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First Evaluation Round

Compliance Report on Belgium

Adopted by GRECO
at its 14th Plenary Meeting
(Strasbourg, 7-11 July 2003)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Belgium at its 4th Plenary Meeting (12-15 December 2000). This report (Greco Eval I Rep (2000) 1) was made public by GRECO following authorisation by the Belgium authorities on 3 January 2001.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the Belgian authorities submitted their Situation Report on the measures taken to follow up the recommendations on 11 March 2003.
3. At its 13th Plenary Meeting (24-28 March 2003) GRECO selected Bulgaria and France to appoint Rapporteurs for the compliance procedure, in accordance with Rule 31.1 of its Rules of Procedure. The Rapporteurs appointed were Mr Georgi Rupchev for Bulgaria and Mr Franck Zientara for France. The GRECO Secretariat assisted the Rapporteurs in drafting the Compliance Report.
4. In accordance with Rule 31.7 of its Rules of Procedure, GRECO examined, debated and adopted the Compliance Report at its 14th Plenary Meeting (7-11 July 2003).
5. According to Rule 15, paragraph 6, of GRECO's Statute and Rule 30.2 of the Rules of Procedure, the purpose of the Compliance Report is to evaluate the measures taken by the Belgian authorities and, as far as possible, their effectiveness from the point of view of compliance with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It is recalled that in its Evaluation Report, GRECO made 14 recommendations to Belgium. Compliance with those recommendations is examined below. GRECO has also noted with interest other information submitted by Belgium on the measures taken following the observations in the Evaluation Report.

Recommendation i.

7. *GRECO recommended to ensure, in the context of the financing of political parties, that effective cooperation between external auditors and the specialised service of the judicial police and/or the competent prosecutors' offices exist.*
8. The Belgian authorities have begun by stressing that the agencies referred to in recommendation i. perform different functions. In accordance with the Act on political parties, the external auditors ("réviseurs d'entreprise") are responsible for drafting an annual report on the accounts of political parties which is sent to the Minister of Finance and the Parliamentary Committee on Control of Electoral Spending. They are bound by professional confidentiality but, like all other Belgian citizens, have a duty to report any offence they have witnessed. The principal task of the federal police, on the other hand, is to investigate offences under the supervision of the judicial authorities.
9. The Belgian authorities have stated that there was nothing to suggest that there was not effective cooperation between external auditors and the police. They added that no complaints had been made in this respect. The auditors reported one case of corruption to the judicial authorities since the Act on the financing of political parties came into force (4 July 1989).

10. GRECO noted the relevant remarks of the Belgian authorities as to the (different) functions performed by the auditors and the police. Furthermore, the Evaluation Report on Belgium already contains information on the tasks of the police and prosecution services specialising in combating corruption (paragraphs 19 to 25) and the external auditors (paragraph 40). In its recommendation GRECO asked the Belgian authorities to ensure that there was cooperation/coordination (paragraph 40) between these services so that the detection of problems of corruption in connection with the funding of political parties might be facilitated. In these circumstances, GRECO noted the statement that there is nothing to suggest that there is not effective cooperation between external auditors and the police and that no complaint has been made in this connection.
11. GRECO took note of the information provided and concluded that recommendation i. has been implemented satisfactorily.

Recommendation ii.

12. *GRECO recommended to ensure that steps are taken with regard to the recruitment of O.C.R.C. personnel so as to permit persons having training or a specialisation useful to the service to be recruited, whilst making sure that staff mobility within the judicial police is not detrimental to the sound operation of the service.*
13. The Belgian authorities have pointed out that since the 1998 reform which brought the various police forces together in a single entity (federal police), all federal police officers have had the same status and consequently been subject to the same conditions of recruitment and mobility. They have also indicated that legislative provisions provide that specialised personnel may be recruited to the police thus enabling the specific requirements of specialised services to be catered for. In this connection, the Belgian authorities have cited the example of accountants, engineers and other professionals who become full members of specialised police services, including the O.C.R.C., when they are posted to them. More particularly with respect to the O.C.R.C., the specialised investigators include, *inter alia*, 11 criminologists, 4 engineers, 1 graduate in topography and one civil engineering graduate
14. GRECO took note of the information provided and concluded that recommendation ii. has been implemented satisfactorily.

