

Adoption: 18 March 2016  
Publication: 20 September 2016

**Public**  
**GrecoRC3(2016)2**

## **Third Evaluation Round**

### **Second Compliance Report on Belgium**

**“Incriminations (ETS 173 and 191, GPC 2)”**

\* \* \*

**“Transparency of Political Party Funding”**

Adopted by GRECO  
at its 71<sup>st</sup> Plenary Meeting  
(Strasbourg, 14-18 March 2016)

## **I. INTRODUCTION**

1. GRECO adopted the [Third Round Evaluation Report](#) on Belgium at its 42<sup>nd</sup> plenary meeting (15 May 2009). This report was made public on 22 June 2009 following authorisation by Belgium (Greco Eval III Rep (2008) 8E [Theme I](#) / [Theme II](#)).
2. As required by GRECO's Rules of Procedure, the Belgian authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO had selected Andorra and Luxembourg to appoint rapporteurs for the compliance procedure.
3. In the [Compliance Report](#) which it adopted at its 51<sup>st</sup> plenary meeting (27 May 2011), GRECO concluded that Belgium had satisfactorily implemented or dealt with only one of the fifteen recommendations contained in the Third Round Evaluation Report. For this reason, it judged the then low level of implementation of the recommendations to be “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3, of its Rules of Procedure. GRECO accordingly decided to apply Rule 32 concerning members failing to comply with the recommendations contained in the mutual evaluation report.
4. The first [Interim Compliance Report](#) was adopted by GRECO at its 55<sup>th</sup> plenary meeting (16 May 2012) and made public on 18 September 2012. The [Second Interim Compliance Report](#) was adopted at GRECO's 61<sup>st</sup> plenary meeting (18 October 2013) and made public on 4 July 2014. In the [Third Interim Compliance Report](#), adopted at its 65<sup>th</sup> plenary meeting on 10 October 2014 and made public on 5 March 2015, GRECO concluded that Belgium had implemented three out of the fifteen recommendations contained in the Evaluation Report. Another nine recommendations had been partly implemented and the remaining three recommendations had not been given effect. GRECO decided not to continue applying the enhanced compliance procedure (as the level of compliance was no longer “globally unsatisfactory”).
5. As required by GRECO's Rules of Procedure, the Belgian authorities submitted their Second Situation Report containing additional information on steps taken to comply with the recommendations found in the Compliance Report to have been partly or not implemented. This report was received on 25 September 2015 and served as the basis for this Second Compliance Report. Further information was subsequently provided.
6. GRECO selected Andorra and Luxembourg to appoint the Rapporteurs for the compliance procedure. Andorra accordingly appointed Ms Ester MOLNÉ SOLDEVILA, Head of Legal Affairs at the Ministry of Justice and of the Interior, and Luxembourg appointed Mr David LENTZ, Deputy State Prosecutor. The Rapporteurs received assistance from the Secretariat of GRECO in drawing up the Second Compliance Report, which evaluates the progress made since the previous interim report in implementing the outstanding recommendations and makes an overall assessment of Belgium's level of compliance with those recommendations.

## **II. ANALYSIS**

### **Theme I – Incriminations**

7. It will be recalled that, in its Evaluation Report, GRECO addressed 4 recommendations to Belgium in respect of Theme I. The Compliance Report concluded in May 2011 that recommendations i to iv had been partly implemented, a situation which remained unchanged in the Interim Compliance Report of May 2012. In the second Interim Compliance Report of October

2013, GRECO found that recommendations ii and iii had been satisfactorily implemented. In the third Interim Compliance Report, recommendations i and iv remained partly implemented. The paragraphs below therefore review progress in implementing recommendations i and iv.

