

# Belgium

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## **CORPORATE SOCIAL RESPONSIBILITY IN GENERAL**

### **1. CSR values and practices, including levels of support from government, business and the general public**

Belgian companies have been increasingly concerned in recent years with applying CSR values and principles. This process, however, is only in its infancy. Unlike in the United Kingdom, there is no Belgian minister with responsibility for CSR. However, since 2003, there has been a minister for sustainable development (currently Ms Els Van Weert). Most corporations that aspire to CSR values and practices are multinationals or larger companies – although, according to some NGOs, small and medium-size enterprises (SMEs) are also starting to pay attention to these issues. Traditionally, there have been three types of attitudes towards CSR: (i) proactive management of CSR; (ii) adoption of some CSR values and practices following, for instance, the occurrence of specific problems or the revelation of important crises in the press; and (iii) no implementation of CSR values or practices unless they become mandatory.

An illustration of the growing concern among Belgian companies with CSR can be found in the corporate agreement on proxy voting, between Fortis Investment and Deminor (a privately owned company whose purpose is to protect minority shareholders), entered into on 24 March 2004. Pursuant to this agreement, Deminor Rating (a service provider active in the corporate governance field) will examine a number of identified companies in which Fortis Investment has a stake, in order to determine whether these companies furnish sufficient information regarding their CSR practices. If this investigation reveals that the information provided does not reach a predetermined threshold, as agreed between Deminor and Fortis, Fortis Investment will not approve the management report and annual accounts of the company at the next ordinary general meeting.

### **2. Laws, statutes, government publications or other significant framework documents**

Under Belgian law, there is no comprehensive set of legal rules or codification of CSR regulations, and CSR values and practices are found only as part of specific legislation, such as employment or procurement laws. Some bills regarding CSR have been introduced in the Belgian Parliament: the most impressive one, in 2000, sought to allow the Belgian courts to hear cases involving any company that violated specific social rights, as long as these companies were in one way or another located in Belgium. This bill was never enacted into law.

Another very interesting bill, introduced in Parliament on 6 January 2004, aims to establish a link between compliance with the rules on social responsibility and sustainable development and the grant of subsidies by the public authorities. The bill attempts to make the grant of subsidies contingent on compliance by companies with (i) the Guidelines for Multinational Enterprises published by the Organisation for Economic Cooperation and Development; (ii) the five basic conventions of the International Labour Organisation on the abolition of forced labour (Conventions Nos. 29 and 105), freedom of association and protection of the right to organise (Convention No. 87), the right to organise and collective

bargaining (Convention No. 98), discrimination with respect to employment and remuneration (Conventions Nos. 100 and 111), and minimum age and the worst forms of child labour (Conventions Nos. 138 and 182); (iii) the UN Norms of Responsibility for Transnational Corporations and Other Business Enterprises with regard to Human Rights of 13 August 2003; (iv) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (December 1998); and (v) the operational and environmental norms published by the World Bank. The bill also proposes to establish an ethics committee to designate recognised organisations to make enquiries. Depending on the results of such enquiries, the minister in charge of granting subsidies can decide to publish the report, to terminate the subsidies or to require repayment of the subsidies. In addition, the minister can also impose a fixed fine and bar the relevant enterprise from applying for subsidies for a determined or indefinite period of time. There is also a large body of soft law in Belgium. Examples include the European Commission's green paper of July 2001 and its communication of 2 July 2002 on CSR, the European Parliament's report of 28 April 2003 on the subject, and the final report on CSR of the EU multi-stakeholder forum of June 2004.

The Ministry of Economic Affairs has set up a working group, composed of members from various departments, to discuss CSR issues. Its mission is three-fold: (i) to assist the Belgian 'high-level work group' implement a Community framework for CSR; (ii) to prepare proposals and specific actions aimed at developing and controlling the quality of CSR in general and certain aspects in particular (a code of good practices, reporting and labelling standards, socially responsible products, etc); and (iii) to serve as a federal think tank for CSR matters. Furthermore, the Belgian government has issued a 2000-2004 plan for sustainable development and has already prepared a 2004-2008 plan. In the latter document, the government encourages CSR, but further explains that CSR is a broad concept whose meaning is not always clear. The government, and the economic affairs ministry's working group, have both set the goals of defining more precisely the concept of CSR, developing a framework for sustainable development and encouraging debate with all relevant parties. In general, various stakeholders in a company have different ideas and opinions as to whether CSR values and practices should be incorporated in binding instruments. While companies themselves are often rather reluctant to do so, the trade unions are more enthusiastic. For investors and consumers, the most important element of CSR is the provision of reliable information regarding companies' products and behaviour in this regard.

