

CRIMINAL LIABILITY OF LEGAL ENTITIES UNDER BELGIAN LAW: A HIGH-LEVEL OVERVIEW

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ABSTRACT

The principle that legal entities can be held criminally liable was first introduced into Belgian law in 1999. Some 20 years later, Belgian Parliament reviewed the rules, and adopted a number of significant changes. The present article offers a high-level overview of the currently applicable legal regime.

TABLE OF CONTENTS

I.	INTRODUCTORY REMARKS	51
	A. Legislative History	51
	B. Article 5 Criminal Code	51
	C. Intertemporal Law	52
II.	SCOPE OF THE CRIMINAL LIABILITY OF LEGAL ENTITIES	52
	A. No Limitation as to the Nature of the Criminal Offence	52
	B. Both Public and Private Legal Entities can be held Criminally Liable	52
	C. Non-Belgian Legal Entities can be held Criminally Liable	54
III.	CRIMINAL LIABILITY OF LEGAL ENTITIES AND PHYSICAL PERSONS ACTING WITHIN THE FRAMEWORK OF LEGAL ENTITIES	54
	A. Attribution of Offences to Legal Entities	54
	B. Attribution of Offences to Physical Persons	56
	C. Effects of Delegation of Competences to Physical Persons	57
	D. Effects of Corporate Compliance Programs	58
IV.	EFFECTS OF CORPORATE RESTRUCTURINGS	58
V.	PROCEDURAL ASPECTS	59
VI.	EFFECTS OF CORPORATE RESTRUCTURINGS	59

I. INTRODUCTORY REMARKS

A. Legislative History

The idea that legal entities could violate criminal law was accepted in Belgian case law by the late 1960s.¹ As legal entities are capable of juridical acts, Belgian courts reasoned that they are also capable of juridical acts that violate criminal law.² However, absent a specific legal basis, courts could not hold legal entities liable for criminal offences.³ A basic principle of Belgian law is that criminal responsibility is individual: a person cannot be liable for another person's actions. As a legal entity by definition acts through the intervention of a physical person, only the latter could be held responsible for any actions violating criminal law, even if those actions were taken on behalf of a legal entity.⁴

This situation was found to be unsatisfactory on multiple levels. Lacking alternatives, prosecutors would try to take action against individuals for crimes that could be attributed to a legal entity. Simultaneously, a correct application of the principle of individual criminal responsibility resulted in difficulties holding anyone liable for offences committed within a corporate context. For example, if a company's board of directors jointly or secretly decided to violate a criminally punishable norm, prosecutors would find it impossible to prove directors' individual contribution to the illegal decision.

B. Article 5 Criminal Code

Belgian legislature tackled this situation with the Act of 4 May 1999, which introduced a new article 5 into the Belgian Criminal Code (hereinafter: "BCC"). Article 5 BCC laid down the principle that legal entities can be held responsible for violations of criminal law.⁵ This responsibility is autonomous: a legal entity can be held liable even if the physical person through which it acted is not deemed at fault or cannot be identified.⁶ Some

¹ See for instance Cass. 11 December 1967, Arr. Cass. 1968, 524. For further details on the legislative history of article 5 BCC, see F. DERUYCK, *DE RECHTSPERSOON IN HET STRAFRECHT*, (Mys en Breesch/ Kluwer Wkb Nv, 1996, 1st ed.) 4-39.

² Patrick Waeterinckx, *De strafrechtelijke verantwoordelijkheid van de rechtspersoon en zijn leidinggevenden*, 2nd ed., INTERSENTIA, 49 (2015).

³ "Societas delinquere potest, sed non puniri potest." See for example, Advocate-General R. H., *De Termicourt's submissions to Cass. 16 December 1948*, JT, 150 (1948) (free English translation): "A legal entity can therefore commit, through its representative bodies, a violation of criminal law as well as any other illicit act [...] Where the Court affirmed in several earlier rulings that a legal entity cannot violate criminal law, it sought to stress that the punishment provided under criminal law applies not to the legal entity, but to the physical person through which the legal entity acted."

