nature of it, for him- or herself or for a third party, in order to adopt one of the attitudes stated at article 247 of the penal code (especially in order to accomplish or to refrain from accomplishing an act in the discharge of his duties, or yet in order to make good use of his or her influence to that effect, and so on).* » [art. 246 §2 of the Belgian penal code]

Private passive corruption refers to *«the fact that a person holding the position of director or of manager of a legal entity, of a proxy or of an employee of a legal entity or a natural person, to apply for or to accept, directly or through intermediaries, an offer, a promise or an advantage whatever the nature of it, for him- or herself or for a third party, in order to do or to refrain from doing an act of his duties or facilities as a result of his position, without knowledge and without permission, as the case may be, of the board of directors or of the general meeting, of the principal or of the employer. »* [art. 504bis §1 of the Belgian penal code]

Private active corruption refers to *« the fact of proposing (or granting), directly or through intermediaries, to a person holding the position of director or of manager of a legal entity, of a proxy or of an employee of a legal entity or a natural person, an offer, a promise or an advantage whatever the nature of it, for him- or herself or for a third party, in order to do or to refrain from doing an act of his duties or facilities as a result of his position, without knowledge and without permission, as the case may be, of the board of directors or of the general meeting, of the principal or of the employer. »* [art. 504bis §2 of the Belgian penal code]

It is moreover possible to make a distinction between two corruption levels:

- « Street-level corruption », that classically refers to the bribery perpetrated by the ordinary citizen in his dealing with the administration (for instance, in order to obtain one or the other document or to escape control or avoid paying a fine).
- « Top-level corruption », that refers to the higher realms of economics in society and that often, unlike the previous type of bribery, requires the implementation of a large number of complex financial mechanisms and operations in order to guarantee its opaqueness.

Finally, it should be noted that the crime of corruption exists as soon as there are initial steps in the commission of a crime, in other words as soon as the proposition or the appeal is formulated.

Misappropriation of public funds designates the fact that *«a person holding a public office who will order to collect, who will demand or receive what he or she did not know to be due or exceed what was due as rights, taxes, contributions, farthings, income or interests, as salaries or wages. »* [art. 243 of the Belgian penal code]

The **conflict of interest** designates the fact that *« a person holding a public office who will have taken or received, either directly or through intermediaries or by simulated acts, some interest, be it within the framework of acts, auctions, companies or administrations from whom he or she was charged, at the time of the act, entirely or partly, with the administration or the surveillance, or who, commissioned to authorise payment or to do the settlement of a business, will have taken any interest in it. »* These arrangements, however, will not be applicable to *« he or she who could not, given the circumstances, favour his own private interest by his function, and who will have acted overtly. »* [art. 245 of the Belgian penal code]

Embezzlement committed by a public official either designates the fact that *«a person holding a public office who will have embezzled (in other words, used for other purposes than the initially fixed purpose) public or private farthings, securities serving as documents, titles, acts, transferable property securities that were in his hands either by virtue, or on the basis of his position », or as the result of a « person holding a public office, who will have wickedly or fraudulently destroyed or deleted acts or titles, of which he or she was the depository in this capacity, of which he or she had been informed or to which he or she had had access on the basis of his position »* [art. 240 and 241 of the Belgian penal code]

Public grants fraud

The **public grants fraud** refers to the abusive and irregular use of an amount of a public grant to other purposes than those why they were given. Besides, this grant can have been bestowed by the state, another legal entity of public law, the European Community or another international organisation.

As regards the bestowing of grants as with regard to procurement contracts, the amounts at stake –and therefore, the possible backhanders offered or embezzlements effected- are often very substantial. And the fact that these grants are bestowed on a regular basis to sensitive sectors (from the environmental or socio-economic point of view for instance) makes their embezzlement even more prejudicial. The damage is then

not only financial, but also human because the embezzled money cannot be invested where it has been decided necessary to invest in.

Public procurement contracts fraud

Finally, **public procurement contracts fraud** include the violations or irregularities committed on the occasion of the set up, the granting and the execution of markets regarding work, supplies or services with the authorities. They notably consist of the writing and use of false documents, the disturbance of free competition, of embezzlements, of fraud regarding the quality or quantity concerned, and so on.

