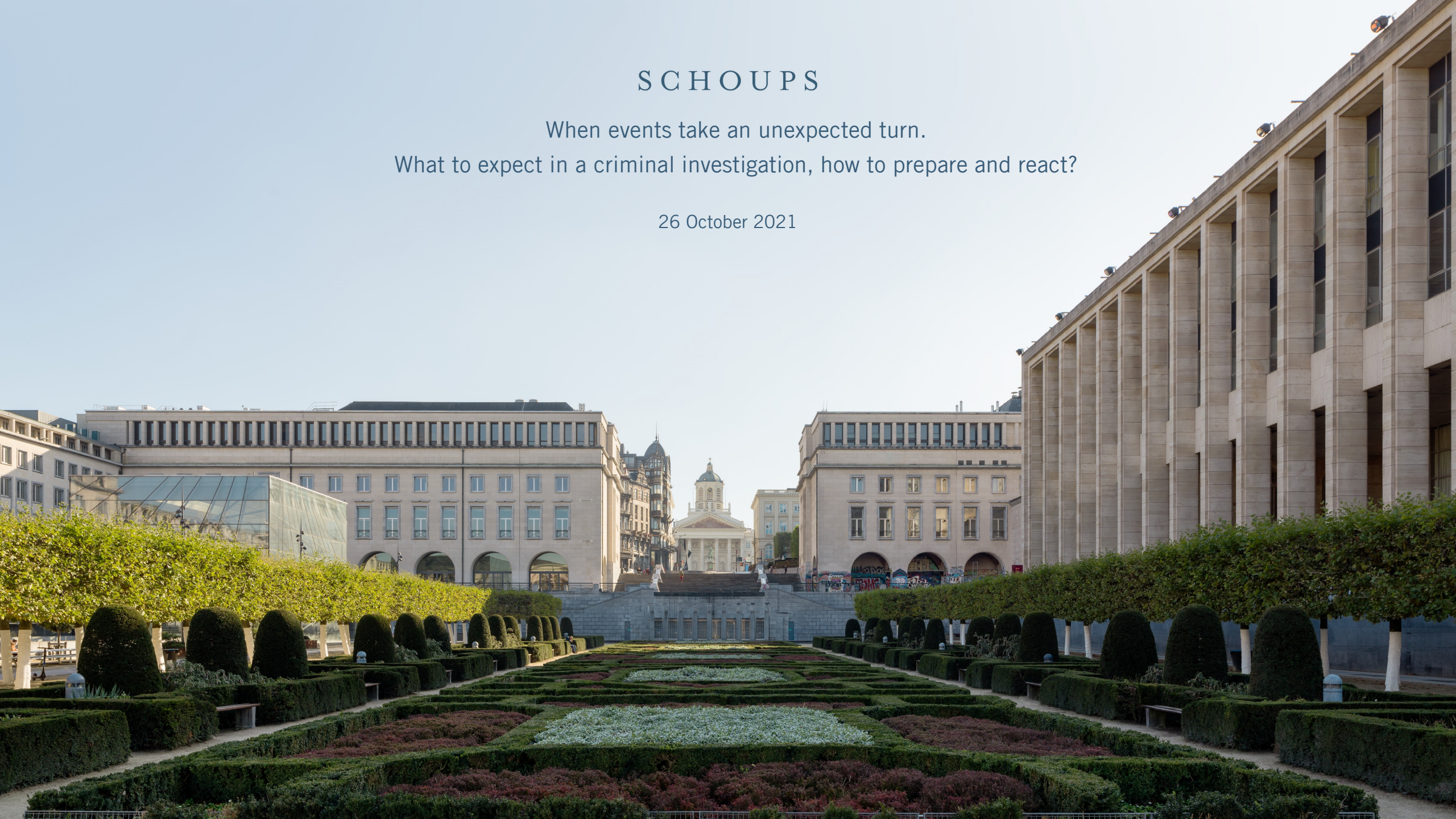


SCHOUPS

When events take an unexpected turn.
What to expect in a criminal investigation, how to prepare and react?

26 October 2021



When events take an unexpected turn. What to expect in a criminal investigation, how to prepare and react?



Liesbeth Truyens

+32 497 26 58 88

liesbeth.truyens@schoups.be



Marie-Aude Deslandes

+32 498 72 49 23

marie-aude.deslandes@schoups.be

SCHOUPS

Antwerpen

De Burburestraat 6-8 bus 5
2000 Antwerpen

Brussel

Regentschapsstraat 58 bus 8
1000 Brussel

www.schoups.com
t. +32 3 260 98 60

Agenda

- I. Criminal liability of a legal person: refresher
- II. The course of a criminal investigation
- III. How to mitigate risks?





- Who?
 - ✓ all legal entities (whether public or private including joint ventures)
- Which offences?
 - ✓ all offences of the Belgian Criminal Code (including the unintentional offences) and of any special criminal law



- When? Only if the offence can be attributed to the legal entity.
 - ✓ Criminal conduct:
 - is intrinsically linked to the realisation of the legal entity's (real) corporate purpose (and not it's statutory purpose)
 - is intrinsically linked to the defence of the legal entity's interests
 - has been committed on behalf of the legal entity
 - ✓ Criminal intent
 - intention to act (specific or general)
 - negligence
- No exclusion of the criminal liability of the physical persons who committed or participated in the offence (mostly the organs of the legal entity)



Case study – Private bribery

Mr. X, top-level manager of a private company in 'food and beverages' offers the director of a big retail company high-value advantages (luxury holidays, gifts, etc) if the director does not insist on price-cuts on the soft drinks sold by the retailer.