⁴ F. DERUYCK, *DE RECHTSPERSOON IN HET STRAFRECHT*, (Mys en Breesch/ Kluwer Wkb Nv, 1996, 1st ed.) 12, 273.

⁵ Act of 4 May 1999 introducing the criminal responsibility of legal entities, Belgian State Gazette 22 June 1999.

⁶ Report on behalf of the Commission of Justice, Parliamentary exhibits, Senate 1998-1999, nr. 1217/1, 18.

20 years later, on 11 July 2018, a new act was adopted,⁷ amending the existing legal framework on two major points. First, a complicated system regulating concurrent criminal liabilities of legal entities and physical persons was repealed. Second, the act abolished the immunity from criminal prosecution of certain legal entities of public law (notably municipalities and the Federal State).

C. Intertemporal Law

Although the Act of 11 July 2018 entered into effect on 30 July 2018, the old rules may continue to apply for some time into the future. Belgian law does not allow for the retroactive application of stricter criminal legislation (article 2 BCC). To the extent that the old rules set forth a more lenient regime, they will continue to apply to certain offences committed prior to 30 July 2018. The application of the old rules will gradually fade out.⁸

II. SCOPE OF THE CRIMINAL LIABILITY OF LEGAL ENTITIES

A. No Limitation as to the Nature of the Criminal Offence

Legal entities can be liable for any offence. There are no limitations as to the type of offence for which a legal entity can be held liable: under Belgian law, legal entities can be held criminally liable for any offence, regardless of its nature.⁹

B. Both Public and Private Legal Entities can be held Criminally Liable

Private legal entities. In principle, article 5 BCC applies to both private legal entities and entities of public law. Private legal entities comprise a.o. all commercial companies, but

⁷ Act of 11 July 2018 amending the Criminal Code and the preliminary title to the Code of Criminal Procedure with regard to the criminal responsibility of legal entities, Belgian State Gazette, 20 July 2018.

⁸ Without going into detail, it can be noted that the statute of limitations for violations of Belgian criminal law generally ranges between 6 months and 20 years, depending on the nature of the violation. Belgian criminal law distinguishes between three types of offences (art. 1 BCC). An infraction ("overtreding" / "infraction") is generally a minor offence, such as a lesser traffic violation, punishable with prison sentences of 1 to 7 days and / or fines of 1 to 25 EUR. The statute of limitations for this type of offences expires after 6 months. Misdemeanors ("wanbedrijf" / "délit") are more severe infractions, such as the misappropriation of corporate assets (art. 492bis BCC), punishable with 8 days to 5 years imprisonment and / or a fine higher than EUR 25. The statute of limitations is set at 5 years. Crimes ("misdaad" / "crime"), are a final category of offences, punishable with imprisonment for a period longer than 5 years and / or a fine higher than EUR 25, such as grave forms of physical violence. Depending on the nature of the crime, the statute of limitations is set at 10, 15 or 20 years. In practice, crimes can and often are "correctionalized", meaning that they are assimilated to a misdemeanor, including for purposes of the applicable limitation period. The limitation period starts on (last) day on which the violation was committed. The statute of limitations can be tolled or suspended by acts of investigation or acts of prosecution.

⁹ In practice, legal entities are most often prosecuted for offences typically associated with businesses (such as tax evasion, fraud and economic, environmental and social law violations). Nevertheless, theoretically speaking, there are no general limitations as to the crimes for which a legal entity could be prosecuted. Taking into account legal entities' abstract nature, it is in practice not possible for a legal entity to commit certain crimes closely associated with physical persons.

also non-for profit organizations with legal personality. Article 5 BCC also extends criminal liability to a specified number of other groups which do not have legal personality, such as joint ventures, temporary associations and commercial companies in the process of incorporation.^{10 11 12}

Public legal entities. Legal entities of public law are also criminally liable, although they do remain somewhat shielded from the consequences of prosecution: courts can enter a declaratory judgment against them (i.e. a simple guilty verdict) but cannot impose criminal sanctions (article 7bis BCC).

