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Joint First and Second Evaluation Rounds

Summary of the Evaluation Report on Belarus

Adopted by GRECO
at its 62nd Plenary Meeting
(Strasbourg, 2-6 December 2013)

The publication of Evaluation and Compliance Reports shortly after their adoption is a long-standing practice among GRECO member States. This serves two important purposes: ensuring overall transparency of the GRECO process and facilitating the implementation of recommendations at domestic level by raising awareness of GRECO's findings across society.

The Joint First and Second Round Evaluation Report on Belarus was adopted by GRECO at its 56th Plenary Meeting (June 2012) and the authorities were invited to authorise, as soon as possible, its publication, to translate it into the national language and make the translation public. Since then, on several occasions concerns have been expressed in both GRECO's Bureau and Plenary that the confidentiality of the report has not been lifted. On 16 October 2013, the Secretary General of the Council of Europe sent a letter to the Ministry of Foreign Affairs of Belarus urging the Government to comply with the positive transparency policy applied and accepted within GRECO. On 8 November 2013, at its 66th meeting, the Bureau instructed the Secretariat to prepare a summary of the Evaluation Report with a view to its adoption by the Plenary at its 62nd meeting (2-6 December 2013) and publication, pursuant to Rule 34, paragraph 2 of the Rules of Procedure.

At its 62nd Plenary Meeting (Strasbourg, 2-6 December 2013), GRECO decided that in the absence of an authorisation from the authorities of Belarus to publish the entire report, this summary would be made public on 3 February 2014.

The following contains the Conclusions from the Joint First and Second Rounds Evaluation Report on Belarus¹:

267. "It is difficult to establish the scale of corruption in Belarus as there is only limited reliable information available in this respect. Although the authorities see corruption as a systemic phenomenon affecting social, economic and organisational issues, the scale of the problem and what form it takes remain unclear. Some information suggests that the day-to-day (so called low level) corruption is less endemic as it is kept under better control through strong law enforcement measures and that the problem of corruption in Belarus is more alarming higher up in the hierarchy and within the predominantly state-run enterprises. The limited research available is not enough to adequately describe the situation and there is virtually no information of any substance from sources independent of the State. Foreign and international information is also limited although, in terms of Transparency International's Corruption Perception Index (CPI), the ranking of Belarus remains low, relative to other GRECO member States. There is a need to study the situation in more depth in order to establish a clearer understanding of the problem of corruption, where vulnerabilities and risks lie, as a basis for action against this anomaly. What is clear is that the fight against corruption is given high priority by the authorities through specific anti-corruption legislation accompanied by presidential decrees on a large number of matters including in the form of state programmes to fight corruption. How successful these measures have been, however, remains unclear as there is no systematic analysis and evaluation of the progress achieved.
268. Although the principle of separation of powers between the legislature, the executive power and the judiciary is set out as a basic notion in Article 6 of the Constitution of Belarus, other parts of the Constitution and some legislation contradict and undermine this fundamental principle. The far-reaching presidential powers reflected in the Constitution and in practice are strongly criticised by the international community for not complying with the principles of a pluralist democracy, the principle of the rule of law and the protection of human rights. These are also

¹ Document GRECO Eval I-II Rep(2011) 3E.

fundamental safeguards within the GRECO context, being a body of the Council of Europe. Of central importance are the extensive powers accrued to the President not only in respect of the executive branch at central and local levels, but also in respect of legislative competences as well as over the judiciary. This system, where the fundamental principle of separation of powers is not upheld, inevitably creates a structure without the necessary checks and balances fundamental to a society governed by the rule of law as well as to the effective fight against corruption at all levels. A consequence of this is that it affects Belarus' efficiency and credibility in fighting corruption at all levels.