### **3. International treaties, conventions or standards**

Belgium is a member state of the European Union, and so Community regulations and directives have legal effect. In addition, green papers and recommendations issued by the Community institutions are given considerable weight by the Belgian authorities. Belgium is a signatory of the 1992 Rio Declaration on Environment and Development and attended both the 1992 UN conference on environment and development in Rio de Janeiro and the 2002 world summit on sustainable development held in Johannesburg. Belgium has also played an active role in the revision of the OECD Guidelines for Multinational Enterprises, which deal with a wide range of topics relating to CSR, including sustainable development, the availability of information, working conditions, the environment, the fight against bribery, consumer protection, science and technology and competition. Finally, Belgium has implemented the eight basic conventions of the International Labour Organisation.

### **4. Non-statutory sources of liability for companies**

Under Belgian law, directors of a company may be held liable in tort if they have failed to act in a prudent and diligent manner, provided that damage resulted from their behaviour and a causal link between the behaviour and the damage can be shown. Since the entry into force of the Act of 4 May 1999, Belgian companies can also be held criminally liable.

The courts can levy fines on companies if their corporate organs approved criminally sanctioned behaviour with respect to any offence linked to the fulfilment of their corporate purpose or the safeguarding of their corporate interest or which was obviously committed on their behalf.

### **5. Principal institutions, government agencies and/or major non-governmental organisations (NGOs)**

Since the entry into force of the Act of 5 May 1997 on the co-ordination of federal policy on sustainable development, federal reports on sustainable development have been drafted; these frequently address CSR matters. A federal inter-departmental working group has been set up further to examine CSR matters and to assist in CSR development on the national and international levels (see section 2 above).

There are quite a few NGOs active on CSR in Belgium, of which two are especially worthy of attention. Business and Society Belgium, a non-profit organisation, acts as a spokesperson on CSR. Enterprises and organisations may become members and obtain information and services regarding CSR. Business and Society Belgium is the local branch of CSR Europe and very active in CSR Europe's programmes. The organisation currently has more than 30 members, including the four big federations of employers. Secondly there is Global One, which published the Responsible Enterprise Guide, and, at the request of the Ministry of Economic Affairs and Scientific Research, carried out a study of public and private tools used to further CSR. Deminor, a company active throughout Europe, whose work with Fortis Investment was mentioned above, has developed a corporate governance programme. This operates through its subsidiary, Deminor Rating, which rates the corporate governance compliance of companies. CSR criteria are among those examined.

## **SPECIFIC AREAS OF CORPORATE SOCIAL RESPONSIBILITY**

### **6. Human rights**

The Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms is applicable in Belgium, as are the UN Human Rights Covenant, the UN Covenant on Political and Civil Rights, and the UN Covenant on Economic, Social and Cultural Rights. Protection of fundamental human rights is also enshrined in the Belgian Constitution. Under Belgian law, the *Cour d'arbitrage* (Constitutional Court) is responsible for ensuring that Belgian legislation complies with and ensures respect for basic human rights.

The UN Norms of Responsibility of Transnational Corporations and Other Business Enterprises with regard to Human Rights (13 August 2003) also provide clear guidelines for enterprises with respect to their obligations to comply with and promote human rights in their sphere of influence. Human rights are also dealt with in other areas of law, such as employment (eg, the prohibition on child labour).

### **7. Corruption**

On 9 June 1999, Belgium implemented the OECD Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions, which provides that "enterprises should not, directly or indirectly, offer, promise, give or demand a bribe or other undue advantage to obtain or retain business" and tries to ensure that Western countries enact national legislation to outlaw the bribery of foreign public officials.

Furthermore, Ducroire/Delcredere, the Belgian export credit agency, expressly requires applicants to certify that both the exporter and the intervening bank have taken note of the law of 9 June 1999 on the approval of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997. The general terms and conditions of Ducroire/Delcredere provide that "the insured

may forfeit his rights and be obliged to reimburse any amounts paid to him if he is ordered under a final court order, pronounced on the basis of criminal provisions, to enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1999. Ducroire/Delcredere's commitments are automatically suspended in the event legal proceedings are initiated against the insured on the basis of the above provisions. The insured shall report without delay any proceedings started or any criminal sentence pronounced against him."

Finally, as mentioned above, since 1999, Belgian companies can be held criminally liable and fined accordingly.

## **8. Corporate governance and business ethics**

In an agreement of 10 July 2003, the Belgian federal government declared it would strengthen and support all institutions that encourage the adoption of CSR rules and practices, such as Ducroire/Delcredere, and encourage companies to adopt ethical behaviour. A bill is currently pending in the Belgian Parliament to introduce into the Company Code an obligation for all listed or public companies to publish their directors' remuneration.

