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Third Interim Report

Third Evaluation Round

Third *Interim* Compliance Report on Belgium

"Incriminations (ETS 173 and 191, PDC 2)"

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"Transparency of Political Party Funding"

Adopted by GRECO
at its 65th Plenary Meeting
(Strasbourg, 6-10 October 2014)

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I. INTRODUCTION

1. GRECO adopted the Third Round Evaluation Report on Belgium at its 42nd plenary meeting (15 May 2009). The report was made public on 22 June 2009 following Belgium's authorisation (Greco Eval III Rep (2008) 8F Theme I / Theme II).

2. In accordance with GRECO's Rules of Procedure, the Belgian authorities presented a Situation Report on the measures taken to implement the recommendations. GRECO had asked Andorra and Luxembourg to appoint rapporteurs for the compliance procedure.

3. In the Compliance Report which it adopted at its 51st 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. It therefore considered the very low present level of compliance with the recommendations "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. In the Interim Compliance Report adopted at the 55th plenary meeting (16 May 2012), GRECO found a virtual absence of any progress, only recommendation v under Theme II having been partially implemented. It therefore decided that in accordance with Rule 32, paragraph 2 (ii) of its Rules of Procedure, the Chair would send the head of the Belgian delegation a letter, with copy to the Chair of the Statutory Committee, drawing his attention to this non-compliance with the relevant recommendations and the need to take firm action to ensure tangible progress as soon as possible. Furthermore, in accordance with Rule 31 para. 8.2 revised of its Rules of Procedure, GRECO asked the head of the Belgian delegation to submit, by 28 February 2013, a report on the measures adopted to implement the outstanding recommendations (recommendations i to iv for Theme I and recommendations ii to xi for Theme II). This information was submitted on 12 June 2013 and amplified on 8 August.

5. In the second Interim Compliance Report adopted at its 61st plenary meeting (18 October 2013), GRECO concluded that the level of implementation of the recommendations remained "globally unsatisfactory", and in pursuance of Rule 32, paragraph 2 (ii) c) of its Rules of Procedure requested the Secretary General to send a letter to the Foreign Minister of Belgium[1], drawing his attention to the non-compliance with the relevant recommendations and the need to take firm action so that tangible progress could be made expeditiously. GRECO asked the head of the Belgian delegation to submit to it, by 31 July 2014, a report regarding action taken to implement the outstanding recommendations. The report was forwarded on September 2014 and provided a basis for drafting this third interim compliance report.

6. This third interim compliance report was drawn up by Ms Clàudia CORNELLA DURANY for Andorra and Ms Doris WOLTZ for Luxembourg, with the assistance of the Secretariat. It assesses progress since the previous interim report in implementing the outstanding recommendations, and makes an overall appraisal of Belgium's level of compliance with these recommendations.

[1] The letter was signed by the Secretary General on 27 November 2013.

II. ANALYSIS

Theme I – Incriminations

7. It is recalled that in its evaluation report GRECO made 4 recommendations to Belgium in respect of Theme I. The Compliance Report concluded in May 2011 that recommendations i to iv had been partially implemented, a situation which remained the same in the Interim Compliance Report of May 2012. In the second Interim Compliance Report of October 2013, GRECO considered that recommendations ii and iii had been satisfactorily implemented. The following paragraphs 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 partially implemented. The Belgian authorities proposed in May 2011 to produce a general circular which would address in particular the clarifications called for in the recommendation by including a paragraph drawn up by the SPF Justice (the federal ministry). A joint police-magistrates training course was announced for late 2011. In May 2012 the circular was still in a draft state, then again in October 2013 (stated reasons: lack of agreement within the network of experts on corruption and members' heavy workload). At the same time, the Belgian authorities also reported the absence of relevant new case-law on "receipt" of undue advantages.

10. The Belgian authorities now report that a) new case-law on receipt has still not arisen; b) there have been no new training schemes since the study day of 19 November 2011 at which receipt of an advantage was reportedly identified as being entirely part of all forms of corruption; however, the Judicial Training Institute envisages further appropriate courses in 2015; c) as regards the circular announced since May 2011, this has made no progress: discussions held in June 2014 did not end in an agreement. Work will nevertheless continue and the members are now to propose amendments.