Prior to the act of 11 July 2018, certain legal entities of public law with a political nature were immune from criminal prosecution (notably the Federal State, the Regions, the Communities and municipalities). This immunity was granted as these entities were subject to political oversight, and because it was feared that criminal action could be used as a political instrument against or within these entities.¹³ The distinction nevertheless gave way to severe criticisms: as the nature of the entity rather than the concrete actions in which it was engaged determined whether it could be criminally liable, identical behavior would result in prosecution for some legal entities, but not for others.¹⁴ This distinction moreover had the adverse side effect that natural persons exercising functions within public legal entities with a political nature could be held criminally liable on behalf of the legal entity. The *travaux préparatoires* to the Act of 11 July 2018 refer to cases where a town's mayor or aldermen were prosecuted for accidents occurring on municipal playgrounds and on municipal roads with insufficient lighting or illegible traffic signs.¹⁵

¹⁰ This extension however generally applies only to groups with economic goals. A not-for profit organization in the process of incorporation is for instance not envisaged. Patrick Waeterinckx, *De strafrechtelijke verantwoordelijkheid van de rechtspersoon en zijn leidinggevenden*, 2nd ed., INTERSENTIA, 53 (2015).

¹¹ The text of article 5 BCC also refers to civil companies which have not taken the form of a commercial company. Traditionally, this was the type of company through which for instance liberal professions organized their activities. The distinction between civil companies and commercial companies has however been repealed (art. 22 Act of 15 April 2018).

¹² We can add here that for offences committed in the framework of groups or entities which do not fall under the scope of article 5 BCC, the formerly applicable rules as discussed in section 1 (legislative history) continue to apply, i.e. the criminal liability of physical persons will have to be shown.

¹³ Constitutional Court 10 July 2002, nr. 128/2002, www.const-court.be. See F. DERUYCK, *DE RECHTSPERSOON IN HET STRAFRECHT*, (Mys en Breesch/ Kluwer Wkb Nv, 1996, 1st ed.) 184 for a further discussion.

¹⁴ Note that in Belgium public bodies regularly enter the domain of activities typically associated with the private sector. See Patrick Waeterinckx & R. van Herpe, *De wettelijke regeling i.v.m. de strafrechtelijke verantwoordelijkheid van de rechtspersoon ontdoet zich na 19 jaar van twee groeipijnen*, N.C., 554 (2018), who refer to a.o. the construction of buildings, infrastructural works, the drenching of river beds, the operation of hospitals, etc.

¹⁵ Parliamentary exhibits, 54Ko816 (Draft act amending the Criminal Code and the preliminary title to the Code of Criminal Procedure with regard to the criminal responsibility of legal entities), 2.

C. Non-Belgian Legal Entities can be held Criminally Liable

Foreign legal entities are not exempt. Legal entities under foreign law are not exempt from the criminal liability regime of article 5 BCC. They can also be prosecuted before Belgian courts for criminal offences entailing Belgian jurisdiction.

Principles of Belgian criminal jurisdiction. Belgian criminal law applies to offences committed on Belgian territory, regardless of the nationality of the party that committed the offence. An offence is considered to have occurred in Belgium as soon as a material action constituting one of the constitutive elements of that offence occurred on Belgian territory.¹⁶ This open-ended criterion allows Belgian prosecutors to claim jurisdiction rather easily. Subject to certain conditions, Belgium also exercises extra-territorial jurisdiction for a limited number of offences committed abroad, including certain forms of bribery of public office holders.¹⁷ Belgian criminal jurisdiction is not barred by a foreign claim to jurisdiction for the same facts.

III. CRIMINAL LIABILITY OF LEGAL ENTITIES AND PHYSICAL PERSONS ACTING WITHIN THE FRAMEWORK OF LEGAL ENTITIES

A. Attribution of Offences to Legal Entities

Belgian criminal offences – two components. All Belgian criminal offences comprise two components: a material component (the "*actus reus*", or punishable action, e.g. the taking away of an asset, the discharging toxic waste into a stream) and a moral component (the "*mens rea*" or guilty mind-set that makes an action into a criminal offence, e.g. the specific intent to embezzle said asset, or the criminal negligence which resulted in the discharge of toxins into a stream).

