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## National integrity System Assessment [Belgium]

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**NATIONAL INTEGRITY  
SYSTEM ASSESSMENT  
BELGIUM**



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# EXECUTIVE SUMMARY

## **Executive Summary**

This report presents the Belgian « National Integrity System » (NIS). The thirteen pillars which form the NIS have been analysed through a series of questions. For the most part, the formal framework (legal framework) and, to a lesser degree, the practical implementation (practice) has been examined.

Given the limited amount of empirical work that has been done on corruption in Belgium as well as the short timeframe and limited resources of the current project, some limited choices had to be made. Therefore this study is focused on the federal level, while the regional level is only discussed occasionally.

This report focuses on legal and other visible aspects, the research on practice being less developed. This study can therefore not be considered as the final answer to the numerous questions contained in the NIS framework. The authors of this report consider it as a first attempt at exploring the NIS as well as aiming to offer a broad overview of the NIS in Belgium.

This summary briefly presents the empirical data available of the (perception of) prevalence of corruption in Belgium – the data are particularly limited – followed by the 13 pillars of the NIS.

### **1. Corruption in Belgium**

The comparative analysis of the perception of corruption (at the business as well as the public level) places Belgium at an average European level. Corruption is perceived to be higher in Belgium than in the Scandinavian countries but lower than in France or Spain for example.

The studies are not extensive enough to enable clear conclusions. Moreover, official statistics of prosecutions and convictions given by the police and justice department have proven difficult to analyze. Besides problems with information registration, criminal offences tend to receive claims more often than corruption since the former are easier to prove than the latter. However, political scientific studies have argued that, in the last few years, certain phenomena which are linked to corruption (such as political appointments or permanent holding of position) are less frequent.

### **2. The National Integrity System in Belgium**

This report is based on a qualitative collection and analysis of data. Three important sources of information have been used: laws and regulations, secondary studies and sources, and 32 face-to-face interviews. Even though this is a qualitative study, TI chose to score the constituent parts of the NIS in order to provide the reader with a clear and accurate overview of the information that has been presented. The resulting scores should be treated with caution and should not be used to make comparisons with other countries.

This summary outlines the individual pillar findings according to their given themes: resourcing (financial, human, infrastructure), independence, transparency, accountability, integrity and the specific role played by the given institution. The overall analysis for each of the pillars can be found at the beginning of the according section in Chapter 8. Before discussing each of the specific themes, a brief outline is given of how the NIS pillar model has been transposed into the Belgian context.

### *Pillars : Interpretation & Scope*

1. (« *Legislature* ») : the Federal Parliament (House of representatives and Senate);
2. (« *Executive* ») : the top level of executive power (Federal government and the cabinet ministers (strategic cells))
3. (« *Judiciary* ») : the Belgian judicial system, paying particular attention to the judges;
4. (« *Public sector* ») : the federal public services and programmes (SPF and SPP), the federal scientific institutions, non-profit making institutions and social security institutions ;
5. (« *Law enforcement agencies* ») : Local and Federal Police (and, to a lesser degree, special inspection services in general and the administration of tax and customs in particular);
6. (« *Electoral management body* ») : actors involved in election organisation and control, giving particular attention to the Commission which monitors the electoral expenditure and transparency of political parties (Control Commission) as well as the Commission which verifies the validity of elections and credentials;
7. *Ombudsman* : the parliamentary ombuds services, focusing on the federal level, but also paying attention to regional parliamentary ombudsmen
8. *Supreme audit institution* : the Court of Auditors ;
9. («*Anti-corruption agencies (ACA)* ») : Central Office for the Fight against Corruption (Federal Police) and the Bureau of Ethical Administrative Conduct (SPF Budget and Management Control);
10. (« *Political parties* ») : the political parties ;
11. *Media*: the audio-visual and written press, also focusing on new developments and technology ;
12. (« *Civil society* »): civil society organisations in their different juridical forms, focusing on established organisations as well as recently created ones that have developed due to « new social movements ».
13. (« *Business* ») : businesses, in their various juridical forms.

### *Resources*

Concerning resources of respective institutions, there are no major cross-cutting issues in terms of financial, human or infrastructural resourcing. Nevertheless, there were a few outstanding limitations within specific pillars. . There are, for example, indications to an inadequate level of training at parliamentary level. For the Justice department, there are indications that it struggles to maintain enough personnel and has serious problems managing and supporting its staff (e.g. : IT support). Pillar 9 points to insufficient human resources at the Central Office for the Fight against Corruption (OCRC). The assessment under pillar 10 brings to light the advantages allowed for the larger established parties by the current political party financing system.