Mr. A, an electrical contractor offers the director of a real estate promotor high-value advantages (luxury holidays, gifts, etc) if he chooses Mr. A's company for his construction works.

Ex-politiebaas vervolgd voor corruptie bij keuze hoofdzetel



Ruim 2.000 politiemensen moesten zo'n zes jaar wachten op een immens kantorencomplex aan de Brussels

Huiszoeking bij GBL én topman in dossier-Lafarge

L'affaire Nethys s'élargit : Voo et Resa sous enquête pour corruption

Une instruction judiciaire pour corruption cible l'intercommunale Resa, sortie du giron de Nethys mi-2018, écrit jeudi Le Vif qui a pu consulter des documents judiciaires.



How does a criminal investigation start?

Preliminary inquiry (public prosecutor's office)	Judicial investigation (investigating judge)
<ul style="list-style-type: none">complaint is filed with the police or with the public prosecutor's office (by e.g. a competitor or an employee)	<ul style="list-style-type: none">complaint with civil party petition
<ul style="list-style-type: none">police finds harmful elements while investigating another case (e.g. during a house search)	<ul style="list-style-type: none">the public prosecutor refers a case to the investigating judge (whether in whole or for a 'mini judicial inquiry')
<ul style="list-style-type: none"><i>proactive recherche/recherche proactive</i> for certain offences (including bribery)	<ul style="list-style-type: none">if the investigating judge decides to keep the case after a 'mini judicial inquiry'



The EU Whistleblower Directive to be implemented in national law by 17 December 2021



Differences between a case handled by a public prosecutor or an investigating judge

- the prosecutor has less extensive powers (but he has more powers when and as long as there is a situation of *flagrant délit/heterdaad*)
- only the investigating judge can order certain intrusive measures, such as:
 - search of private premises
 - secret interception of private communications
 - network search
 - arrest warrant



How do they investigate?

- the local or federal (specialised) police will conduct the investigation; the prosecutor or investigating judge is in charge
- interrogations of relevant parties (with assistance of a lawyer)
- house/enterprise search (but no phishing expeditions)
- bank search
- request the tax records of natural and legal persons
- seizure of and search in cell phones, computers, other electronic devices, networks



Access to/copy of the criminal file

- the preliminary inquiry is in principle secret, but
 - a right to receive a copy of the police report of your interrogation
 - all directly interested parties can request the prosecutor to access the criminal file and/or to copy it (appeal possible with the indictment chamber)
- the judicial investigation
 - the public prosecutor may at any moment request access to the file and ask the investigating judge to conduct specific investigation measures
 - for the other parties the same principles apply as with the preliminary inquiry, but the prosecutor can also appeal the decision of the investigating judge to grant access/copy



Request for additional investigation measures

- Preliminary inquiry
 - no legal rights for the parties to request additional investigation measures
 - parties can however always make suggestions or submit formal requests to the prosecutor
- Judicial investigation
 - the prosecutor has a general information right
 - the suspect and the civil party can request the investigating judge to take additional investigation measures, but the investigating judge is not obliged to do so
 - anyone whose goods are harmed by an investigation measure can request the lifting of that measure
 - the suspect can request the lifting of a seizure over its asset in exchange for the payment of a lump sum



The end of a criminal investigation

- Preliminary enquiry
 - the prosecutor decides to close the case and not to prosecute;
 - the prosecutor summons the suspect to appear before the criminal court;
 - alternative punishment, including the settlement
- Judicial investigation
 - the case will be brought before the council chamber that will decide whether or not to refer the case to the criminal court depending on the evidence
 - the prosecutor will decide whether to prosecute the suspect or request its acquittal



By setting up an effective compliance program in order to **prevent, detect and respond** to compliance risks





✓ Prevent

- Introduce a written compliance policy by way of a Code of Conduct:
 - In which sector is your company active?
 - Where is your company active?
 - To what regulations is it subject to?
 - How is your company organised?
 - What are the compliance risks in your business?
- Channel responsibilities through delegation
- Provide in a clear (confidential) chain of reporting up to the management
- Who will be responsible to handle the reports filed?
- Follow-up on legislative changes
- Train and raise awareness with your personnel



✓ Detect

- Compliance audits
- Provide in a whistleblowing procedure

✓ Respond

- Deal diligently and timely with the reported information
- Enquire internally and if the breach is confirmed, take appropriate action
- Address control weaknesses or failures and improve your compliance program
- Manage the communications internally and externally
- Sanction



Q&A

SCHOUPS

Antwerpen

De Burburestraat 6-8 bus 5
2000 Antwerpen

Brussel

Regentschapsstraat 58 bus 8
1000 Brussel

www.schoups.com
t. +32 3 260 98 60

Bedankt voor uw aandacht



Liesbeth Truyens

+32 497 26 58 88

liesbeth.truyens@schoups.be



Marie-Aude Deslandes

+32 498 72 49 23

marie-aude.deslandes@schoups.be

SCHOUPS

Antwerpen

De Burburestraat 6-8 bus 5
2000 Antwerpen

Brussel

Regentschapsstraat 58 bus 8
1000 Brussel

www.schoups.com
t. +32 3 260 98 60