11. GRECO takes note of the latest information supplied. It regrets that since the adoption of the Evaluation Report over five years ago, none of the measures has been found satisfactory to date. A single study day for the entire country was organised in November 2011 and, as stated in the second compliance report in connection with recommendation iv, the presentation made on 9 November 2011 seemed intended chiefly for general comment on the existence, not the implementation, of the GRECO recommendations. In the meantime, no new judicial decision was delivered on the question of "receipt" of an undue advantage. Training plans are now announced for 2015, but without further details. As to the draft circular, GRECO values the assurances given to the effect that discussions are proceeding, but there is no communication of a timetable which would allow a tangible result to be achieved in a foreseeable and reasonable time frame. GRECO insists that Belgium show more determination in the adoption of measures for the implementation of this recommendation. It agrees for the time being to continue to regard the present recommendation as partially implemented.

12. GRECO concludes that recommendation i remains partly implemented.

Recommendation iv.

13. *GRECO recommended i) taking 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) considering withdrawing or not renewing the reservation concerning Article 17 of the Convention.*

14. GRECO recalls that this recommendation has been deemed "partially implemented" hitherto. As was announced in the second interim report, the reservation made 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. In particular, the view was taken that that the principle of universal jurisdiction laid down by Article 12bis of the Code of Criminal Investigation (CCI) was not limited to the humanitarian context. Belgium's first move was therefore to produce a draft circular on Article 12bis CCI. But owing to theoretical and practical problems which would have arisen from universal jurisdiction regardless of the subject-matter, Belgium finally preferred to amend the legislation in accordance with Article 17 of the Convention and the present recommendation iv. A draft amendment to Articles 10 quater and 12 of the CCI was thus tabled in January 2013, and was the subject of ministerial discussions and consultations with practitioners. The authorities stressed that these amendments would result in a significant extension of the extraterritorial jurisdiction of the Belgian courts and would furthermore necessitate readiness to eliminate the condition of dual criminality which has long applied. The authorities also stressed that the study day on 9 November 2011 dealt with this question. GRECO considered that as it was no longer a matter of ensuring an interpretation of Article 12bis which would be consistent with this recommendation, but rather of amending the CCI with new rules of jurisdiction, this training session held in 2011 was losing its relevance (besides being limited in scope for the reasons given under recommendation i).

15. The Belgian authorities now state that the draft text to amend Articles 10 quater and 12 of the CCI governing Belgium's extraterritorial jurisdiction, presented back in January 2013, will be submitted to the next Minister of Justice after the formation of the new government.

16. GRECO takes note of the lack of any progress with the implementation of this recommendation. The draft legislative amendment remains at an early stage since it has still not been approved by the government for submission to parliament. GRECO nevertheless agrees for the time being to maintain the present recommendation's partially implemented status having regard to the withdrawal of the reservation to Article 17 of the Criminal Law Convention, effective since July 2010. GRECO strongly encourages Belgium to step up efforts so that its national law is now fully aligned with the Convention, and to ensure that the present recommendation is implemented.

17. GRECO concludes that recommendation iv remains partly implemented.

Theme II – Transparency of political party funding

18. In its Evaluation Report, GRECO made 11 recommendations to Belgium concerning Theme II. The Compliance Report concluded in May 2011 that recommendation i had been satisfactorily implemented, and that recommendations ii to xi had not been implemented. The Interim Compliance Report of May 2012 subsequently noted the lack of any progress but, as general consultations had made headway and recommendation v had been discussed in this context, GRECO considered it partially implemented. The Second Compliance Report noted in October

2013 the absence of any tangible new development. The following considerations 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 Committee on control of electoral expenditure and political party accounting. After several rounds of meetings and proceedings interrupted by early elections in 2010, a draft bill was under discussion in October 2013, but lack of exact information prevented GRECO from judging its full relevance. At all events it seemed that the Belgian parliament was also working on other federal proposals dating from well before the Evaluation Report of May 2009 and not directly connected with its content. At the same time, various recommendations seemed not to be addressed in the parliamentary proceedings, as the parliament's documents themselves emphasised by identifying political and institutional players of the country. GRECO drew the attention of Belgium to these points[2] and to the fact that the draft bill concerned only part of the legislation concerned, viz. the Act of 4 July 1989 (cf. paragraphs 29-31 of the second interim report).

20. The Belgian authorities now state that the proceedings published in the interim report[3] of the "Political parties" working group have continued, alongside the 6th State Reform marked especially by the reform of the Senate. Finally, a proposal for twelve or so changes relating to questions addressed in the Evaluation Report was presented at the end of 2013, accompanied by three other supplementary legislative proposals. These four proposals were adopted in November and December 2013 and published in the *Moniteur belge* of 31 January 2014[4]:

- revision of Article 142 of the Constitution of 6 January 2014 (p. 8546);
- special Act of 6 January 2014 amending the special Act of 6 January 1989 on the Constitutional Court (p. 8592);
- Act of 6 January 2014 amending the Act of 4 July 1989 on limiting and monitoring expenditure on elections to the federal houses of parliament and the open financing and accounting of political parties, and on open funding and accounting of political parties, the Electoral Code, the Act of 19 May 1994 on limiting and monitoring expenditure on the election of the European Parliament and the Act of 19 May 1994 regulating election campaigns, on limiting and declaring spending on elections to the Walloon, Flemish, Brussels-Capital Region and German-speaking Community parliaments, and establishing the review criteria for official communications of the public authorities (p. 8664);
- Act of 6 January 2014 amending the Act of 19 May 1994 on limiting and monitoring expenditure on the election of the European Parliament and amending the Act of 19 May 1994 regulating election campaigns, on limiting and declaring spending on elections to the Walloon, Flemish, Brussels-Capital Region and German-speaking Community parliaments,

[2] "In addition, it seems that many of the recommendations have not yet been taken into account, as the authors of the draft bill themselves and the parties and institutions consulted sometimes drew attention to a risk that the proposals might be inadequate. Some parties moreover pointed out that the goals of the legislative reform needed to be clarified and that certain recommendations made in the Evaluation Report should be more clearly acted upon. It should perhaps be recalled that for each recommendation addressed to Belgium the body of the evaluation report includes an underlying analysis, which should give those devising and deciding on the reform a better grasp of GRECO's expectations. GRECO also noted that page 150 of the parliamentary report of 5 June 2013 states that the draft bill draws in part on an earlier bill dating from 2002 and therefore without direct relevance to GRECO's evaluation of 2009. Elsewhere it is stated that the draft should in principle indicate for each recommendation made by GRECO whether it has been followed up, which is not the case at present."

[3] http://www.lachambre.be/FLWB/PDF/53/2854/53K2854001.pdf

[4] See http://www.senate.be/actueel/homepage/Staatshervorming/Moniteur_%20du_31-01-2014.pdf.

and establishing the review criteria for official communications of the public authorities (p. 8675).

21. The authorities point out that some of the provisions of these instruments came into force on the day of their publication in the *Moniteur belge*; others came into force on the date of the elections of 25 May 2014, and still others will come into force on the date set by the Act in question (eg 1 January 2015).

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 unimplemented to date, owing to the lack of any tangible progress.

24. The Belgian authorities state that, with regard to the first item of the recommendation, the reform of January 2014 is intended to fill a gap in the former regulations, since political parties ineligible for the federal parliamentary grant were not sanctioned for infringing the rules on electoral expenditure or on donations considering that the sole penalty prescribed by the legislation was deduction from that grant. Under the new provisions, sanctions also apply to parties ineligible for the grant. As also indicated regarding recommendation xi, new section 13 of the Act of 4 July 1989 (federal elections) amended in January 2014 provides that if a party fails to lodge or delays in lodging a declaration of electoral expenditure and of the source of funds allocated to them, the federal control commission (CCF) may impose a) an administrative fine of EUR 1 000 per day of delay, up to a limit of EUR 30 000; b) if the declaration is not received within thirty days, it is possible to freeze the grant until receipt of the declaration. If the declaration is inaccurate or incomplete, the CCF may impose the following penalties: a) a warning coupled with a request to rectify or complete the data within a fortnight b) then if required an administrative fine of EUR 1 000 per day of additional delay, up to a limit of EUR 30 000, or freezing until receipt of the rectification if these fines prove ineffectual. If the maximum amount of electoral expenditure specified in section 2 paragraph 1 (EUR 1 million) is exceeded, the CCF imposes on the political party concerned an administrative fine equal to the overspending, though with a minimum of EUR 25 000 and a maximum corresponding to four times the monthly grant. In case of a violation of section 2 paragraph 1.3 or 1.4 (which mainly provides for ceilings on campaign expenditure for political parties)[5], or with any subdivision of section 5 paragraph 1 (providing for certain limits on

[5] Section 2 paragraph 1:
The total of expenditure and financial commitments for election propaganda conducted by political parties at the federal level, at the constituency level and at the level of the electoral colleges, may not exceed, for the election of the Chamber of Representatives, the amount of 1,000 000 EUR.
Notwithstanding the foregoing, when several elections are held on the same day, political parties may not spend more than 1,000 000 EUR in total for all of their election expenses and financial commitments.
Twenty-five percent of this amount may however be charged to the candidates. In this case, the amount allocated to each candidate may not exceed ten percent of the percentage specified in this subparagraph.
Political parties can focus their campaign at the federal level, at the level of electoral colleges and constituencies on one or more candidates. In this case, the parties must be able to prove that the expenditure made for this or these candidates are consistently part of the party's campaign.

campaigning and sponsorship)[6] the CCF may issue a warning or impose an administrative fine of EUR 1 000 to 250 000 (doubled for any further infringement). The same regulations apply to European elections (section 11 of the Act of 6 January 2014).