Recommendation iii.

15. *GRECO recommended bringing the O.C.R.C. up to its statutory strength and carrying out, as part of the current restructuring of the police and taking into account the efficiency that can be gained through a better organisation and management of staff, an appraisal of the medium-term needs of the service in terms of personnel, in order in particular to enable it fully to discharge its task of detecting acts of corruption. Moreover, also concerning the detection of acts of corruption, it would be desirable to ensure that the O.C.R.C. and the service in charge of supervising public tenders as well as other police forces when starting investigation of corruption matters exchange information effectively.*
16. The Belgian authorities have stated the following:

- With respect to bringing the O.C.R.C. up to strength, the operational force of the Office was already at 90% strength: 1 head of service, 20 superintendents and 38 (of a planned total of 40) chief inspectors, as well as administrative employees, were at present working in the O.C.R.C. This was the highest percentage of superintendents posted to a service anywhere in the federal police.
 - As regards exchange of information between the O.C.R.C. and the services in charge of public tenders, it had to be emphasised that the latter were in the process of reorganisation. As part of the restructuring of those services, particular attention would be given (probably by the new government resulting from the general election of 18 May 2003) to the quality of information exchange between those services and the O.C.R.C.
 - As for exchange of information between the O.C.R.C. and other police services, a ministerial memorandum of February 2002 stipulated that the federal police should be responsible for investigating corruption cases. That meant that in practice such cases would be examined by the specialised federal police service, namely the O.C.R.C. Furthermore, both levels of police (federal and local) were now using a single computerised system in which they stored their respective information. In addition, a database, known as "corrupdoc" was being compiled by the O.C.R.C.: it already contained all O.C.R.C. cases and the corruption cases district judicial services transmitted to the Office were gradually being entered.
17. GRECO took note of the information provided and concluded that recommendation iii. has been implemented satisfactorily.

Recommendation iv.

18. *GRECO recommended making the necessary investment so as to enable access to essential private sources of information and considering the rapid implementation of legal provisions related to the police enabling access to internal databases.*
19. The Belgian authorities have stated that the necessary investment had been made to enable all members of the federal police to have "centralised" access to a number of sources of private (of the Dunn and Bradstreet variety) and public information (for example, the national register of natural persons). The project was in its final phase and all that remained was for contracts to be awarded. As for the O.C.R.C., it had direct or indirect access to public sources of information and the private EURO-DB database (a legal and commercial database of the Dunn and Bradstreet variety).
20. GRECO took note of the information provided and concluded that recommendation iv. has been implemented satisfactorily.

Recommendation v.

21. *GRECO recommended making the necessary legislative changes so as to permit the use of procedural means which are lacking at present (telephone-tapping in corruption cases and machinery for value based seizure).*
22. The Belgian authorities have mentioned:

- With respect to telephone-tapping in corruption cases, an Act passed on 29 November 2001 and published in the *Moniteur belge* on 23 February 2002 had amended Article 90 of the Criminal Investigation Code and now made it possible to use telephone-tapping in corruption cases in both the public and private sectors.
 - As regards value-based seizure, an Act passed on 19 December 2002, published in the *Moniteur belge* on 14 February 2003, "extended the possibilities for seizure and confiscation in criminal cases". In particular, it provides for value-based seizure to preserve evidence and property where the pecuniary benefit deriving from an offence can no longer be identified in the assets of the (presumed) offender. It had already been possible for the courts to order value-based seizure.
23. GRECO took note of the information provided and concluded that recommendation v. has been implemented satisfactorily.