269. The hierarchical top-down approach from the President, sanctioned by the Constitution, is mirrored in the specific structures put in place to fight against corruption. The Office of the Prosecutor General, who is directly accountable to the President, is the coordinating authority for the fight against corruption. Other law enforcement agencies (Ministry of Internal Affairs (Militia), the State Security (KGB) and the Investigation Committees are also included in the structure as well as other relevant state authorities (State Control Committee, Customs, State Border, National bank, Armed Forces etc). This structure is to a large extent influenced by the law enforcement perspective, which may be efficient in executing orders; but its effectiveness in identifying specific or local problems and in developing tailored and appropriate measures to counteract corruption in the various sectors of public administration and to develop effective general preventive measures is doubtful. Added to this is the fact that there is very limited representation from a broad range of institutions and interest groups from outside the traditional state/public structures. The participation of representatives of wider civil society, truly independent from the state, is recognised as an essential element in combating corruption in many countries and is largely missing in Belarus. Furthermore, Belarusian anti-corruption programmes need a stronger focus on preventive measures as opposed to crime prevention in general and law enforcement measures in particular. In this respect, as well, a high degree of transparency in public administration is a cornerstone for preventing corruption, as is the right to express dissenting opinions and a truly independent media, areas which are considered extremely weak in Belarus. Thus, there is an urgent need to redesign the focus of existing anticorruption programmes or to establish new ones.
270. The law enforcement system in Belarus is powerful and the various bodies are provided with certain levels of specialisation including the possibility to use special investigative techniques, measures such as seizure and confiscation, etc. However, the strict hierarchical system does not leave much space for the operational independence and autonomy of law enforcement officials or other officials of the public service in the current system.
271. The constitutional and legislative safeguards for an independent judiciary are far from adequate. The current legal framework provides for extensive presidential powers, *inter alia*, in respect of the appointment and dismissal of judges to the Constitutional Court, to the general and economic courts, as well as to their respective presidiums. Moreover, these powers also extend to disciplinary proceedings and sanctions against judges. Such far-reaching powers are not compatible with the principle of judicial independence.
272. Also of particular concern is that, in addition to the immunity provided for in the Constitution, the Criminal Procedure Code sets out specific procedures which allow only certain higher officials, following the specific authorisation of the President, to initiate criminal proceedings against a large number of top officials whose positions are listed in the Personnel Register of the President of the Republic (appended to this report).

273. Legal persons are regulated in detail in the Civil Code. Although the system of registering legal persons has been significantly modernised in recent years, it is still marked by the deficiencies allowing so-called “one day” companies to be used as a shield for corruption offences. Internationally acceptable accounting standards are not yet fully introduced, and legal persons cannot be held liable for criminal offences.

274. In view of the above, GRECO addresses the following recommendations to Belarus:

- i. **to ensure that comprehensive studies, including research independent of the state, are carried out in order to gain a more profound insight into the phenomenon, extent and risks of corruption in the various sectors and at the different levels of public administration, in the private sector and among ordinary citizens in order to provide a solid basis from which to target the problems in an appropriate and tailored manner (paragraph 51);**
- ii. **that the coordination structure for the fight against corruption be provided with a broader and permanent representation of the non-governmental sector (including through independent non-governmental organisations, academics, media etc) (paragraph 56);**
- iii. **establishing an evidence-based comprehensive strategy and plan of action for the fight against corruption which, in addition to law enforcement measures, has a strong emphasis on corruption prevention, in particular the need to improve the transparency of public administration, freedom of expression and the development of an independent media. The strategy and plan need to cover all parts of the public sector and must be accompanied by realistic time frames for implementation and impact assessment; they should also take into account the results of the previous anti-corruption programmes (paragraph 60);**
- iv. **to ensure independent, comprehensive and objective monitoring, separate from law enforcement agencies, of the implementation and of the impact of anti-corruption programmes. Civil society should be in a position to provide input and to make its views known on the outcome of such monitoring (paragraph 61);**
- v. **that the operational independence of the various law enforcement agencies and their investigative staff be strengthened and combined with the accountability that comes with appropriate checks and balances under the principle of the rule of law (paragraph 122);**
- vi. **that law enforcement staff specialised in corruption prevention and detection are provided with uniform training at regular intervals with regard to the typology of corruption and the prevention and detection of corruption offences (paragraph 123);**
- vii. **ensuring that i) an appropriate level of specialisation to handle corruption investigations be maintained and/or developed, as necessary, within the newly created Investigation Committee and ii) that its staff benefits from continuous in-service training concerning the particular features of corruption offences and their investigation, including international dimension (paragraph 124);**