Moreover, a strategic analysis realised in 2002 shows that corruption is used on a regular basis in order to distort one or another procurement contracts' procedure. The financial loss resulting from acts of bribery would therefore be more important in areas where procurement contracts frequently occur, all the more so since the amounts at stake are very substantial. Thus, corruption constitutes for the entrepreneur, for the supplier or for the provider of a service a means to obtain the contract or to optimise the cost-effectiveness by committing various irregularities during its implementation.

Particularity of the phenomena

All those crimes of corruption, misappropriation of public funds, conflict of interest, embezzlement, public grants fraud or public procurement contracts fraud are particular on more than one account:

- In the first place, they are difficult to delimit. They indeed include a series of problematic behaviours that, though they are ethically very questionable, are not always perceived as illicit by public opinion or by the offenders themselves. The concept of bribery (in its broad sense) is yet linked to that of ethics or of moral, and the perception we have of them sometimes strongly changes depending on the person, the culture and the mentality. Furthermore, a large number of companies perceive corruption above all as a survival strategy.
- Secondly, they are quite difficult to trace. As a matter of fact, they generally do not arouse a direct physical victim, who could notify the facts to the authorities. The protagonists as for them of course have no single reason to denounce the crime themselves. There is in fact something in it for everybody and from that moment they will strive after keeping their acts secret. Such facts will in this way often last for several months, or even for several years, before being brought to light. This all partly explains why the black number (in other words, the number of facts unknown to the authorities) is very substantial concerning the phenomena put forward here.
- The third characteristic is that these crimes are often tedious to prove. When the facts are known to the authorities, a further difficulty lies in the charges the proof generates. As a matter of fact, when they can be determined, they must even mostly be searched for through the study of a substantial number of documents some of which are technically speaking very complex. From then on, this necessitates a lot of time investment and many skilled employees, which is not always possible to guarantee. This is even more problematic as various mechanisms more or less complex will be used on a regular basis. For instance, the exchange operation (type of transmission leaving no single trace on paper support and thus difficult to trace) in the framework of the « street-level corruption ». Or otherwise, at other and more complex levels, the use of several financial constructions or of various accounting techniques in order to dissimulate where the moneymakers came from (for instance, setting up umbrella companies, constituting « secret funds », making out forged invoices, and so on). Some offenders also appeal to intermediaries in order to formulate the proposition or to transmit the backhanders.
- Moreover, the offenders of such crimes belong to a quite particular kind. As a matter of fact, the acts involved here can occur at all power levels, in any area of society. Their originators often have got nothing to do with the classical delinquent's stereotype. So, the persons in question generally are well integrated in society and benefit from a good image in the view of public opinion (high-ranking public official, director of a famous company, influential politician, etc.), or even from legal immunity in their own country.

- With regard to the cost of violations of the sort, it stands at several levels and can be of various orders. As a matter of fact, it sometimes very strongly goes over the very amount of the backhanders or of the embezzled moneymakers. For instance, within the framework of the procurement contracts, when a public official in charge of controlling the execution of the contract turns a blind eye to the quality of the materials used or products delivered, it is the whole of the market that can end up tainted. The loss for the administration then amounts to the value itself of the business. Besides, in addition to the money, fringe benefits can be offered or embezzled. It can be a matter of meals at the restaurants, of vehicles, of electronic or computing equipment, of jewellery, of transferable securities, of buildings, of the carrying out of personal work, of travelling, of promotions, or even of sexual advantages.

Impact of the phenomena

The impact of the various phenomena upon our society can show effects at several levels:

- At political level, through the discredit cast on the institutions or the administrations concerned. This not only weakens the trust public has in them as it also affects the brand image of the country abroad.
- At democratic level, the principle of equality of citizens is flouted. Bribery and the neighbouring violations thus extremely undermine the ethical values of society. As a matter of fact, it is first and foremost the whole of community who suffers the consequences of the lack of integrity of the representatives of the administration, through the violation of the elementary principles of democracy. In the extreme, the generalization of such a system might leave the door wide open to all sorts of abuses.
- At economic level, the discredit cast upon the areas affected could lead to some hesitation from especially foreign investors to pump clean money into our economy. More particularly within the framework of procurement contracts, companies that would not wish to enter into the system might well face the risk of losing every single market and that would inevitably lead them to bankruptcy.
- At social level, the bankruptcy of decent companies could lead to extremely insecure situations for the workers who lost their jobs. Besides, as a large number of companies called into question perceive bribery as a survival strategy, the risk in seeing instituted a real bribery culture may not be neglected.
- At security level, the use of corruption can, for instance, lead to the bad quality of the materials used or of the products made, or even to the illegal deliverance of documents (identity papers for instance) with all the consequences that this implies.

In this manner, the offenders of such facts increase their non ethical behaviours and particularly use corruption and influence, as a result of which they give birth, among other things, to problematic political, social and economical situations. They are searching for personal profit at the expense of the country's benefit.

LEGISLATION

Corruption

In Belgium, corruption is governed by the penal code as it was amended by the Law of 10 February 1999 on tackling bribery (recently amended by the Law of 11 May 2007). More precisely, the articles 246 and the following ones of the penal code are dedicated to public bribery and the articles 504bis and the following ones of the same Belgian code are dedicated to private corruption.

At international level, several conventions deal with the topic of corruption:

- The Penal Convention on corruption (Council of Europe, 27 January 1999).
- Civil Law Convention on Corruption (Council of Europe, 4 November 1999).
- The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 17 December 1997).
- The Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (Council of the European Union, 26 Mai 1997).
- Convention against Corruption (United Nations Organisation, 31 October 2003).

Our country has ratified the first 4 conventions. They are therefore applicable within the framework of Belgian law. The ratification of the UNO Convention currently is subjected to a bill.

Misappropriation of public funds, conflict of interest and embezzlement committed by a public official

These violations, which are closely related to those of bribery, are governed by the Belgian penal code as amended by the Law of 10 February 1999 on the repression of corruption (more precisely the articles 240 and the following ones of the Belgian penal code).

Public procurement contracts fraud

The legislation in force on procurement contracts fraud is highly complex and voluminous. The main texts on the subject are the following:

- The Law of 24 December 1993 on procurement contracts and on some work, supplying and services markets.
- The Royal decree of 8 January 1996 on public work, supplying and services markets and on the civil engineering concessions.
- The Royal decree of 26 September 1996 establishing the general rules for the execution of the procurement contracts and of the civil engineering concessions.

In addition, it should be noted that « *a penalty clause especially applicable to the public procurement contracts does exist: article 314 of the Belgian penal code (as it was amended by the Law of 24 December 1993), punishing those who will have, in some way, to get in the way of the liberty of auctions or tenders. Are offences to this clause, the prior agreements between entrepreneurs, with or without the complicity of members of the administration.* » [Corruption and the procurement contracts, Federal Police, PJF Liège, Division Financial Enquiries, Corruption & Procurement Contracts Team, Atrium News n°8, June 2007]

As Belgium had to implement a number of European directives this legislation was recently profoundly modified. However, the new legislation (Laws of 15 June 2006 and 12 January 2007) hasn't come into force yet.

Public grants fraud

Public grants fraud is mainly proceeded against in Belgian legislation on the basis of the Law of 7 June 1994 amending the Royal decree of 31 May 1933 on the declaration that has to be done as regards grants, allowances and all kinds of benefits that are entirely or partly committed to government.

At European level, things are settled by the Convention on the protection of the financial interests of the European Communities (Council of the European Union, 26 July 1995).

PARTNERS

The various partners of the OCRC are:

The other departments of the Directorate Financial and Economic Crime

Punctually, in particular within the framework of large-scale operations, the OCRC can obtain the support from colleagues belonging to other sections of the Economical and Financial Criminality Direction, and particularly from the Central Office for the Fight against Organised Economical and Financial Criminality (OCDEFO). In some cases, it is also the OCRC itself that provides such a support to the OCDEFO.

Moreover, the Federal Computer Crime Unit (FCCU) regularly helps the OCRC when searches are carried out in computer circles, in particular in public administrations. Thereafter, the computerized data are put at the disposal of the police in a directly exploitable format.