Recommendation vi.

24. *GRECO recommended carrying out an in-depth study into whether it is necessary to have specific legislation to govern inquiry techniques, such as pseudo purchase, infiltration, controlled delivery, observation and the use of informants and collaborators.*
25. The Belgian authorities have mentioned the "Act on special search methods and other investigatory methods" passed on 6 January 2003, published on 12 May 2003 and entered into force on the following 22 May. Most of the methods set out in the new Act were already being applied in practice on the basis of two ministerial memoranda. The purpose of the January 2003 Act was therefore to put in place legal safeguards both for those subject to such methods and for the police officers called upon to apply them, under constant supervision by the judiciary. It deals, in particular, with three methods - observation, infiltration and the use of informers - and lays the foundations for the techniques applied in the framework of these methods (pseudo-purchase, flash-roll, frontstore, purchasing information, etc). It also deals with certain related methods: discreet visual surveillance, direct tapping, interception of mail, deferred intervention and the collection of information on bank accounts and bank transactions.
26. As for the question of collaborators of justice, the Belgian authorities have stated that a Draft Law "introducing the informer system" was submitted to the Belgian Chamber of Representatives on 10 August 2001. It proposes in particular to establish a legal framework on the subject. The Belgian Parliament had not examined this draft law so far.
27. GRECO considered that the Belgian authorities have gone far beyond the "in-depth study" - called for in the recommendation - on the need to establish a full legislative framework on the special means of investigation called for in recommendation vi. Through the January 2003 Act, they have created such a legislative framework and have clearly set out the specific criteria for application. As for informers and other collaborators, GRECO considered that such a "study" has been undertaken several times since studies have been conducted and laws drafted. Those draft laws have not yet been examined by the legislator, however. GRECO considered that Belgium might provide further information on developments with respect to informers and other collaborators.
28. GRECO took note of the information provided and concluded that recommendation vi. has been implemented satisfactorily.

Recommendation vii.

29. *GRECO recommended adopting measures to enable witness protection to be developed.*
30. The Belgian authorities have mentioned the following Acts passed on the subject:
- Act on the anonymity of witnesses, passed on 8 April 2002 and published on 31 May 2002. It sets out, *inter alia*, the circumstances in which the courts may decide to omit certain information regarding the identity of a witness (partial anonymity) or, in certain exceptional circumstances, grant (total) anonymity. A Royal Decree on the examination of anonymous witnesses was in preparation.
 - Act on the rules concerning the protection of witnesses and other provisions, passed on 7 July 2002 and published on 10 August 2002. It introduced the criteria according to which a Committee for the Protection of Witnesses may grant protection to any person “endangered by statements made or to be made in the context of a criminal case (...)”, their family members and other relations, and sets out the special protection measures that may be granted.
 - Act on taking statements using audiovisual media, passed on 2 August 2002 and published on 19 September 2002. This deals with two different ways of taking statements: (1) distance examination (for example, by video-conferencing or closed-circuit television; (2) audiovisual and audio recording of the examination.
31. GRECO took note of the information provided and concluded that recommendation vii. has been implemented satisfactorily.

Recommendation viii.

32. *GRECO recommended studying possibilities of increasing the number of prosecutors in the prosecution service and the number of investigating judges.*
33. The Belgian authorities have stated that undermanning in the judiciary (prosecutors and investigating judges) concerned only the Brussels Court of Appeal and was in particular the result of linguistic problems and the difficulty of finding enough candidates who satisfy the conditions of appointment laid down. A new Act passed on 18 July 2002 and published on 22 August 2002 had amended a 1935 Act on the use of languages in judicial proceedings. It distinguishes between the posts requiring “in-depth” knowledge of the candidate’s other language and those requiring “adequate” knowledge (in the latter case, only passive written knowledge of the other language is required). This would make it possible in the relatively near future to increase the number of candidates for posts for which “adequate” knowledge of the other language is required. According to the information the Belgian authorities have provided, the number of judges working in the Brussels Court of Appeal should increase as follows: prosecution services, 92 (at present) + 34 = 126; judges hearing cases, 105 (at present) + 51 = 156.
34. GRECO took note of the information provided and concluded that recommendation viii. has been implemented satisfactorily.