Euronext Brussels, the Belgian Commission for Banking, Finance and Insurance, and the Belgian Federation of Enterprises jointly established in January 2004 a corporate governance committee to draft a code of best practice for listed companies. The Belgian Commission for Banking, Finance and Insurance has offered publicly to commend compliance with these rules. This code is scheduled to be completed, presented and issued on 14 December 2004 and to enter into force on 1 January 2005. For the time being, three separate sets of corporate governance recommendations and guidelines have been issued by the Belgian Commission for Banking, Finance and Insurance, the Brussels Stock Exchange (part of Euronext) and the Belgian Federation of Enterprises, respectively. The new code will consolidate these texts and incorporate recent economic developments and new market expectations in terms of corporate governance, while taking into consideration international rules such as OECD recommendations and the EU plan of action on modernising company law and enhancing corporate governance, as well as various national codes of corporate governance. The stated objective of the current draft, which is beyond the scope of this report, is to create long-term value and sustainable growth.

## **9. Corporate responsibility to employees**

Belgium has ratified the eight basic Conventions of the International Labour Organisation (the Acts of 20 January 1944, 23 January 1961, 23 October 1951, 12 December 1953, 23 May 1952, 22 March 1977, 19 April 1988 and 8 May 2002). These Conventions offer the bare minimum of guarantees in terms of CSR and have been ratified by 99 countries. Enforcement of the Conventions throughout the entire production and distribution chain should strengthen sustainable growth in countries where they are applied. Since 1998, Belgian companies have been required to publish a social balance sheet (*bilan social*), which is incorporated into their annual accounts and published at the same time. This balance sheet must contain: (i) employee data; (ii) shifts in personnel during the fiscal year; (iii) the use of measures to encourage employment; and (iv) the education and training of employees. The purpose of the social balance sheet is to increase transparency in terms of corporate social policy. Belgian procurement legislation also frequently includes employment thresholds to be met or complied with by the applicant.

On 27 February 2002 the Belgian legislature took the remarkable step of enacting a law to promote socially responsible production and create a social label. This label will be affixed to qualifying products of a company, ie, it is linked to a product rather than to a particular company, upon completion of an audit verifying, amongst other factors, compliance with the eight basic ILO Conventions. By granting the label to a product

rather than a company, the government aims to ensure that companies verify that their suppliers and sub-contractors also apply the core ILO rules. Thus, the label will serve as an instrument to spread CSR beyond Belgium's borders.

On 11 June 2002, the Belgian Parliament passed an act on the prevention of violence and moral and sexual harassment at work. In addition, on 11 July 2002, the legislature passed a Royal Decree that implemented the same principles, and on the same date, the Federation for Belgian Enterprises also issued a circular on the topic. The Act entered into force on 1 July 2002. Parliament has also passed the Act of 25 February 2003, aimed at fighting discrimination; the Act of 16 December 2002 to create an institution to promote the equal treatment of men and women, the aim of which is to fight discrimination and inequality based on gender; the Act of 5 June 2002, to prevent discrimination against workers under an employment contract of definite duration; and the Act of 20 January 2003 aims to strengthen laws against racial discrimination.

### **10. Corporate responsibility towards the environment**

Belgium takes an active interest in international environmental protection. As well as attending the Rio and Johannesburg summits, Belgium has also ratified three key international treaties: the Kyoto Protocol, the Convention on Biological Diversity and the Convention to Combat Desertification. For the time being, the Belgian government's prime objective is "to establish the conditions required to ensure international implementation of the Kyoto Protocol".

Community environmental legislation is, of course, applicable in Belgium – for instance, Regulation 1946/2003 on genetically modified organisms of 15 July 2003, and Directive 2004/35 on environmental liability with regard to the prevention and remedying of environmental damage, which has yet to be transposed into Belgian law. Other notable instruments are the Convention of the Council of Europe on the protection of the environment through criminal law of 4 November 1998, which has yet to enter into force, and the European Commission's proposal for a directive on the protection of the environment through criminal law. The latter has yet to be adopted and is still in the legislative stage; moreover, the European Commission has challenged the Council's framework decision of 27 January 2003 before the European Court of Justice.

At the national level, Belgium has enacted a wide variety of laws aimed at protecting the environment. Due to Belgium's rather complex institutional structure, these laws had to be adopted at both the federal level and by the three regions (Flanders, Wallonia and the Brussels-Capital Region). They pertain to the evaluation of the environmental impact of certain programmes and plans, the prevention and management of soil pollution, environmental permits and planning, waste, soil and/or groundwater pollution, air quality, etc. These regulations usually provide for criminal sanctions in the event of violation.

