

The use of pre-trial criminal settlements in the field of *minor offences*

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Christine Guillain



Pre-trial settlements in Belgium

« Criminal transaction »

- Belgian legal system = Opportunity principle
- **Pre-trial criminal settlement = Criminal transaction**

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« Criminal transaction »

DEFINITION TRANSACTION

- Procedure whereby the public prosecutor invites the offender to pay a sum of money. The amount is fixed by the public prosecutor, may not exceed the maximum fine provided for by law, and must be proportionate to the offence
- Payment by the offender definitively ends the prosecution
- Alternative to punishment? Alternative to prosecution

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HISTORY AND SCOPE TRANSACTION

- Criminal transaction was introduced in Belgium in 1935 for minor offences and has been amended several times (1939, 1947, 1949, 1957, 1984, 1994) and most recently in 2011
- The idea behind these amendments is to make the conditions for applying the transaction more flexible and to broaden its scope
 - Managerial approach to justice
- Since 2011, transaction can be applied to all offences punishable by up to 20 years of imprisonment, provided that these offences do not involve serious physical harm for victims
 - Very broad scope of application of the transaction

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« Criminal transaction »

“classic” transaction	“extended” transaction
Preliminary stage of the criminal investigation	All stage of criminal proceedings
Minor offences	Financial delinquency

DATA? 2020: less than **8%** of all offences dealt with by the public prosecutor's office ended in a **transaction**

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PANDEMIC

- Research project on the repression of Covid Offences conducted at the University of Saint-Louis (Brussels), by Christine Guillain and Diletta Tatti in partnership with the The National Institute of Criminalistics and Criminology in Brussels (Alexia Jonckheere and Elodie Schils).

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- **PANDEMIC**
- Press release Public Prosecutor's Office, 31st March 2020: “the systematic recording of all offences, the sending or handing over of a transaction when the first offence is recorded, and prosecution in the event of further recordings or non-payment of the transaction proposal”
- Amount Transaction: 250 eur for individuals

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- **PANDEMIC**

“classic” transaction	“extended” transaction
Preliminary stage of the criminal investigation	All stage of criminal proceedings
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+ Immediate criminal transaction

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- **PANDEMIC**
- Immediate criminal transaction, proposed not by the public prosecutor's office, but directly by the police with a view to better enforcing "measures to fight the proliferation of COVID-19" (Directive n° 06/2020, 25 March 2020).
- “ If technically possible, the police will propose an immediate transaction (by electronic means or by the immediate handing over of a transfer form (never by handing over cash))”

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- DATA PANDEMIC: 6 June 2021
 - 240,598 cases of suspects involved in "Covid" offences had been opened
 - Comparaison = 624,899 cases were opened in 2020 (all cases)
 - 77.496 transactions, more 50%
- → Comparaison = 8% (48,190) cases closed by the public prosecutor's offices in 2020.

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PANDEMIC:

Transaction proposals are automatically generated by a computer system: the amount of the transaction is set at a flat rate of 250 euros (for individuals), regardless of the circumstances, and without any analysis of the case by a magistrate

- Criminal management of Covid offences has thus generated an almost routine processing of offences, preventing any individualization of the sanction

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AFTER PANDEMIC?

- Directive of criminal policy in 2021 has extended immediate criminal transaction to other offences considered as minor, such as drug possession offences or simple theft, shoplifting or even the carrying of prohibited weapons

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AFTER PANDEMY?

- Several goals: “rapid and visible reaction to common crime, uniformity, fluidity, efficiency and security in the processing of cases in the criminal justice system; reduction of the sense of impunity for the offenders and within society”.
- Amount of the transaction varies according to the type of case, but can reach up to 500 euros.

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OBSERVATIONS

- Police is responsible for recording, prosecuting, and judging the offence, with no guarantee of a fair trial for the suspect
 - Risks of power abuse, discrimination and misjudicial errors
- At EU level, directives guarantee all suspects or accused persons in criminal proceedings the following rights: to be assisted by a lawyer, to be informed of their rights and of the charge against them, to consult the criminal file and to remain silent (Directive 2013/48/UE, Directive 2012/13/UE, Directive 2016/343/UE)
 - But Minor have been excluded from the scope of application of these directives

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OBSERVATIONS

- Minor Offences?
 - Max 500 eur + if dispute or non-payment: risk to be exposed to a transfer to the magistrates' court and therefore to higher fines and, above all, to possible prison sentences.
- Extension of the immediate settlement procedure is symptomatic of the proliferation of simplified and extra-judicial procedures throughout Europe. Their aim is to manage the growing flow of criminal cases more quickly, smoothly, and efficiently, but they relegate the fundamental rights of suspects to second place and reinforce the inequalities in the treatment of justice

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Fair Trials, Efficiency over justice: insight into trial waiver systems in Europe, december 2021,
<https://www.fairtrials.org/articles/publications/efficiency-over-justice/>

Thank you for your attention!