Material component. For a legal entity to be convicted, it should first be shown that an "*actus reus*" can be attributed to it. In some cases, Belgian criminal law explicitly determines the party to which an action will be attributed. By way of example, numerous provisions of the Belgian Social Criminal Code designate "*the employer, its agents and representatives*" as the party responsible for criminally sanctioned violations of social law.

¹⁶ Cass. 24 January 2001 (A.R. nr. P.00.1627.F), Arr. Cass. 2001, nr. 167; Cass. 26 May 2009 (A.R. nr. P.09.0438.N), RW 2011-2012, 1246, annotation D. DE WOLF; Cass. 7 June 2011 (A.R. nr. P.11.0172.N/1), Arr. Cass. 2011, nr. 348. See also H. Fransen, *Strafwet*, in: X. Postal Memorialis. Lexicon strafrecht, strafvordering en bijzondere strafwetten, (Kluwer & Mechelen 2017) S.180-55; Fanklin Kutty, *Principes généraux du droit pénal belge, Tome 1, La loi pénale*, 3, LARCIER, 365-369 (2009); CHRIS VAN DEN WYNGAERT, PHILIP TRAESE & STEVEN VANDROMME, STRAFRECHT EN STRAFPROCEDURE IN HOOFDLIJNEN, (Maklu et. all eds. 2017) 152.

¹⁷ See article 6 – 12 Preliminary Title to the Code of Criminal Procedure. Typically, besides a number of procedural conditions, a double incrimination is required (an action committed abroad will only give rise to prosecution in Belgium if that action constitutes an offence both in Belgium and in the jurisdiction where it was committed).

In the absence of a specific legal provision, a criminal offence can be attributed to a legal entity in one of the following three situations:

- The offence shows an intrinsic link with the realization of the entity's corporate purpose. The corporate purpose can be found in the legal entity's articles of association or its by-laws. This criterion does not imply that the corporate purpose should be aimed at committing criminal offences, but that an offence was committed with a view to realizing a legal entity's corporate purpose.¹⁸
- The offence shows an intrinsic link with the legal entity's interests. This criterion was adopted to avoid that a legal entity's criminal responsibility would be exclusively dependent on the description of its corporate purpose, as included in its own bylaws or articles of association.¹⁹ Any offence committed to further a legal entity's (financial or moral) interests can be attributed to it.²⁰
- When the concrete circumstances show that the offence was committed on behalf of and to the benefit of the legal entity. The mere fact that a legal entity benefited from an offence does not suffice to attribute the offence to it in all circumstances, but can be a factual indication that the legal entity is responsible.²¹

Moral component. Second, the entity must have acted with "*mens rea*". Belgian law does not specify when that is the case, so that an analysis of all relevant factual circumstances should be made, taking into account the specific features of the legal entity.²² By way of example, when a company's board of directors deliberately decides to act in a certain way, the legal entity could be considered to have acted with intent. Similarly, where criminal

¹⁸ See for instance Cass. 9 november 2004, NjW 2005, 769, where three not-for profit organizations founded with the corporate purpose of a.o. spreading Flemish national awareness were found guilty of violations of the anti-racism act for members' repeated racist statements in public.

¹⁹ CHRIS VAN DEN WYNGAERT, PHILIP TRAESE & STEVEN VANDROMME, STRAFRECHT EN STRAFPROCEDURE RECHT IN HOOFDLIJNEN, (Maklu et. all eds. 2017) 136.

²⁰ See for instance Cass. 5 June 2012, where a company was found responsible for the violation of certain environmental standards, committed intentionally and systematically out of economic considerations.

²¹ This criterion may for instance have been at the basis of the Gent correctional court's 7 September 2004 decision (NjW 2004, 1283), where a company was found liable for lacking environmental and health and safety standards. The court specifically added that by not making the necessary investments, the company had not only brought its employees and the environment in danger, but had also distorted competition with other companies that do make the required efforts.