### **Recommendation i.**

8. *GRECO recommended that necessary measures, such as circulars, interpretative material or training, be introduced to recall that the intentional "receipt" of an advantage, within the meaning of the Criminal Law Convention on Corruption (ETS 173), is unlawful in respect of the various offences of passive bribery.*
9. GRECO recalls that, to date, this recommendation remains partly implemented. The Belgian authorities proposed in May 2011 to produce a general circular which would address in particular the clarifications called for in this recommendation by including a paragraph drawn up by the Federal Public Justice Department (SPF Justice). Work was started, but for various reasons never completed (stated reasons: lack of agreement within the network of experts on corruption and members' heavy workload). A joint police-magistrates training course took place on 19 November 2011, during which it was apparently stated that the receipt of an advantage is an integral part of all forms of corruption, and the Judicial Training Institute had planned further relevant training courses for 2015. At the same time, the Belgian authorities also reported the lack of any relevant new case law on the "receipt" of undue advantages.
10. The Belgian authorities now report that a) there has been no relevant new case law; b) that, where training is concerned, following initiatives taken by the Judicial Training Institute, a meeting was held on 18 September 2015 and a study seminar is scheduled for May 2016; c) that the circular was finally adopted by the Board of State Prosecutors on 10 September 2015 – "COL 11/2015 – Public corruption, private corruption, unlawful receipt, acceptance of an interest and embezzlement by a person holding public office: criminal policy, case processing and legal framework". The purpose of this text is to step up the fight against corruption. It states that cases concerning offences of public corruption must be dealt with on a priority basis. It also sets out guidelines for handling cases: mandatory assignment to the contact prosecutor for cases of public corruption, unlawful receipt, acceptance of an interest and embezzlement by a person holding public office, systematic reporting to court presidents of draft decisions and difficulties encountered at all stages of proceedings<sup>1</sup>, active monitoring of length of proceedings, precise definition of the subject-matter of the investigation, seizure of the pecuniary benefits derived from offences, monitoring of requests for international judicial assistance, dealing with any plea bargaining, computerised registration, reporting to the hierarchical authority (especially if it is planned to discontinue proceedings owing to a lack of resources) and communication of case law. Prosecutors are reminded of the content of the European Union Convention of 1997 on the fight against corruption involving officials of the European Communities or officials of the Member States and the Council of Europe's Criminal Law Convention on Corruption of 1999, as regards the intentional receipt of an undue advantage, GRECO's expectations on this matter and those of OECD, and the relevant case law of the Court of Cassation.
11. Above all, the Minister of Justice supported the drafting of a text actually amending the articles of the Criminal Code on passive corruption in the public sector (Article 246, paragraph 1) and passive corruption in the private sector (Article 504 bis, paragraph 1): the words "soliciting or

---

<sup>1</sup> In particular, proceedings in cases of public corruption, unlawful receipt, acceptance of an interest or embezzlement by a person holding public office may only be discontinued on the grounds of "insufficient investigative capacity" or "change of investigative or prosecution priorities" with the express consent of the court president.

accepting” are replaced by “soliciting, accepting or receiving”. These amendments (and various other provisions) are part of the law amending the Criminal Code and the Code of Criminal Procedure and introducing various other judicial provisions. The text submitted in autumn 2015<sup>2</sup> was adopted by Parliament on 28 January 2016, signed by the King on 5 February and subsequently published in the official journal on 19 February, it entered into force on 29 February.

12. GRECO welcomes the fact that the judicial circular announced in 2011 was finally adopted by the Board of State Prosecutors on 10 September 2015 and then distributed to all prosecution offices. GRECO appreciates its content not only from the standpoint of this recommendation but also from that of improved law enforcement against public and private corruption in general, since the text pursues a range of more general objectives. GRECO also welcomes the final adoption in January 2016 of amendments to the Criminal Code explicitly introducing the notion of “receipt” of an undue advantage. This lends confirmation and greater visibility to the developments in case law that began in the late 1990s and establishes bribery as a separate offence in its passive form too, in line with Article 3 of the 1999 Criminal Law Convention on Corruption. Belgium has therefore fully satisfied the requirements of this recommendation.
13. GRECO concludes that recommendation i has been implemented satisfactorily.

#### **Recommendation iv.**

14. *GRECO recommended i) to take the necessary steps in order to clarify, notably for practitioners, the scope of Article 12bis of the Code of Criminal Procedure, which enables Belgium to assume jurisdiction on the basis of Article 17 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173) in any case where the domestic rules of law fail to satisfy that provision, and make it clear that dual criminality is not a requirement in cases of bribery and trading in influence; ii) to consider withdrawing or not renewing the reservation concerning Article 17 of the Convention.*

GRECO recalls that this recommendation has been deemed “partially implemented” hitherto. As announced in the previous reports in this compliance procedure, in response to the second part of the recommendation, the reservation to Article 17 of the Convention was withdrawn with effect from 1 July 2010 – the Belgian authorities in fact indicated that it was no longer justified in the current state of interpretation of the provisions (the view was taken that the principle of universal jurisdiction laid down in Article 12 bis of the Code of Criminal Investigation (CIC) was not limited to the humanitarian context). A draft circular on Article 12 bis of the CIC was subsequently produced, but was abandoned in view of the implications of universal jurisdiction. Belgium finally preferred to amend its legislation in line with Article 17 of the Convention and a draft amendment to Articles 10 quater and 12 of the CIC was prepared in January 2013 and was to be submitted to the next Minister of Justice after the formation of the new government.

15. The Belgian authorities now report that the draft text amending Articles 10 quater and 12 of the CIC regulating Belgium’s extraterritorial jurisdiction was presented in a memorandum of 11 March 2015 to the new minister. The federal prosecution service and the Board of State Prosecutors are involved in the consultations.
16. GRECO takes note of the lack of any tangible progress in implementing this recommendation. It once again urges Belgium to step up its efforts to now bring its national law fully into line with the Convention and ensure the implementation of this recommendation.

