

Reform of the criminal liability regime applicable to legal persons

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The law of 11 July 2018 recently modified the Criminal Code and the preliminary section of the Code of Criminal Procedure (article 5) with regard to the criminal liability of legal persons (the “Law”). The Law drastically reforms and broadens the scope of criminal liability of legal persons under Belgian law. The Law entered into force on 30 July 2018 and the Law applies with immediate effect, but is not retroactive, meaning that it cannot affect past or pending cases in a negative way.

The most significant reforms introduced by the Law relate to the abolishment of:

- the “decumul” regime between legal and natural persons when committing the same criminal offence; and
- the so called “immunity” of criminal liability for certain legal persons governed by public law.

Alignment of criminal liability regime for legal and natural persons

The general principles regarding the situations in which criminal offences are attributable to legal persons remain unchanged. Legal persons can only be held criminally liable for a criminal offence:

- if the offence is intrinsically linked to the realisation of the legal person’s corporate purpose; or
- if the offence is intrinsically linked to the defence of the interests of the legal person; or
- if the offence is, according to the circumstances, committed on behalf of the legal person.

Under the previous regime, however, criminal liability of legal persons and natural persons for the same criminal offence was treated differently depending on whether a criminal offence was committed intentionally by the natural person. In the event of a criminal offence that was not committed intentionally by the natural person, only the person who committed the most serious fault could be held criminally liable (i.e., so called “decumul” of criminal liability).

The Law now simplifies the criminal liability of legal and natural persons by abolishing this “decumul” regime. Henceforth, both legal and natural persons can be held liable for any criminal offence (irrespective of whether it was committed intentionally).

This is an important reform and will increase the exposure risk of legal persons to criminal liability (even if, in practice, a number of courts already applied the “cumul”).

Abolishment of immunity from criminal liability of legal persons governed by public law

Under the previous regime, certain legal persons under public law, such as the federal State, the Communities, the Regions and the local authorities, could not incur criminally liable (i.e., so called “immunity”).

The Law now abolishes this immunity, but simultaneously introduces a restriction on the punishment of those legal persons governed by public law. The punishment of those legal persons cannot consist of a “classic” punishment, but only of a “simple guilty verdict”.

This change may have major consequences for the civil liability of legal persons governed by public law. Under the previous regime, victims were already able to take legal action against legal persons governed by public law and seek compensation if their damage resulted from a tortious liability fault on the part of the legal person, but in practice, the burden of proof was often very heavy in the absence of a criminal conviction. From now on, if a criminal court pronounces a “simple guilty verdict”, then in principle, civil fault will also be established, which would effectively lower the burden of proof for victims. This will facilitate the recovery of compensation for victims claiming against legal persons governed by public law.

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