²² Parliamentary exhibits, Senate 1998-1999, nr. 1217/1, 5 (free English translation): "It will have to be shown that the offence resulted from a deliberate decision made within the legal entity, or that there was negligence at the level of the legal entity which is causally linked to the offence. One can for instance envisage the hypothesis where a lacking internal organization within the legal entity, insufficient safety measures or unreasonable budgetary restraints have created the conditions which made the offence possible." For an in-depth discussion, see Hans van Bavel, *De rechtspersoon in ons schuldstrafrecht: over het moreel bestanddeel in hoofde van de rechtspersoon*, in: *Strafrecht als roeping. Liber Amicorum Lieven Dupont* (Frank Verbruggen, Raf Verstraeten, D. Van Daele & Bart Spriet 2005) 125-140.

offences result from the absence of sufficient oversight or from a general corporate culture, the legal entity could be considered to have been negligent.²³

B. Attribution of Offences to Physical Persons

Current rules. Under the current rules, a legal entity's criminal liability does not exclude that of a physical person, nor does a physical person's liability exclude that of a legal entity. Both can be prosecuted either as co-perpetrators²⁴ or as an accomplice to an offence committed by the other person.²⁵ In practice, prosecutors generally try to take action against both the legal entity and any physical persons involved in the matter.

Old rules (prior to entry into effect of act of 11 July 2018). The old rules provide for a complicated regime of concurrent liabilities. As a matter of principle, only the legal entity or the natural person acting on its behalf can be held criminally liable. The severity of their respective wrongdoing is to be compared, and only the party that committed the more serious wrongful act will be deemed at fault. A court cannot sanction the other party but can enter a declaratory judgment against it (i.e. declare it guilty, without imposing any sanctions). An exception to this general rule applies for criminal offences committed intentionally, in which case both the legal entity and the natural person are liable. The complexity of this concurrent liability regime lay at the basis of Belgian Parliament's 2018 decision to repeal it.

Managers' responsibilities are sometimes filled in (all too) broadly. There are cases where Belgian courts interpreted the responsibilities linked to managerial or executive positions very broadly, basing individual convictions on general observations regarding their responsibilities or competences (by way of example, see the cases where a manager was found guilty because he "could not have been unaware" of a criminal violation;²⁶ or where a corporate officer was convicted for an offence after the court found that he was generally

²³ See e.g. *Police Tribunal Marche-en-Famenne*, 20 December 2004, VAV 2005, 128, ruling that a large transport company should be able to ensure that its employees respect transport regulations, for instance by setting up a department that monitors tachographs, and organizes trainings for drivers.

²⁴ If all constitutive elements of a criminal offence are present on the part of the legal entity and on the part of the natural person, both will be liable as co-perpetrators of said offence. Under certain circumstances, parties which have offered essential assistance without which a criminal offence could not have been committed, as well as parties which have directly induced another party to commit a criminal offence can also be considered (co-)perpetrator (art. 66 BCC).

²⁵ Criminal complicity implies that a party knowingly, willingly and voluntarily contributed to the realization of a misdemeanour or a crime, in one of the ways described in the criminal code. This includes offering information or material aid to the perpetrator of a criminal offence, or otherwise enabling or facilitating a criminal offence (art. 67 BCC). Complicity requires deliberate intent. It is not possible under Belgian law to be an accomplice to a criminal offence through carelessness or negligence.

²⁶ Correctional court Antwerp, 27 May 2009, cited in Patrick Waeterinckx, *De strafrechtelijke verantwoordelijkheid van de rechtspersoon en zijn leidinggevenden*, 2nd ed., INTERSENTIA, 21 (2015).