Recommendations ix. and x.

35. *GRECO recommended raising the level of specialisation in corruption cases of some investigating judges and judges hearing cases. GRECO also recommended increasing training given to investigating judges and judges hearing cases on the handling of cases of economic crime, including corruption cases.*
36. In accordance with paragraphs 63 and 66 of the Evaluation Report, these two recommendations are closely interlinked; their implementation may therefore be examined jointly.
37. The Belgian authorities have stated as follows:
- Judges may undergo in-service training on economic and financial crime which includes the study of corruption-related offences. As a general rule, such training is not compulsory. Conversely, the training of future investigating judges (who need to obtain a specific qualification through specific training) and trainee judges includes compulsory attendance at a certain number of hours of training that includes economic and financial crime.
 - These training programmes are offered by the Ministry of Justice and are updated every year according to changes in legislation and case-law. The trainers are practitioners - judges or lawyers - and university lecturers. Furthermore, with respect to prosecutors, the Board of Prosecutors has developed a network of judges specialising in subjects such as serious and organised crime who exchange their experiences at very frequent meetings. There is also a similar network on economic, financial and fiscal crime, including corruption cases.
 - With respect to corruption, training is centred on the analysis of the legislation on corruption and the related offences (including the legislation governing public tenders), the functioning of the O.C.R.C. and the management of investigations of economic and financial cases, including corruption. As these subjects are comparatively "stable", such courses are not held every year. The next one will be held on 12 May 2004 and will be specifically for prosecutors and judges hearing cases who specialise in economic and financial cases.
 - No figures are available on the rate of attendance of such specific courses. However, some 80 judges attended the course on economic and financial crime (which took place in 2001-2002).
 - In order to ensure that corruption-related cases are properly dealt with, the Board of Prosecutors has issued instructions to the effect that such cases should be entrusted to the "economic and financial" section of each prosecutor's office.
38. GRECO took note of the information provided and concluded that recommendations ix. and x. have been satisfactorily implemented.

Recommendation xi.

39. *GRECO recommended that the desirability of a campaign to make the public aware of the existence of the Board of Mediators be examined.*
40. The Belgian authorities have stated that the Board of Mediators frequently organised seminars and information campaigns in the mass media (the newspaper *Le Soir*, for example) and maintained columns. It also had a Website.

41. GRECO took note of the information provided and concluded that recommendation xi. has been implemented satisfactorily.

Recommendation xii.

42. *GRECO recommended that the interagency unit should be institutionalised and used to put forward solutions for improving the exchange of information on corruption.*
43. The Belgian authorities have stated that two specific agencies (the network of specialised judges and the interdepartmental unit) were merged in 2003 in order to avoid the proliferation of bodies with complementary tasks. The new network is composed of representatives of the prosecuting authorities (all the districts (27) and jurisdictions (5) of the Kingdom are members), the criminal policy department, the federal police (central office for combating economic and financial crime and the O.C.R.C.), the Ministry of Finance, the banking commission and the financial information handling unit. Its responsibilities are to support the Board of Prosecutors and public prosecutors in the performance of their duties. It is structured as follows: (1) a coordinating team, chaired by the attending judges for economic and financial matters of the Board of Prosecutors, meets five times a year. It manages day-to-day business: the need to draw up draft memoranda, take legislative initiatives and give expert opinions to judges with specific problems in the context of actual cases. Two meetings had taken place in 2003 and, with respect to combating corruption, had resulted in the issuing of information on the O.C.R.C., the organisation of a day's training on legislation on corruption, public tenders and the O.C.R.C. and the management of investigations of economic and financial cases, including corruption. (2) A general assembly which meets once a year. It is composed of the coordinating team and contact points from each district and jurisdiction in the Kingdom. The first general assembly was held on 20 May 2003, when the network and the draft vade-mecum on financial investigations, including corruption, were presented.
44. GRECO took note of the information provided and concluded that recommendation xii. has been implemented satisfactorily

Recommendation xiii.