### *Independence*

Many pillars received a high grade for their level of independence, particularly in law. For most, the legal foundation guaranteeing their independence is good to very good, although some problems were detected. Perhaps the most outstanding is the Parliamentary Commission for the Monitoring of Electoral Expenditure, and Financing of Political Parties (*Commission parlementaire de contrôle des dépenses électorales et de la comptabilité des partis politiques*). The report highlights certain factors which can make it quite difficult for this Commission to take independent decisions.

While the legal framework is generally satisfactory, that is considerably less the case for the practice. In the legislative sphere, the independence of the parliament is seriously curtailed by the government, political parties and

various interest groups. The executive, which consists of cabinets and government, and which is formally to be controlled by the parliament, in reality seems to be subject to considerable influence from the party headquarters, and to some degree, civil society organisations. Also concerning the area of judiciary, a difference has been perceived between the legally provided independence and the practice. In the area of judiciary, although the creation of the High Council of Justice had made the recruitment and promotion of judges more objective, a number of risks remain. We have also observed the impact of media and public opinion on judgments, and in a few cases signs of political interference have been evoked.

Concerning the public sector, there are cautious signs that political appointments have decreased in the last two decades. However, a certain influence of politics remains, especially amongst senior officials as holders of public office. A similar situation exists within the police.

The independence of ombudsmen and the Court of Auditors, both parliamentary institutions, is deeply founded in law and seems to be maintained in practice. The independence of the two « anti-corruption » services seems satisfactory, both legally and in their implementation, even though the lack of resources might threaten this independence.

The Belgian political parties seem to be independent, legally and in practice, although a limited influence can be exercised through the decision making on how parties are financed. The independence of the media is well guaranteed by the law. However, risks have been observed in practice, due to the direct links and interdependence between the political world and journalists, as well as the commercial pressure exercised on the media.

A strong interdependence exists between civil society and the authorities, even though there are no really problematic government interventions. The established organisations are most concerned, though the government exercises influence over all organisations which receive its financial subsidies.

Concerning the « Business » pillar, the report highlights the low number of offences which are reported to the authorities, and the great differences between companies when it comes to preventing corruption.

We have also observed specific risks at the inter-municipal level. Good corporate governance principles are not always respected and conflicts of interest are possible, for example when a public official holds a management position. There is a similar risk when political officials have a management position in a private company.

### *Transparency*

Two general observations can be highlighted for all pillars when it comes to transparency. Firstly, under almost all pillars, great efforts have been made to make information publicly available, in particular through websites. A number of good practice examples are discussed in the report. Secondly, a large number of office holders are legally required to submit a record of offices and assets. The record of offices is made public, which encourages transparency. A few questions remain concerning the monitoring of the records' accuracy. The record of assets also has some limitations: declaring debts is not mandatory and the record can only be viewed by an investigating judge and under particularly strict conditions..

Other observations regarding particular pillars could be useful. High grades were awarded to those pillars where a number of efforts were made, legally and in practice, to maintain high standards of transparency. This is especially the case for the ombudsmen.

Efforts are being made in other pillars, but important flaws remain. For example, within the « executive » pillar, the ministerial cabinets have few legal obligations to be transparent, despite their central position within the political

decision making process. Measures to change this are being developed at governmental and cabinet level. Concerning the judiciary, attempts have been made to increase its transparency, but it has yet to prove more effective, as several public surveys show. During the last two decades, a number of initiatives within the public sector have been made to increase transparency in the legislation for public information disclosure by the authorities. In practice, there are still limitations, such as delays. Also in the area of government assignments, transparency could be strengthened.

The same observations that were made for the « executive » can be made for the pillars which denote the « anti-corruption services » and the « services that ensure respect of the law ». The Court of Auditors respects the legal obligations, but goes in practice a bit further with the information made available. However, the members of the Court of Auditors and their assistants are not legally obliged to declare their offices or assets.

The transparency of the electoral process (see the « electoral authorities » pillar) generally seems satisfactory, even though there are signs of limitations concerning the financing of political campaigns.

The same observation can be made concerning the « political parties » pillar. There is little transparency of the indirect financing of political parties (in particular through the contributions of political office holders and through financial means which are meant for parliamentary fractions).

Concerning civil society and business, the law prescribes numerous obligations to uphold transparency for organisations registered as legal personalities. There are no indications that these are systematically not being applied (with a few exceptions when it comes to legally inactive persons). However, there are some important limitations when it comes to anti-corruption measures taken by civil society and business organisations.

#### *Accountability*

There are important differences between pillars in terms of accountability. For many pillars there is also a big difference between formal rules (« legal framework ») and practice.

Under the « Legislature » pillar, scientific research suggests that in their agenda setting the parliament, and, in a broader sense the political sphere, discusses very few of the questions that are important to the public. Besides, the lack of evaluation of existing laws is underlined. At the « Executive » level, in addition to a lack of control over parliament, one can note the absence of systematic audits of federal ministerial cabinets (strategic cells).