The Brussels Institute for Environmental Management has developed a system of eco-labels to be granted to eco-dynamic enterprises, ie one that takes environmental concerns into account in its day-to-day management. Any company applying for such a label must file the necessary documents; a jury will then decide based on 92 predetermined criteria whether to grant the label. The idea is to encourage SMEs to move towards an international environmental label, such as the European eco management and audit scheme (EMAS) label, which is available to private and public entities in the EU and the European Economic Area. Belgian companies may also apply for ISO 14001 certification, which is available to any organisation that wishes to establish, implement, maintain and improve an environmental management system in order to ensure compliance with state environmental policy. ISO 14001 specifies the requirements for environmental management systems so as to enable organisations to develop objectives and implement policies that take into account laws and other binding requirements as well as information about significant environmental issues. It applies to those environmental aspects that the

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organisation identifies as capable of being controlled and influenced and does not set specific environmental performance standards (see [www.iso.org](http://www.iso.org)).

Ducroire/Delcredere has also issued an environmental policy, which entered into effect on 1 January 2000 and applies to export credits exceeding one year and to investments. According to the organisation's website ([www.ducroire.be](http://www.ducroire.be)), "Ducroire/Delcredere tries to reconcile the interests of society with those of the export community by seeing environmental studies through to a successful conclusion while keeping in mind the concern for confidentiality, quick decision-making and equal treatment of competitors". The application form for medium- to long-term export transactions includes an environmental heading.

### **11. Corporate responsibility to communities**

Belgian companies that apply CSR practices and values are keen to take into consideration, insofar as possible, the interests of the local communities affected by their decisions or activities. The non-profit organisation Business and Society has an "employee involvement" project, pursuant to which six companies have undertaken to lead pilot projects on a wide variety of issues, such as boosting NGOs, providing aid to young retirees and the handicapped, refurbishing schools, renovating underprivileged areas, giving classes on the internet to the disadvantaged, etc.

### **12. Corporate responsibility for overseas activities**

The involvement of Ducroire/Delcredere is extremely important in promoting CSR by Belgian companies working abroad. Ducroire/Delcredere refers to the OECD Guidelines for Multinational Enterprises. Another important initiative is the bill introduced in Parliament on 6 January 2004 that seeks to make the grant of subsidies by the public authorities contingent on compliance with the rules on social responsibility and sustainable development, discussed above, section 2.

### **13. Procurement**

At both the Community and national levels, procurement applications increasingly refer to, or include, social and environmental clauses, pursuant to which the applicant must declare or undertake to comply with certain social or environmental obligations (for instance, hiring a given number of unemployed people, implementing a specific system for reducing soil pollution or waste, etc). On 20 April 2004, a bill was introduced in the Belgian Parliament to create a specific 'ethics register' in which companies found by a court to have violated the laws on racism, xenophobia and discrimination in the hiring process will be listed, and subsequently precluded from applying for or receiving public resources.

### **14. CSR reporting and socially responsible investing**

There is no general obligation on CSR reporting for the time being. The current annual report which all companies must file is not required to include any information on compliance with CSR values and practices, with the exception of the social balance sheet, discussed above. However, there seems to be a growing trend towards reporting CSR practices. For instance, the European Federation of Accountants has requested the EU Multi-stakeholder Forum to give CSR reporting "the same level of recognition as financial reporting".

In Belgium, some interesting legislative initiatives have been taken. First, a fund to promote socially responsible and sustainable economic policies has been created, pursuant to the Act of 8 April 2003, the goal of which is to provide assistance to any form of corporate involvement, including shareholdings or loans, that benefits activities linked to such policies. At least 70 per cent of the fund must be invested in these activities, developed by companies or non-profit organisations and embodying the principles of: (i) emphasis on labour rather than capital; (ii) promotion of autonomous management; (iii) placement of

individuals and the collective before the profit motive; (iv) encouragement of the democratic decision-making process; and (v) the promotion of sustainable development. A tax incentive is also provided, ie, any underwriting of registered bonds will generate a tax deduction for individual taxpayers.

Another interesting bill recently introduced in Parliament has the goal of setting up a specific entity, UCIT, to promote socially responsible economic policies and the encouragement of participation in this sector. Here again, there would be a tax incentive, as investors would enjoy an immediate tax break corresponding to five per cent of the invested amount for a period of at least five years, up to €250 per year. Another Act, of 3 November 2001, established a Belgian investment company for developing countries. Article 3 of the Act states that the goal of the company must directly or indirectly lead to sustainable employment in accordance with fundamental labour rights as defined in the ILO basic Conventions. In addition, the company must voluntarily adopt a policy regarding the equal treatment of men and women. Finally, an Act of 3 April 2003 on supplementary pensions and their tax treatment includes a chapter on transparency, pursuant to which the legal entity or natural person overseeing the supplementary pension fund must file an annual management report. Such a report must include information on the fund's long- and short-term investment strategy and the extent to which social, ethical, and environmental concerns are taken into account. While these pension funds are not obliged to engage in socially responsible investing, they must clearly disclose whether such criteria are taken into account in their investment strategy and choices.

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