---

<sup>2</sup> <http://www.dekamer.be/flwb/pdf/54/1418/54K1418001.pdf>

17. GRECO concludes that recommendation iv remains partly implemented.

## **Theme II – Transparency of political party funding**

18. In its Evaluation Report, GRECO addressed 11 recommendations to Belgium in respect of Theme II. Following the Third Interim Compliance Report, the situation is currently as follows: recommendations ii, iv, v, vi, viii, ix and xi have been partly implemented and recommendations iii, vii and x remain unimplemented. Recommendation i was deemed satisfactorily implemented in the First Compliance Report. The following sections therefore examine the action taken by Belgium on recommendations ii to xi.
19. GRECO recalls that the work to transpose the Third Evaluation Round recommendations on Theme II has so far been conducted by the Federal Parliament of Belgium, specifically through the working group on “Political parties” set up in December 2000 (then given a fresh mandate in October 2007 to consider a reform) by the Parliamentary Commission on control of electoral expenditure and political party accounting. GRECO has had occasion, in the previous reports, to comment on the work in progress and the bill being drafted to introduce a certain number of changes in connection with the issues addressed in the Evaluation Report. The parliamentary work is summarised in a working document of the Parliament<sup>3</sup>. GRECO was required to draw Belgium’s attention to the precise expectations of the report and to the fact that the proposed amendments met only some of those expectations (some were not even discussed). The amendments were finally adopted along with a whole legislative package of four laws in November and December 2013, published in the *Moniteur belge* of 31 January 2014<sup>4</sup>: a) revision of Article 142 of the Constitution of 6 January 2014 (p. 8546); b) special law of 6 January 2014 amending the special law of 6 January 1989 on the Constitutional Court (p. 8592); c) law of 6 January 2014 amending the law of 4 July 1989 on the limitation and control of electoral expenditure incurred for elections to the Federal Chambers and the funding and accounts of political parties, the Electoral Code, the law of 19 May 1994 on the limitation and control of electoral expenditure incurred for elections to the European Parliament and the law of 19 May 1994 regulating the election campaign, concerning the limitation and declaration of electoral expenditure incurred for the elections to the Walloon Parliament, the Flemish Parliament, the Parliament of the Brussels-Capital Region and the Parliament of the German-speaking Region, and establishing the review criteria for official communications of the public authorities (p. 8664); d) law of 6 January 2014 amending the law of 19 May 1994 on the limitation and control of electoral expenditure incurred for the elections to the European Parliament and amending the law of 19 May 1994 regulating the election campaign, concerning the limitation and declaration of electoral expenditure incurred for the elections to the Walloon Parliament, the Flemish Parliament, the Parliament of the Brussels-Capital Region and the Parliament of the German-speaking Region, and establishing the review criteria for official communications of the public authorities (p. 8675).
20. The Belgian authorities report that, after the federal parliamentary elections of May 2014, the Commission on control of electoral expenditure and political party accounting resumed work in a new composition, followed shortly afterwards by a re-formed working group on “political parties”. The latter met several times in 2015 and focused on revising the statutes and rules of procedure

---

<sup>3</sup> <http://www.lachambre.be/FLWB/PDF/53/2854/53K2854001.pdf>

<sup>4</sup> See [http://www.senate.be/actueel/homepage/Staatshervorming/Moniteur\\_%20du\\_31-01-2014.pdf](http://www.senate.be/actueel/homepage/Staatshervorming/Moniteur_%20du_31-01-2014.pdf). The authorities pointed out that some of the provisions of these texts came into force on the day they were published in the *Moniteur belge* and others on the day of the elections, 25 May 2014, and that others would come into force on the date specified in the law (e.g. 1 January 2015).

of the parliamentary commission and developing a new model financial format for political parties in co-operation with the Institute of Company Auditors (an initial draft was planned for September 2015). Owing to delays in putting the structures in place and in adopting the new financial format, the entry into force of the new legislation had to be postponed to 1 January 2016 and the filing of accounts in the new format will therefore commence in 2016 in respect of 2015 (law of 11 June 2015 – *Moniteur belge* of 22 June 2015<sup>5</sup>).