At the judicial level, concerning responsibility mechanisms, there is an important difference between the formal framework and mechanisms which seem satisfactory, and their implementation where subsisting problems include the inefficiency of complaints and disciplinary procedures. The same discrepancies are present in the public sector: although the necessary mechanisms (such as disciplinary procedures, internal controls and the creation of auditing services) were planned, in reality these measures have not been implemented or are only barely functioning. Furthermore, despite several attempts, the federal level has not yet managed to create a functioning whistleblowing system.

An extended and complex network of actors (e.g. the “P Committee”, the Inspection Committee of the local and federal police, the judiciary) is responsible for the integrity of the services that apply the law. This is problematic in practice, for example when it comes to disciplinary procedures and because judges are not inclined to condemn members of these services. The same goes for anti-corruption services.

In general, accountability seems to be good within the electoral process (« electoral authorities » pillar). Nevertheless, no appeal is possible against a decision taken by the Commission which monitors the validity of elections and credentials.

The political parties have elaborate accountability and control systems, even though some important limitations are apparent. The organisation of electoral expenditure monitoring and political parties financing is complex. There is no real control exercised over parties which get no public donations. There are ways to evade obligations to register donations and it is sometimes difficult to clearly understand the finances of political parties given the complex and intricate network around these parties (such as non-profit organisations (asbl)).

The ombudsmen are accountable to their respective parliaments, although the monitoring of the implementation of their recommendations is limited (except amongst the Flemish). The Court of Auditors is accountable to parliament, for example through its reports. The Court is audited as well, even though this is done through its own members.

There are a number of formal mechanisms that hold the media to account. They seem to be working well in practice, while maintaining enough press liberty.

The new law concerning non-profit organisations has reinforced the management and the level of transparency that organisations in civil society are submitted to. Measures are also being taken to address false non-profit organisations. The business world has developed different corporate governance codes of conduct. Important aspects of those codes of conduct are enforced by law. However, these only apply to businesses in the financial sector and stock market listed companies.

In other, especially medium or small, businesses, attention for integrity policy is in general still limited. Different efforts are currently being made to address this situation, for example through networking activities.

### *Integrity*

There is still much to do when it comes to integrity and policies of integrity.

Within parliament, there are very few policies of integrity. The judicial framework is very limited (no ethical code of conduct for members of parliament, quasi non-existent regulations concerning gifts or conflicts of interests) and even though additional mechanisms exist in practice, these are also very limited. The same problem can be observed within the « Executive ». The Federal level lacks an ethical code of conduct for the ministers or members of cabinet, and several other mechanisms of promoting policies of integrity do not exist. This is especially remarkable because numerous problems (concerning integrity) are generally ascribed to the cabinets. The policies of integrity of the judiciary are more advanced but still have flaws, especially in terms of control and discipline procedures.

The situation in the public sector is better, especially when it comes to formal arrangements (e.g. the ethical code of conduct). The effectiveness of these measures, however, is deficient. Integrity training is available, but not in a systematic way. The same goes for the « law enforcement agencies »: many measures and policies are available but in practice however we can not speak of a fully implemented integrity policy. The situation in the « anti-corruption services » is better as a result of a few additional efforts.

The Ombudsmen are not tied to any formal ethical code of conduct but are made to respect a number of relevant rules. An incident which implicated a federal ombudsman has nevertheless highlighted weaknesses in the monitoring of ombudsmen's activities.

The Court of Auditors has a number of formal integrity measures (e.g. an ethical code) and they apply them in practice. Additional measures could however be considered.

In the media sector, there are a number of ethical codes and mechanisms that monitor the integrity of journalists. Due to the development of new media, an important question is raised as to how these rules can be imposed on non-professional journalists. Additional factors such as time constraints (especially because of the development of new media) and commercial pressures create risks for the professional journalist. These pressures exert a negative influence on the verification of the validity of information, even if there is little empirical evidence to support this.

Efforts are being made to increase integrity amongst civil society organisations, among others by directives the sector formulated itself. With regard to organisations receiving public funds, the authorities maintain some control over the integrity of money disbursement. The business sector also initiated several policies to promote integrity. Nevertheless, an advanced management of integrity issues has only been observed in a limited number of companies or civil society organisations. There are also limits in the regulations, which, as a consequence, restrict the capacity of expert accountants and auditors in reporting cases of fraud or corruption.

#### *Role in the National Integrity System*

In line with NIS methodology, questions were also asked regarding the role played by the institutions of each pillar in the NIS. This summary is limited to a few key observations.

During our analysis of the « Legislature » and the « Executive » pillars, we observed that there was a limited interest to combat corruption. Although there are some legal initiatives, they are the result of international obligations and regulations. The analysis of the « political parties » pillar confirms this observation. The analysis of the federal election programme of June 2010 showed some scattered interest for specific anti-corruption measures, but the theme was not a priority. This is also true for the Di Rupo government agreement of December 1<sup>st</sup>, 2012.