"responsible for the company's operations"²⁷). Such decisions are subject to justified criticisms: a criminal conviction should be substantiated with proof of a concrete and individual fault; generic observations as to an individual's function or responsibilities do not suffice.²⁸

Under the old rules, a broad interpretation of managers' responsibilities could limit the legal entity's liability for unintentional violations. As noted above, in such cases, a court would have to compare the severity of both parties' wrongdoings and could only sanction the party that commit the more serious wrongful act. A court may have accepted easily that the manager should be held accountable. Under the new rules, there is no general principle which would stop a court from holding both the legal entity and the manager liable, insofar both can be deemed at fault (regardless of the severity of their respective wrongdoing).

C. Effects of Delegation of Competences to Physical Persons

Delegation of competences and of corollary responsibilities. If a legal entity delegates a competence or a task to a physical person, the criminal liability attached to that competence or task may shift from the legal entity to the physical person. By way of example, a company may designate a corporate officer to monitor and safeguard compliance with a specific environmental standard. If that standard is subsequently violated, the violation will not be attributed to the legal entity, but to the physical person who was responsible for preventing it in the first place.

A delegation of competences can only result in a shift of criminal responsibilities under strict conditions. Firstly, some tasks are considered to be of such importance that they cannot be delegated and always remain under the supervision and responsibility of the legal entity and / or its upper management.²⁹ Additionally, a delegation of competences should (i) relate to a specific / limited activity or task, (ii) be done explicitly, (iii) be accepted by the physical person on an informed basis, (iv) be effective, i.e. the physical person should have the practical means and background required for a successful performance of his assignment, and (v) the legal entity should maintain due supervision.³⁰

²⁷ Correctional court Hasselt, 6 March 2009, cited in Patrick Waeterinckx, *De strafrechtelijke verantwoordelijkheid van de rechtspersoon en zijn leidinggevenden*, 2nd ed., INTERSENTIA, 22 (2015).

²⁸ Cass. 9 October 1984, Pas. 1985, 194.

²⁹ Primarily, this covers strategic decisions. Note that some authors also consider certain more practical tasks, such as applying for environmental licenses, as being core competences that cannot be delegated (see e.g. Michael FAURE, *De strafrechtelijke aansprakelijkheid voor milieuverontreiniging*, in: *Milieurecht voor bedrijfsleiders en hun adviseurs* (P. Morrend 1994) 81-115).

³⁰ A. Jansen, *Délégations de pouvoirs dans l'entreprise et risque pénal: un état des lieux*, RPS 2013, 43; Luc Bihain, *Quelles réactions face à la fraude*, in: *Droit pénal des affaires – l'heure des comptes*, (Emmanuel R. France 2016) 127-135.

D. Effects of Corporate Compliance Programs

A compliance program can mitigate criminal responsibility. In the first place, corporate policies, codes of conduct and compliance monitoring are prevention instruments. Under certain circumstances, they can also mitigate the criminal liability of a legal entity. Written policies can be used to show that a legal entity prohibits its employees from taking certain actions on its behalf, so that those actions are neither materially nor morally attributable to it. Criminal responsibility will not be attributed to a legal entity that has an effective internal organisation, when an offence was caused solely by a physical person's individual decisions.³¹ The existence of a compliance program could also be taken into account by courts as a mitigating circumstance when determining the appropriate sentencing measure for a given violation.

The absence of a compliance program can be held against companies.

Although there is no general legal requirement for companies to introduce a compliance program,³² the absence thereof could be held against a legal entity. In practice, companies are most often prosecuted for unintentional violations of legal norms.³³ The absence of prevention mechanisms could be used by prosecutors to show culpable negligence on behalf of a company.³⁴

IV. EFFECTS OF CORPORATE RESTRUCTURINGS

Certain types of restructurings lead to a discontinuation of criminal proceedings. In principle, criminal charges against legal entities elapse upon their liquidation, judicial dissolution or dissolution without liquidation.³⁵ In those cases, it will no longer be possible to bring criminal charges. In contrast, other juridical acts that somehow entail a restructuring of a legal entity do not affect criminal charges against it (e.g. the transfer of a business, the transfer of all or part of a company's assets or shares, a corporate transformation, a partial demerger, etc.) (art. 20 Preliminary Title to the Code of Criminal Procedure).