21. As regards the outstanding GRECO recommendations: a) the new working group was asked – like its predecessors – to consider the action to be taken on them and the political groups were invited to submit any proposals; b) the President of the Chamber of Representatives – who also chairs the control commission – decided to bring GRECO recommendations iv to viii, x and xi (those recommending that the regions be invited to take measures along the desired lines) officially to the attention of the community and regional parliaments via a letter of 19 June 2015. The parliaments of Wallonia, of the German-speaking community and the Flemish parliament<sup>6</sup>, in principle, will be participating in the re-formed working group as from April 2016. The Belgian authorities point out that such a participation of the entities' parliaments in the activities of a group of the federal Parliament, responsible for legislative work, is quite exceptional. It is well understood that the legislative proposals, draft decrees or draft ordinances will need to be discussed within the competent commissions of the respective parliaments. The Flemish Parliament has already indicated its intention to submit a draft decree.

#### **Recommendation ii.**

22. *GRECO recommended that the Act of 4 July 1989 and other relevant legislation be amended i) to extend their coverage to parties that do not receive federal public financing and ii) to introduce criteria for extending more systematically the scope of the consolidated accounts of parties and political groups to include associated structures, in particular the party's local sections, so that oversight is also exercised in respect of the local level.*
23. GRECO recalls that this recommendation is considered partly implemented to date. The January 2014 amendments produced measures in response to the first part of the recommendation, but not the second: GRECO drew attention to the disparate situation which prevails in Belgium, resulting from the variable application of the rules from one political party to another (see the references to the Evaluation Report in the previous compliance report). It said that suitable criteria would make it possible, precisely, to consolidate political parties' financial statements so as to avoid 1000 page documents and repeated audits, as the Belgian authorities complained.
24. The Belgian authorities state in paragraphs 20 and 21 that work to implement the pending recommendations resumed in 2015, but for the time being no tangible measures are reported with regard to this recommendation in particular.
25. GRECO takes note of the resumption of parliamentary work in 2015, but regrets that there have so far been no new developments along the lines of the first part of the recommendation.
26. GRECO concludes that recommendation ii remains partly implemented.

---

<sup>5</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2015061105](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2015061105)

<sup>6</sup> The parliament of the Wallonia-Brussels federation does not consider participating in this work given its competences and composition.

### **Recommendation iii.**

27. *GRECO recommended that the federal legislation on the respective obligations and responsibilities of parties and their components be further clarified, to ensure that financial transactions are effected to the highest extent possible through each party's financial association.*
28. GRECO recalls that this recommendation has been considered unimplemented to date. The Belgian authorities stated that, after deliberation, the conclusion was reached that Belgian regulations were sufficiently binding, transparent and comprehensive. For its part, GRECO reiterated that the evaluation report pointed to a disparate situation lacking transparency with regard to financial flows and financial responsibilities within political parties (see the references to the Evaluation Report in the previous compliance report), and with regard to consolidation of accounts, as already noted in connection with the previous recommendation.
29. The Belgian authorities state in paragraphs 20 and 21 that work to implement the pending recommendations resumed in 2015, but for the time being no tangible measures are reported with regard to this recommendation in particular.
30. GRECO takes note of the above and of the resumption of parliamentary work in 2015, but regrets that there have so far been no new developments along the lines of the first part of the recommendation.
31. GRECO concludes that recommendation iii remains non-implemented.

### **Recommendation iv.**

32. *GRECO recommended i) the registration of donations of less than EUR 125 to parties and candidates be made a formal obligation; ii) the use of modern and more secure means of payment for donations be encouraged to make them more traceable; iii) the notion of donation be clarified or defined so as to better address services rendered free of charge or below market value on the one hand, and to ensure consistency as regards sponsorship by legal persons and the existing rules governing donations on the other hand; iv) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation.*
33. GRECO recalls that this recommendation has been considered partly implemented to date. Belgium has essentially given effect to the measures recommended in the second part of the recommendation, but has not acted satisfactorily, or has not acted at all, on the other parts. Regarding the first part of the recommendation, GRECO pointed out that on-site discussions revealed that “in the absence of explicit provisions regarding donations below EUR 125, opinions diverge about the obligation to register such donations” (paragraph 35 of the Evaluation Report). Regarding the third point, Belgium confined itself, with the amendments of January 2014, to introducing rules on sponsorship in a manner which ultimately confers full legitimacy on a practice which is prohibited in principle owing to the ban on donations by legal persons. For GRECO, the question of sponsorship came under the broader problem of the need for an adequate definition of donation. GRECO noted that Belgium had opted since 1993 (following controversial cases) to prohibit support originating from legal persons, but that the legislation and supervisory bodies had not adequately or explicitly “outlawed” it in all conceivable cases. At the same time, the definition of “donation” in Belgium is very broad and takes in all forms of support (financial, in kind, “*in whatever form*”), but elected representatives met during the visit recommended that this definition be made more specific in order to include sponsorship too. In order to ensure the greater

consistency called for by this part of the recommendation, Belgium would have needed either to revert to a pre-1993 situation as regards contributions from legal persons, while clarifying the methods of recording sponsorship in political accounts, or to outlaw this practice in a clear and universally accepted way. GRECO emphasised that the solution adopted by Belgium in 2014 followed neither of these two approaches and that the sponsorship rules introduced actually confined themselves to stipulating compliance with market prices in the assessment of support in kind from sponsors or expenses directly defrayed by them. The existing rules setting upper limits on donations are not applicable (except during election campaigns), which is another inconsistency having regard to the logic of the Belgian regulations: this is based on upper limits placed both on the amount of individual support and on electoral expenditure. GRECO also emphasised that differentiating between permitted support from legal persons and prohibited donations from legal persons was likely to be problematical in practice, in terms of general transparency and supervision.