45. *GRECO recommended that measures (if necessary of a legislative nature) should be taken to facilitate cooperation between (a) the law-enforcement and judicial authorities and (b) the tax authorities. Moreover, that access to information held by telecommunication companies be facilitated through a centralised access system.*
46. The Belgian authorities have mentioned:
- With respect to legislative measures to facilitate cooperation between the law-enforcement authorities and the tax authorities, two protocols were concluded in 2000 between the Ministries of Finance and Justice, the main aim of which was to combat tax evasion and, in particular, VAT fraud. Two ad hoc units had been formed composed of police and Ministry of Finance staff who worked closely with prosecutors.
 - The Act "to make tax authority officials available to the police" was passed on 13 March 2002 and published on 29 March of the same year. Article 2 provides: "Officials from the tax authorities,

appointed by the Minister of Finance, shall be made available to the federal police for the purposes of assisting them in combating organised economic and financial crime”.

- As for access to information from telecommunications companies, in 2002 the Minister of Justice announced to the Senate the introduction of a central telephone-tapping room, the “Central Technical Interception Facility”, to intercept communications between fixed and mobile telephones, and e-mail. An invitation to tender had then been launched for its creation and the contract had recently been awarded. In addition, a Royal Decree of 9 January 2003 provided for the establishment within each telecommunications network operator and service provider, including the Internet (but with a number of restrictions), of a “Coordination and Justice Unit”. The units’ tasks include in particular facilitating collaboration between operators and service providers and the relevant judicial authorities.
47. GRECO took note of the information provided and concluded that recommendation xiii. has been implemented satisfactorily.

Recommendation xiv.

48. *GRECO recommended studying the need for reinforced cooperation between the Court of Auditors and the police units as well as the prosecutors in charge of the fight against corruption in order to ensure that they receive, in a systematic way, information which might be useful in detecting cases of corruption, even if they do not constitute criminal offences.*
49. The Belgian authorities have wanted first of all to make it clear that the Belgian Court of Auditors performs duties similar to those of Courts of Auditors in other countries. The controls it exercises concern the expenditure and revenue of the Federal, Community and Regional Governments, and those of permanent provincial deputations. It exercises financial controls (checking to see that state finances are accurate, reliable and complete), control of legality (checking to see that public expenditure and revenue comply with the Budget) and control of “good use of public moneys” (checking the use of financial, human and material resources) and public agencies. The results of these three forms of control are regularly reported to the parliamentary assemblies (either in the form of integrated summaries in the annual “Cahiers d’observations” or in the form of special publications). According to the law, the Court’s annual reports are published and may therefore be used by the police or other specialised investigation agencies since an irregularity in the accounts might conceal an offence. Furthermore, the members of the Court, like all other public officials, have a duty to report to the relevant judicial authorities any offences of which they become aware in the performance of their duties.
50. As an example of the consolidation of cooperation between the Court of Auditors and the police and judges responsible for combating corruption, the Belgian authorities have underlined that the Court of Auditors had reported two cases with financial implications – and which might therefore be connected with corruption – to the relevant judicial authorities and that the latter had undertaken criminal investigations on the basis of that information.
51. GRECO took note of the information provided and concluded that recommendation xiv. has been implemented satisfactorily.

III. CONCLUSIONS

52. GRECO notes with satisfaction and concludes that all the recommendations have been implemented satisfactorily.
53. The Belgian authorities might also like to transmit to GRECO the further information mentioned in the parts of the report concerning recommendation vi.