

**Analysis of the handling of client money in The Netherlands, Belgium, Germany and France**

<b>Question</b>	<b>The Netherlands</b>	<b>Belgium</b>	<b>Germany</b>	<b>France</b>
<b>Do lawyers hold trust monies? If so, how?</b>	Yes, all lawyers are obligated to establish a foundation solely for the purpose of holding trust monies or to join an existing foundation through an agreement.	Yes, all lawyers are obligated to have a third-party account (with a financial institution acknowledged by the Flemish Bar Council) at their disposal solely for the purpose of receiving trust monies.	Yes, the lawyer is obligated to hold clients' money in third party accounts.	No.
<b>Do lawyers receive training in the handling of money? If so, what kind of training?</b>	Yes, this topic is addressed in the vocational training for lawyers. The legislation on the handling of (trust) monies is discussed in a workshop, as well as the practical and ethical aspects.		No, it's the lawyers' own responsibility to acquire the knowledge he needs to perform his professional duties.	No, but the UNCA* assists and trains the personnel employed by the funds and provides regular training to the funds' presidents and directors.
<b>If lawyers don't hold trust monies, who does and how?</b>				Each lawyer or law structure is obligated to open an individualized account with the CARPA** to deposit the money they receive for their clients' account. Although the attorney remains the principal for the transmission of the funds and maintains the signature of the means of payment, the CARPA functions under the political and deontological control of the local Bar Association which has created it.
<b>Do lawyers/escrow agents have to report to the regulator about these monies? What do they have to report and when?</b>	Yes, all lawyers have to declare yearly they have a foundation at their disposal. All directors of trust foundations have to declare yearly that they follow the procedures concerning the handling of trust monies. In addition they have to report the balance. During an audit (yearly 10% of all law firms is audited) the regulator verifies the transactions of (in most cases) the last 6 months.	Yes, a lawyer, association, or grouping that manages the third-party accounts, must yearly provide a list of all third-party accounts, all accounts that have been opened/closed, the balance of every account and a breakdown of the aforementioned balances for each file. The regulator audits a minimum of 2,5% of his bar members each year.	Only if this is specifically requested: all lawyers must provide the Council of the Bar with information and produce their files on request in regulatory matters.	Yes, for every movement of money the lawyer must be able to answer the following questions: from whom, to whom and why?

<b>What authority does the regulator have over these monies?</b>	The regulator is authorized to obtain all information concerning the trust monies and the transactions. The directors can grant the regulator power of attorney to authorize transactions. The regulator is authorized to discharge a director and to appoint a new one.	On opening the third-party account, the lawyer grants an irrevocable power of attorney to the regulator, to have full access to and obtain copies of all transactions on that third-party account. The regulator may take all precautionary measures in supervising the correct use of the account, including imposing a temporary ban on the handling of third-party funds.	All lawyers must provide the Council of the Bar with information and produce their files on request in regulatory matters. If it's established that a lawyer handled in breach of his obligations he can be sanctioned.	From the time they are deposited to that of their withdrawal, the CARPA handles the management, monitoring and auditing of third-party funds. The local Bar can, at any time, order inspection and audit, obtain any relevant document or order any enquiry which may be deemed necessary in the circumstances under ordinal inspection rules and case-law.
<b>What are the controls/security features?</b>	In order to carry out a transaction the transaction must be approved by two directors of the foundation (digitally or in writing); no payment of lawyers' fees shall be made without the client's prior written consent.	The third-party account may never have a debit balance; no form of credit is allowed with regard to the third-party account; debit or credit cards may not be issued for the third-party account; direct debits are not allowed on the third-party account; the issue of cheques and cash withdrawals from the third-party account is not allowed unless the regulator gives prior written consent; the lawyer may give standing orders, but only in favour of clients or third parties.	The amount held in a collective clients' account must not exceed € 15.000 per party and shall not be held for more than one month, unless something else has been agreed in writing. According to the General Conditions of the banks the lawyer is obliged to establish the identity of the beneficial owner by opening of the account or at the request of the bank.	No withdrawals from the account shall be made without the prior control of the CARPA; any movement of funds between sub-accounts is forbidden, except with the special, prior, authorisation of the President of the Fund; no sub-account shall show a debit balance; no payment of lawyers' fees shall be made without the client's prior written consent.
<b>What are the vulnerabilities?</b>	Not all directors respect the four eyes principle. Some directors carry out transactions without the explicit consent of their co-director or authorize their secretaries to do it for them.	A lawyer can singly authorize (possible illegitimate) transactions.	There seems to be no active supervision on (the movement of) trust monies.	The CARPA is not required to report suspicious transactions.
<b>What is the cost?</b>	Establishing a new foundation costs around € 400 once. A bank account costs around € 5 a month.	The costs depend on the respective bank.	The costs depend on the respective bank.	None, the system self-finances its operating costs due to the remuneration of the deposited funds.
<b>Who receives the benefit of the interest? How is it used?</b>	Formally the client receives the benefit of the interest after the money has been on the trust account for longer than eight days.	With the exception of the sub-account (an account opened solely for a specific client or file), the third-party account does not yield any interest or other income (notwithstanding the option for the Flemish Bar Council and/or the National Bar Council to negotiate payment for themselves with the financial institution).		Although there are rules for paying interest to clients in exceptional cases relating to length of time or size of deposit, the usual rule is that the interest remains with CARPA. Once CARPA's own expenses have been paid (the personnel and legal assistance, its training and the hardware and corresponding software) and the handling insurance is funded, it goes towards public interest activities undertaken by the bars.

<b>Does the regulator maintain a fund to compensate clients for the theft of client trust funds by a lawyer?</b>	No, the compensation fund was liquidated in 2013 because it had become redundant.	The Flemish Bar Council has an insurance policy in case of insolvency. All lawyers are automatically covered by this insurance.	A few local bars have created (local) funds to compensate clients for the theft of client trust funds by a lawyer. The funds are fed by fines that accrue from disciplinary law convictions.	No, there's no need for a compensation fund because clients' money is not susceptible to theft by individual lawyers.
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\* UNCA = Union Nationale des CARPA

\*\* CARPA = Caisse de Règlements Pécuniaires des Avocats (Fund for Lawyers' Pecuniary Settlements).