34. As already mentioned, the Belgian authorities state in paragraphs 20 and 21 that parliamentary work to address the outstanding recommendations resumed in 2015. For the time being, however, no tangible measures are reported with regard to this recommendation in particular. The letter of 19 June 2015 from the President of the Chamber of Representatives – who also chairs the control commission – officially drew the attention of the community and regional parliaments to the content and expectations of this recommendation. As indicated in paragraph 21, the parliaments of the federated entities will be involved from now on in the work conducted at federal level.
35. GRECO notes with satisfaction that an official letter concerning the content and expectations of this recommendation was sent to the community and regional parliaments on 19 June. GRECO notes that this seems to have generated new impetus for the transposition of the measures recommended at the level of the federated entities. Belgium has therefore given effect to the fourth point of the recommendation, but GRECO regrets that, for the time being, the first and third points remain unimplemented.
36. GRECO concludes that recommendation iv remains partly implemented.

#### **Recommendation v.**

37. *GRECO recommended i) to examine the advisability of extending the financial and accounting reference period applicable to election campaigns so that declarations reflect more closely the resources and expenditure devoted to these campaigns; ii) if appropriate, to invite the regions to amend their legislation in accordance with this recommendation.*
38. GRECO recalls that it considered this recommendation partly implemented in view of the fact that the amendments of January 2014 introduced measures in line with the first part. But no action had yet been taken on the second point in the recommendation.
39. As already mentioned, the Belgian authorities state in paragraphs 20 and 21 that parliamentary work to address the outstanding recommendations resumed in 2015 and that a letter sent on 19 June 2015 by the President of the Chamber of Representatives – who also chairs the control commission – officially drew the attention of the community and regional parliaments to the content and expectations of this recommendation. As indicated in paragraph 21, the parliaments of the federated entities will be involved from now on in the work conducted at federal level.



40. GRECO notes with satisfaction that an official letter concerning the content and expectations of this recommendation was sent to the community and regional parliaments on 19 June. The Flemish Parliament indicates that it will be considering follow-up action. GRECO hopes that this will give the necessary impetus for the transposition of the measures recommended. Consequently, Belgium has now given effect to all the requirements of this recommendation.
41. GRECO concludes that recommendation v has been implemented satisfactorily.

#### **Recommendation vi.**

42. *GRECO recommended i) the retention period for supporting documents be extended beyond two years; ii) where it does not exist, particularly at provincial, district and municipal levels under the Act of 7 July 1994, such an obligation be introduced; iii) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation.*
43. GRECO recalls that recommendation vi was considered partly implemented owing to the fact that the amendments of January 2014 extended the retention period for supporting documents as required by the first part of the recommendation. But no tangible action had been taken on the second and third points in the recommendation. The authorities pointed out that the federal legislature had competence in respect of European elections, federal elections and elections to the federated entities, whereas the regions only had competence in respect of local elections.
44. As already mentioned, the Belgian authorities state in paragraphs 20 and 21 that parliamentary work to address the outstanding recommendation resumed in 2015. The letter of 19 June 2015 from the President of the Chamber of Representatives – who also chairs the control commission – officially drew the attention of the community and regional parliaments to the content and expectations of this recommendation. As indicated in paragraph 21, the parliaments of the federated entities will be involved from now on in the work conducted at federal level.
45. GRECO takes note of the foregoing. Where the second part of the recommendation is concerned, as the Belgian authorities pointed out in the previous report, the federal legislature has competence in respect of European elections, federal elections and elections to the federated entities, while the regions only have competence in respect of local elections. GRECO notes that the situation is actually quite complex because this competence is sometimes exclusive and sometimes shared. For example, with regard to the (federal) law of 7 July 1994 *on limiting and monitoring expenditure on elections to [provincial, municipal and district] councils and the direct election of social assistance councils*, a) it was fully repealed in respect of the Flemish Community insofar as it concerns provincial, municipal and district elections; b) it was partially repealed in respect of the Walloon region: this applies to Articles 8, 9, 10, 12, 13, paragraph 2, first sentence, 13bis, and 14 to 33 insofar as they concern the monitoring of expenditure on elections to provincial, municipal and district councils; c) it apparently remains fully in force in the rest of Belgium, and hence in respect of the Brussels-Capital Region<sup>7</sup>. On the occasion of the adoption of the present report, the Belgian authorities confirm that this seems indeed to be the actual situation. The federal legislature would therefore retain at least some competence to deal with the measures required by the second part of the recommendation. Clearly, however, this cannot be done without some interaction with the community and regional parliaments. The third part of the recommendation was put into effect through the letter of 19 June 2015 sent officially by the President of the Chamber of Representatives to the community and regional parliaments. As already mentioned, the Flemish Parliament has already undertaken to examine the matter and it

