[BE] Law on the Protection of Journalistic Sources

IRIS 2005-5:1/6

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

On 17 March 2005, the Federal Parliament approved the new law on the protection of journalistic sources (see IRIS 2005-3: 6) and entered into force on 7 May 2005 after its publication in the Official Gazette (Moniteur Belge/Belgisch Staatsblad) on 27 April 2005.

The protection of sources is guaranteed in respect of the following persons (Article 2):- 1° Journalists, which means anyone who is working independently or as an employee, as well as every legal person, who regularly and directly contributes to the gathering, editing, production or distribution of information for the public by way of a medium and - 2° Editorial staff, which means anyone who in the exercise of his functions may be in a position to have knowledge on information that can lead to the revelation of a source, regardless whether this is through the gathering, the editorial treatment, the production or the distribution of this information.

According to the new law, journalists and members of the editorial staff have a right to refuse the disclosure of information upon request of the judicial authorities, in four different situations (Article 3), namely: 1° if the information may reveal the identity of a source; 2° if the information may reveal the nature or the origin of that information; 3° if the information may reveal the identity of the author of a text or an audiovisual production; 4° if the disclosure may reveal the content of the information and of the documents themselves, if that may lead to the informant being identified.

Journalists or editorial staff, however, exceptionally can be compelled by a judge to disclose information revealing a source where three cumulative conditions are fulfilled (Article 4): 1° the information relates to crimes that constitute a serious threat to the physical integrity of one or more persons; 2° the requested information is of crucial importance for the prevention of these crimes; 3° the requested information cannot be obtained in another way . According to Article 5, detection measures and investigative measures such as searches, seizures and telephone tapping shall not apply to data relating to information sources of journalists and editorial staff, unless the data may prevent the crimes referred to in Article 4 and if these investigative measures comply with the other conditions set out under that Article. Article 6 stipulates that journalists and editorial staff (the persons referred to in Article 2) cannot be prosecuted under Article 505 of

© European Audiovisual Observatory (Council of Europe) 2026

the Belgian Criminal Code when they are exercising their right to keep silent about their sources. Article 505 of the Criminal Code punishes inter alia those who receive or use documents that have been stolen or have been obtained as a result of crime (e.g. after breach of the duty of professional secrecy by others). Also, in the case of a breach of professional secrecy under the terms of Article 458 of the Criminal Code, journalists cannot be prosecuted under Article 67, par. 4 of the Criminal Code when they are exercising their right to keep silent about their sources, which means that journalists and editorial staff in these circumstances cannot be prosecuted for complicity in the offence of breach of confidence.

Belgium in the very near future will not only have a legal framework protecting journalistic sources in accordance with Article 10 of the European Convention on Human Rights and in application of the European Court's case law on this matter, the Belgian law can also inspire other countries to develop new standards of protection of journalistic sources, “having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom”(ECourtHR 27 March 1996, Goodwin v. United Kingdom , § 39) .

Loi du 7 avril 2005 sur la protection des sources journalistiques, Belgisch Staatsblad/Moniteur belge du 27 avril 2005

http://www.dekamer.be/

Act of 7 April 2005 on the protection of journalistic sources, Official Journal of 27 April 2005

http://www.dekamer.be/

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026