- viii. to strengthen the independence of the Office of the Prosecutor General and of all other prosecutors from undue and improper influence (from any level), and by so doing, ensure that this body is governed by the appropriate checks and balances embodied in the principle of the rule of law (paragraph 127);
- ix. to strengthen the judicial independence of the Constitutional Court, especially as regards the appointment and dismissal of judges, fully in line with the principles of the separation of powers and the rule of law (paragraph 131);
- x. to establish an independent collegial mechanism (such as a High Judicial Council) entrusted with the selection of candidates for the position of judge and thus, to limit, to the extent possible, the involvement of the President in the appointment of judges to courts as well as in the formation of organs of the judiciary, such as the presidiums of the Supreme Court and of the Supreme Economic Court (paragraph 132);
- xi. to take measures to strengthen the independence of the judiciary notably by i) providing for legislative guarantees for the non-removability of judges and ii) revising the procedure for termination in office (whether at the end of any single initial and/or other temporary employment period), dismissal from office and initiating disciplinary actions against judges (paragraph 133);
- xii. i) to limit presidential immunity to the term of office of the President and ii) to establish specific, objective and transparent criteria to be applied by Parliament when deciding on requests for the lifting of immunities and to ensure that decisions concerning immunity are free from political considerations and based only on the merits of the request submitted (paragraph 142);
- xiii. i) to abolish the presidential powers to give consent to or veto the initiation of criminal cases, including cases of corruption, in respect of public officials whose posts appear in the Personnel Register of the President; and ii) to substantially reduce the number of officials subject to specific procedures limiting their investigation/prosecution for corruption offences to the minimum required in a democratic society (paragraph 144);
- xiv. to consider the introduction of *in rem* confiscation, accompanied by pertinent safeguards under the principle of the rule of law (paragraph 170);
- xv. to adopt measures aimed at the deconcentration of powers and influence within the executive branch of public administration and reinforcing the public accountability of the various administrative bodies in Belarus (paragraph 219);
- xvi. i) to establish a structure, distinct from the law enforcement authorities, with an appropriate level of independence and with broad independent civil society representation, to co-ordinate the implementation of various anti-corruption programmes within the public administration and ii) to set up a mechanism for an on-going assessment of the implementation of sectoral anti-corruption programmes and plans of action within the public administration (paragraph 220);

- xvii. **to establish a mechanism entrusted both with the independent monitoring and promotion of the proper implementation of the legislation on access to public information (paragraph 221);**
 - xviii. **to establish an Ombudsman institution, truly independent from the executive branch, with a mandate to deal with complaints from the wider public concerning maladministration within State authorities (paragraph 222);**
 - xix. **to clarify and harmonise the rules on what constitutes acceptable gifts to public officials (paragraph 224);**
 - xx. **i) to introduce an obligation and clear rules/guidelines for employees and officials of public administration to report instances of corruption or suspicions thereof, which they come across in their duty; ii) to establish adequate protection of employees and officials of public administration who report situations of suspected corruption in good faith (“whistleblowers”) and iii) to promote awareness of these measures widely amongst employees and officials of public administration (paragraph 225);**
 - xxi. **i) to establish a model code of conduct/ethics, including positive guidance for employees and officials of public administration on their daily practices vis-à-vis the wider public and ii) to ensure related in-service training on the implementation of such soft law instruments, in particular in relation to the prevention of corruption (paragraph 226);**
 - xxii. **i) to strengthen the controlling functions of the registering authorities with regard to pertinent information on legal persons in the registration process in order to eliminate the possibilities of establishing fake or “one day” companies and ii) to enhance the role and the accessibility of the unified registry of legal persons in the identification of the real founders and purposes of the registered or liquidated legal persons (paragraph 264);**
 - xxiii. **to adopt modern accounting legislation in compliance with international accounting standards and to provide for the uniform implementation of such standards in respect of legal persons (paragraph 265);**
 - xxiv. **to adopt appropriate legislation to establish liability of legal persons for corruption offences and to provide effective, proportionate and dissuasive sanctions in these cases - including monetary sanctions - in compliance with the requirements of the Criminal Law Convention on Corruption (ETS 173) (paragraph 266).**
275. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Belarus to present a report on the implementation of the above-mentioned recommendations by 31 December 2013.
276. Finally, GRECO invites the authorities of Belarus to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.”