---

<sup>7</sup> Information taken from the headnotes in the legislative database:

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1994070734&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1994070734&table_name=loi)

would appear that this mail has given new impetus to the process with several parliaments likely to participate in the work conducted at federal level. The Evaluation Report pointed out that the retention period for supporting documents was already more than two years under general accounting rules. In the light of these considerations and the improvements already introduced in January 2014, GRECO considers that this recommendation has, on the whole, been taken into account.

46. GRECO concludes that recommendation vi has been implemented satisfactorily.

**Recommendation vii.**

47. *GRECO recommended i) parties and/or candidates be obliged – within the limits of the Constitution – to declare individual donations above a certain minimum value, together with the donors' identity; ii) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation.*
48. GRECO recalls that it considered recommendation vii unimplemented. Belgium announced that the amendments of January 2014 had put in place a system of public declaration of “all donations by legal persons classed as sponsorship”, whatever their amount, and reiterated certain reservations regarding public disclosure of donors who are natural persons (protection of privacy). GRECO considered that the new measures on sponsorship did not meet the requirements of the first part of the recommendation, especially in view of the resulting problems with regard to the consistency of the regulations (see recommendation iv). As for the opinions delivered by the privacy protection commission in 2007 and, especially, 1999<sup>8</sup>, it appeared that their unfavourable conclusion on the question of publication of the identity of donors was prompted essentially by the state of the laws relating to political funding, and hence the lack of a legal basis allowing information to be published. It would seem possible to comply with the first part of the recommendation by amending the provisions. As regards the second part, no measures had yet been taken along the desired lines.
49. As already mentioned, the Belgian authorities state in paragraphs 20 and 21 that parliamentary work to address the outstanding recommendations resumed in 2015. The letter of 19 June 2015 from the President of the Chamber of Representatives – who also chairs the control commission – officially drew the attention of the community and regional parliaments to the content and expectations of this recommendation. As indicated in paragraph 21, the parliaments of the federated entities will be involved from now on in the work conducted at federal level.
50. GRECO takes note of the above and of the resumption of parliamentary work in 2015. It regrets that there have so far been no new developments along the lines of the first part of the recommendation. As regards the second part of the recommendation, the official letter sent to the community and regional parliaments meets expectations and as pointed out earlier, it would appear that it has generated additional impetus for legislative work for the whole of Belgium. This second part of the recommendation has thus been addressed.
51. GRECO concludes that recommendation vii has been partly implemented.

---

<sup>8</sup> The 1990 opinion is referred to extensively in that of 2007. The commission stated that: “*In consequence of the foregoing, to publish or disclose these lists [of donors of more than EUR 125] outside the control commission would be tantamount to infringing the principle of the appropriateness of processing to its purpose, especially since neither the Act on political party funding nor its implementing decree of 10 December 1998 provides for such publication or disclosure. These lists are confidential, as is reiterated both by section 16 of the Act of 8 December 1992 stipulating secure processing and by section 6 of the Act of 4 July 1989.(...) Thus no publicity given to these lists can be permitted.*”