In the same way, when forged documents are discovered (which happens quite often), the Central Office for the Repression of Forgeries (OCRF) can also give you some support through an expert evaluation.

Finally, the Federal Unit against Swindling and for Economic and financial documentation (FUSE) as for it gives support at judicial documentation management level.

The other districts of the Federal Police

The OCRC hasn't got the monopoly on investigations regarding acts of bribery, embezzlement or public grants or procurement contracts fraud. Such investigations can actually also be led by the decentralised judicial directions (PJF's) within the framework of the districts, that often have an Ecofin section.

Two different situations can then occur: either the investigation is carried out autonomously by the OCRC or by a Federal Judicial Police unit, or it is carried out jointly, one being entitled to the dossier while the other will be giving support.

This support can consist of technical assistance (in public procurement contracts files, for instance) or even of assistance at strength level (for a long period of investigation as well as for punctual actions). In some cases also, an investigation initiated by a PJF can be completely taken over by the OCRC, for instance because of its delicate nature.

In addition, it should be noted that Service Level Agreements (SLA) have been concluded between the OCRC and some PJF (currently, Hasselt, Namur, Dinant, Eupen and Turnhout). By virtue of these agreements the parties especially promise to cooperate more closely in fighting corruption.

Besides, when some of the offenders are police officers, the investigation can be led in collaboration with the General Inspectorate of the Police Services (AIG) or with Standing Police Monitoring Committee (Comité P).

The districts of the Local Police

Though such collaboration is not impossible, the main representative of the local police dealing with bribery is the PJF, which is represented within the judicial district concerned. If need be, it will have the possibility to pass the question or the piece of information on to the OCRC.

Police districts abroad

Within the context of international files (especially those relative to the European institutions), the collaboration with foreign police districts is of the utmost importance, particularly regarding the possible international letters rogatory that may well take place.

Besides, our country promised to supply information to the specialised districts abroad. Thus, our services contributed in 2006 (in collaboration with the German districts) to the set-up of a section combating corruption in Poland.

European Anti-Fraud Office (OLAF)

Because of the presence of the European institutions in Brussels, the OCRC is annually assigned to carry out several investigations regarding the offences committed by European officials. From that time on, the OCRC closely collaborates with the European Anti-Fraud Office (OLAF). It is in fact often after a public

inquiry of the latter that the judicial investigation led by the OCRC takes place on request of the Belgian magistrate.

The magistrature (public prosecutor's office and investigation jurisdiction)

It is by the magistrature that most investigation missions entrusted to the OCRC are issued. That is why a well-balanced partnership between it and our services must exist. In addition, it should be noted that there is a federal magistrate who is empowered to supervise the working of the OCRC.

The Political Investigation Service

This service, which is part of the Federal Public Service (FPS) Justice, deals with the development of criminal politics. A punctual collaboration with the OCRC is not impossible, especially regarding the elaboration of priorities or statistics.

The Office for administrative ethics and deontology

This office, which is part of the Federal Public Service (FPS) Budget and Management Control, plays a part in the prevention of corruption within the public services and collaborates with the OCRC.

The internal audit departments within the various administrations

Some administrations possess internal audit departments of their own, that are likely to make public inquiries. If they show the occurrence of irregularities, a judicial inquiry may be pursued.

Various international organisations and institutions

Punctually, the OCRC is induced to participate in conferences or to collaborate with various international organisations or institutions: European Union (EU), Organisation for Economic Co-operation and Development (OECD), Group of States Against Corruption (GRECO), Transparency International (TI), International Criminal Police Organisation (INTERPOL), and so on.

Representatives of the authorities or of the private sector

They can be of great assistance regarding ethical entrepreneurial activities, the image of the phenomenon and the detection of occurrences.

In addition, it should be noted that the article 29 §1 of the Criminal Investigation Code holds that « *each constituted authority, every public servant or officer, who in the discharge of his duties will be aware of a crime or a violation, will be obliged to immediately report it to the public prosecutor of the court within the competence of which this crime or violation will have taken place or in the area of which the accused could be found, and to transmit to this magistrate all the information, official reports and acts related to it.* »

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