There are two exceptions where it remains possible to bring new criminal charges against a legal entity that has been liquidated, judicially dissolved or dissolved without liquidation. A first exception applies when the liquidation, judicial dissolution or dissolution

³¹ See for instance Liège 23 September 2009, Dr. pén. Entr. 2010, 51-53, finding that the employees who had knowingly ignored clear instructions from their employer should be considered solely responsible for a consequent criminal violation.

³² Note that certain sector-specific laws require the implementation of specific policies (absent which administrative fines can be imposed).

³³ CHRIS VAN DEN WYNGAERT, PHILIP TRAEST & STEVEN VANDROMME, STRAFRECHT EN STRAFPROCEDURE IN HOOFDLIJNEN, (Maklu et. all eds. 2017) 137.

³⁴ See *Police Tribunal Marche-en-Famenne*, 20 December 2004, VAV 2005, 128.

³⁵ This regime mirrors the rule that criminal charges against a physical person expire upon that person's decease. When a person dies pending a criminal trial, the proceedings will be discontinued, and it will not be possible to bring new criminal charges.

without liquidation was aimed at avoiding prosecution (i.e. in cases of "*fraus legis*"). In most cases, it is difficult to bring proof of this specific intention to escape the law. Second, prosecution can continue when the legal entity was already indicted, referred to or summoned before the criminal courts prior to its loss of legal personality.

Belgian courts have at times gone beyond the letter of the above legal framework, by holding newly constituted legal entities criminally liable for the actions committed by another legal entity, after having established through an analysis of both entities' respective activities, offices, shareholders, management, etc. that the former was in fact identical to the latter, and had been set up to continue its operations.³⁶

V. PROCEDURAL ASPECTS

Ad hoc proxy holder. In principle, parties to a Belgian criminal procedure appear in person (for physical persons), through their organs (for legal entities), or through representation by a lawyer. This can lead to a conflict of interests when a legal entity is prosecuted together with a physical person who is also competent to represent it (e.g. a director). In such cases, the competent court will appoint a proxy-holder on an *ad hoc* basis, who will represent the legal entity's interests for purposes of the criminal procedure (article 2bis Preliminary Title to the Code of Criminal Procedure). Without going into further detail here, the unclear wording of article 2bis gives rise to a number (of oftentimes very practical) questions as to the appointment and assignment of the ad hoc proxy holder.³⁷

VI. EFFECTS OF CORPORATE RESTRUCTURINGS

Statutory conversion mechanism. Traditionally, Belgian criminal sanctions envisage physical persons, and are structured around custodial sentences. For legal entities, criminal sanctions are converted into corporate fines, by a way of a specific conversion mechanism set forth in article 41bis BCC. Additional sanctions applicable to physical persons, such as the confiscation of criminal gains realised through an offence also apply to legal entities. Further, there is a specific set of sanctions that applies only to legal entities, including the dissolution of the entity, the temporary or permanent prohibition to exercise a specific activity, the temporary or permanent closure of all or part of the legal entity. A legal entity that was convicted of a criminal offence will be exposed to civil actions for damages from victims of the offence. Criminal convictions could also have other adverse effects, such as the exclusion from certain public tenders.

³⁶ PATRICK WAETERINCKX, *DE STRAFRECHTELIJKE VERANTWOORDELIJKHEID VAN DE RECHTSPERSOON EN ZIJN LEIDINGGEVENDEN*, (2nd ed. 2015) 153.

³⁷ The appointment of a proxy holder could lead to a limitation of the legal entity's right to freely organize its defense, and could therefore infringe upon its right to a free and fair trial. Notwithstanding such potentially grave consequences, it is not always clear under which circumstances a proxy holder should be appointed. For a further discussion, see PATRICK WAETERINCKX, *DE STRAFRECHTELIJKE VERANTWOORDELIJKHEID VAN DE RECHTSPERSOON EN ZIJN LEIDINGGEVENDEN*, (2nd ed. 2015) 154-165. The Act of 11 June 2018 did not amend the rules governing the mandate of the ad hoc proxy holder. Some authors consider this a missed opportunity.