### **Recommendation viii.**

52. *GRECO recommended i) to set up a system – unified if possible – to supervise the financing of parties and election campaigns, that would be as independent as possible from the political parties and be allocated the means needed to exercise adequate substantive control; ii) to invite the regions to take this recommendation into account should the creation of a unified system prove too difficult in the national institutional context.*
53. GRECO recalls that it considered recommendation viii partly implemented. Regarding the first part of this recommendation, Belgium finally chose not to set up a new unified supervision system, but at the same time the improvements brought by the changes decided in January 2014 remained insufficient. Reference was made in particular to the new composition of the (parliamentary) commission on control of electoral expenditure and political party accounting, whose 21 members now include four outside experts, and to the new power of the Court of Audit to request further information from associations acting as financial agents for political parties (although this does not apply to electoral expenditure). Where the second part of the recommendation is concerned, no measures had yet been taken along the desired lines.
54. As already mentioned, the Belgian authorities state in paragraph 21 that parliamentary work to address the outstanding recommendations resumed in 2015. For the time being, however, no tangible measures are reported with regard to this recommendation in particular. The letter of 19 June 2015 from the President of the Chamber of Representatives – who also chairs the control commission – officially drew the attention of the community and regional parliaments to the content and expectations of this recommendation. As indicated in paragraph 21, the parliaments of the federated entities will be involved from now on in the work conducted at federal level.
55. GRECO takes note of the above and of the resumption of parliamentary work in 2015. It regrets the lack so far of any new developments along the lines of the first part of the recommendation. It also reiterates that appropriate and effective supervision of political funding is a key component of the regulation of political funding in countries. This is an important recommendation aimed at improving a situation described in the Evaluation Report as highly unsatisfactory. As regards the second part of the recommendation, the official letter sent to the community and regional parliaments, together with the new impetus given to consultations and legislative work satisfy the requirements of the second part of the recommendation. GRECO hopes that this will make it possible to re-open the discussion on possible unification of the supervision system.
56. GRECO concludes that recommendation viii remains partly implemented.

### **Recommendation ix.**

57. *GRECO recommended i) agreement be reached with the Institut des Réviseurs d'Entreprise (institute of company auditors) on more stringent standards for auditing the accounts of political parties, including rules for ensuring the auditors' necessary independence and ii) consideration be given to extending audit obligations beyond the parties' annual accounts so as to cover notably their reports on electoral expenditure.*
58. GRECO recalls that this recommendation was deemed partly implemented. No new measures had been taken along the lines required by the first part of the recommendation, as Belgium considered the existing measures to be sufficient. In the previous compliance report, GRECO reiterated a number of shortcomings which had been identified in the Evaluation Report. Where

the second part of the recommendation is concerned, consideration has been given to the possibility of introducing audits of electoral expenditure too, as was recommended.

59. As already mentioned, the Belgian authorities state in paragraph 21 that parliamentary work to address the outstanding recommendation resumed in 2015. For the time being, however, no tangible measures are reported with regard to this recommendation in particular.
60. GRECO takes note of the above and of the resumption of parliamentary work in 2015. It regrets the lack so far of any new developments along the lines of the first part of the recommendation.
61. GRECO concludes that recommendation ix remains partly implemented.

#### **Recommendation x.**

62. *GRECO recommended i) steps be taken to ensure that if a party fails to meet its obligations under the Act of 4 July 1989, or other relevant legislation, and this would normally entail the loss of federal funding, it should lose all the services and benefits it receives in the form of public assistance throughout the country; ii) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation.*
63. GRECO recalls that this recommendation was deemed unimplemented owing to the fact that, in the legislative revision process in 2014, no measures were taken to address the first part of the recommendation. The Belgian authorities emphasised that this recommendation raises issues in relation to the principle of the proportionality of sanctions and the division of powers between the federal state and the federated entities. Neither had any measures been taken in response to the second point in the recommendation.
64. As previously mentioned, the Belgian authorities state in paragraphs 20 and 21 that parliamentary work to address the outstanding recommendation resumed in 2015. For the time being, however, no tangible measures are reported with regard to this recommendation in particular. The letter of 19 June 2015 from the President of the Chamber of Representatives – who also chairs the control commission – officially drew the attention of the community and regional parliaments to the content and expectations of this recommendation. As indicated in paragraph 21, the parliaments of the federated entities will be involved from now on in the work conducted at federal level.
65. GRECO takes note of the above and of the resumption of parliamentary work in 2015. It regrets the lack so far of any new developments along the lines of the first part of the recommendation. As regards the second part of the recommendation, the official letter sent to the community and regional parliaments appears to generate new impetus to the work of most of the federated entities, which meets expectations. GRECO hopes once again that this will allow to make the needed improvements for better co-ordination between sanction mechanisms at federal and regional levels.
66. GRECO concludes that recommendation x has been partly implemented.

#### **Recommendation xi.**

67. *GRECO recommended i) the powers of the authorities responsible for ordering sanctions for breaches of the rules on political financing be clarified; ii) steps be taken to ensure that there is a*

*more proportionate and dissuasive scale of sanctions in place for the various infringements by parties and candidates, for example by making ineligibility generally applicable, diversifying the available penalties, establishing more severe criminal penalties and establishing rules on repeat offending; iii) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation.*