The judiciary, the law enforcement agencies and the anti-corruption services are part of the fight against corruption but it is hard to demonstrate their commitment due to limited data

The NIS sees two important roles for the public sector: public education on corruption issues as well as close cooperation with the private sector and civil society. From this point of view, one can determine that this does not happen very often in Belgium. The NIS also contains a specific heading concerning the prevention of corruption in the handing out of government assignments. Although the legal framework is fairly well developed, the procedures contain a number of. In addition, the policy regarding corruption risks linked to subsidies is relatively limited. There is also a serious gap when it comes to the fight against corruption within the federal government. To date, no actor is entrusted with an administrative research competence

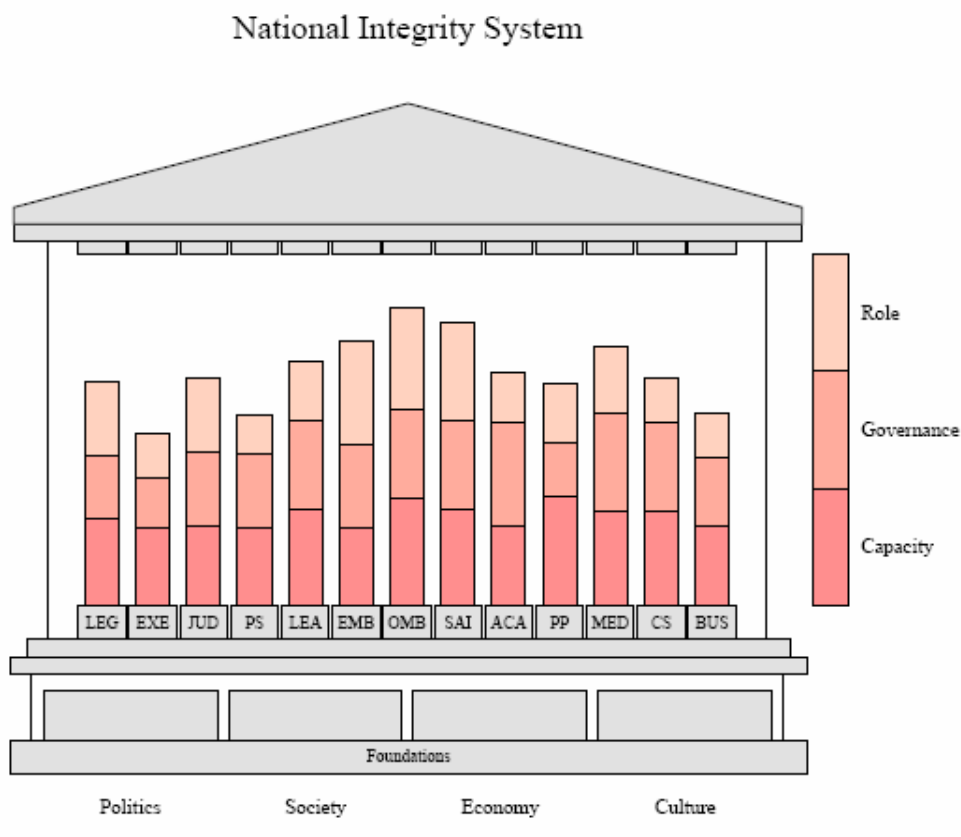
The available information suggests that the Ombudsmen are doing their job of promoting good governance practices effectively. The Court of Auditors also seems to be carrying out its role in a satisfactory manner. It has also initiated specific initiatives to audit the integrity of governmental organisations and has developed the necessary expertise.

Within the Belgian media, with a few notable exceptions, extensive journalistic investigations are limited, even though there are a few initiatives promoting this type of journalism. This is due to a number of constraints, for example insufficient editorial staff which limits extensive time-consuming investigations.

As demonstrated above, civil society as well as business companies are making efforts to fight internal corruption, but the interest to really actively engage in a broad anti-corruption policy transcending the company is rather limited. The civil society organisations (such as TI) and companies which are specialised in the prevention or fight against corruption are an evident exception in this case.

### Conclusion

In conclusion, four categories of problems can be identified: missing functions, underdeveloped functions, limited coordination and limited implementation.



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|------|---------------------------|------|---------------------------|
| LEG. | Legislature               | SAI. | Supreme Audit Institution |
| EXE. | Executive                 | ACA. | Anti Corruption Agencies  |
| JUD. | Judiciary                 | PP.  | Political Parties         |
| PS.  | Public Sector             | MED. | Media                     |
| LEA. | Law Enforcement Agencies  | CS.  | Civil Society             |
| EMB. | Electoral Management Body | BUS. | Business                  |
| OMB. | Ombudsman                 |      |                           |