68. GRECO recalls that it considered recommendation xi partly implemented. The amendments of January 2014 introduced certain changes, but either these changes did not really address the problems identified during the on-site visit (first part of the recommendation) or the improvements actually made were far from sufficient (second part of the recommendation). No measures had been taken in response to the third point in the recommendation. The Belgian authorities pointed out that the question of sanctions remained essentially a federal responsibility – e.g. sanctions relating to electoral expenditure and party accounts. Since the regions have competence in respect of local elections, the attention of the parliaments of the federated entities would, however, be drawn to the changes made in federal legislation and to GRECO's recommendations.
69. As previously mentioned, the Belgian authorities state in paragraph 21 that parliamentary work to address the outstanding recommendations resumed in 2015. For the time being, however, no tangible measures are reported with regard to this recommendation in particular. The letter of 19 June 2015 from the President of the Chamber of Representatives – who also chairs the control commission – officially drew the attention of the community and regional parliaments to the content and expectations of this recommendation. As indicated in paragraph 21, the parliaments of the federated entities will be involved from now on in the work conducted at federal level.
70. GRECO takes note of the above and of the resumption of parliamentary work in 2015. It regrets the lack so far of any new developments along the lines of the first two parts of the recommendation. As regards the last part of the recommendation, the official letter sent to the community and regional parliaments meets expectations. GRECO notes that this has apparently provided additional impetus for the transposition of the measures recommended at the level of the entities. This second part of the recommendation has thus been addressed.
71. GRECO concludes that recommendation xi remains partly implemented.

### **III. CONCLUSIONS**

72. **In the light of the foregoing, GRECO concludes that Belgium has now satisfactorily implemented or dealt with six of the fifteen recommendations contained in the Third Round Evaluation Report. Eight other recommendations have been partly implemented and one has not been implemented.** Since the last interim report in 2014, Belgium has therefore made some – albeit modest – progress by fully implementing three additional recommendations and partially implementing another two.
73. More specifically, as regards Theme I – Incriminations, recommendation i has been satisfactorily implemented and recommendation iv remains partly implemented (recommendations ii and iii having been deemed implemented following the second interim report in the compliance procedure). As regards Theme II – Transparency of political party financing, recommendations v and vi are added to recommendation i as fully implemented recommendations (recommendation i having been deemed satisfactorily implemented in the first compliance report), and recommendations vii and x are added to recommendations ii, iv, viii, ix and xi, which had already

been deemed partly implemented in the previous compliance reports. Recommendation iii remains unimplemented.

74. On the theme of incriminations, GRECO notes that the progress made on one of the two outstanding recommendations is due to the adoption on 28 January 2016 of amendments introduced by the Law amending criminal law and criminal procedure and introducing various other judicial provisions, and to the adoption of a circular for the attention of prosecutors. As a result of these measures, the notion of “receipt” is finally enshrined in the criminal-law definition of offences of passive bribery. This advance is to be welcomed. With regard to the second recommendation, however, Belgium has still not resolved the issue of its extraterritorial jurisdiction in respect of corruption offences after withdrawing its reservation to Article 17 of the Convention with effect from 1 July 2010. Oddly, the country has not taken advantage of the drafting and adoption of the above law of 28 January 2016 to amend its domestic law, as had been decided by the government. GRECO considers that the legal uncertainties which could arise from the present situation, and which are reflected in the hesitations of the Belgian authorities, create unnecessary risks as regards the long-term handling of international corruption cases.
75. As regards political party funding, the President of the Chamber of Representatives sent a letter to the community and regional parliaments inviting them to take account of the GRECO recommendations affecting areas of regulation for which they are responsible. The Parliament – and more specifically the Commission on control of electoral expenditure and political party accounting – has also re-formed the Working Group on “political parties” to implement certain consequences of the January 2014 reform (rules of the control commission, format for financial reports). As mentioned in paragraph 20, there were delays in doing this, with consequences in terms of the coming into effect of some of the January 2014 reforms. Evidently this also delayed consideration of the action to be taken on the outstanding Theme II recommendations. This may explain, partly at least, why the progress on Theme II remains so modest. Consequently, GRECO reiterates once again its call to Belgium to pursue the implementation of the various outstanding recommendations with greater determination.
76. To sum up, Belgium’s results are on the whole still inadequate at the stage of this Second Compliance Report, coming nearly seven years after the Evaluation Report of May 2009. The majority of the recommendations issued in respect of Theme II have not yet been fully implemented, and they relate in some cases to points which are particularly important in terms of the standard of regulation, transparency and supervision of political funding. Parliamentary work has resumed and it would appear that it will involve a direct collaboration of the federated entities, something which is quite exceptional according to the Belgian authorities. In the light of the foregoing, GRECO, acting in accordance with Rule 31.9 of its Rules of Procedure, asks the head of the Belgian delegation to submit further information on the implementation of recommendation iv (Theme I - Incriminations) and recommendations ii, iii, iv and vii to xi (Theme II – Party funding), by 31 December 2016 at the latest.
77. Lastly, GRECO invites the Belgian authorities to authorise publication of this report as soon as possible, to translate it into Dutch (and, if appropriate, German) and to make this (these) translation(s) public.