25. As also indicated with reference to recommendation xi, section 16 ter (5) of the Act of 4 July 1989 has, since January 2014, made it possible to sanction a political party or one of its components for failing to lodge or for delay in lodging the lists which relate to donations and sponsoring (cf. also recommendation iv). The CCF can order an administrative fine of EUR 1 000 per day of delay up to a limit of EUR 30 000, or if required freeze the public grant until receipt of the list. Similar measures are prescribed in the event of inaccurate or incomplete lists.

26. As to the second item of the recommendation, the Belgian authorities report that it was not followed up. They consider it impossible and unfeasible in practical and financial terms that each local entity should have to lodge the same financial report as bodies at higher tiers, the report furthermore requiring the scrutiny of a company auditor. In its present form, publication of the financial reports already runs to a thousand pages. The authorities consider that the current regulations have the advantage of providing an excellent basis for comparison, liable to be jeopardised by the amplification which GRECO desires. Moreover, although the local sections of parties do not come within the ambit of consolidation, they are not totally invisible. Indeed, all the financial flows coming from the local sections which benefit the party and its components must be identified in the party's accounting.

27. GRECO takes note of the information provided. Regarding the first part of the recommendation, it considers that the new logic of the system of sanctions is consistent with this recommendation, and its aim is fulfilled. As to the second part of the recommendation, GRECO can only regret the absence of follow-up and recall the disparate situation which prevails in Belgium, resulting from variable application of the rules depending on the political parties[7]. It invites Belgium to pursue

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[6] Section 5, paragraph 1:
For the periods specified in Article 4, § 1 (the election campaign) political parties and candidates and third parties who wish to make propaganda for political parties or candidates:
1 may not use commercial billboards or advertising posters;
2 may not use non-commercial billboards or advertising posters exceeding 4 m2;
3 may not sell gadgets nor distribute gifts or gadgets, regardless of the mode of distribution and without prejudice to Section 184 of the Electoral Code, except for candidates and persons who, pursuant to Section 4 paragraph 3.1, carry out election propaganda free of charge in favour of political parties and candidates. Gadgets shall be understood as including any goods, except information printed on paper or any other information vehicle conveying a political message and containing only opinions or illustrations, which are used as souvenirs, accessories, trinkets or objects of common use and that the person who distributes them expects that the receiver will use them later according to their intended use so that the user perceive each time on this occasion the message appearing on the object;
4 may not conduct a commercial telephone campaign;
5 may not broadcast commercials through the radio, television and in movie theatres;
6 may not receive sponsorship in the amount or value of products exceeding 2,000 EUR per sponsor.
Note: the same rules apply to European and regional / community elections.

[7] Paragraph 71 of the Evaluation Report: "(…) federal and regional legislation contain definitions of parties and their components, for example in section 1 of the Act of 4 July 1989. Although the definition of a party is relatively broad, parties generally adopt a narrow interpretation of what constitute their components. This does not include local sections, even though the latter may be fairly large in the major cities and take part in election campaigns, finance candidates' individual campaigns and collect funds, a portion of which in certain parties is paid directly or indirectly into the central coffers. The federal parliament's Vademecum does not comment on these definitions or specify the precise extent of parties' accounting obligations for the purposes of section 23 of the Act of 4 July 1989, which applies to both parties and their components. However, the GET notes that in its section on donations, it states that the notion of a political party covers not only federations but also the local sections that form the party's structural base, whatever their legal form. In certain cases, parties' central officials have said that they were totally unaware of the financial situation of local sections, even in the case of

with energy its consideration of this question. GRECO feels that suitable criteria would make it possible, precisely, to consolidate the financial statements of the political parties so as to avoid 1000 page documents, and manifold audits, as the Belgian authorities complain.

28. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

29. *GRECO recommended that the federal legislation on the respective obligations and responsibilities of parties and their components be further clarified so as to ensure that financial transactions are effected as far as possible through each party's financial association.*

30. GRECO recalls that this recommendation has been considered unimplemented to date owing to the lack of any tangible progress.

31. The Belgian authorities state that after deliberations, the conclusion was reached that Belgian regulations were sufficiently binding, transparent and complete. On balance, it matters little whether or not the financial flows pass through the funding association since finally a single consolidated financial report must be drawn up for the party. Although the parties enjoy strategic autonomy in this sphere, they are under an obligation to produce a consolidated report whereby the finances of the parties can undergo mutual comparison.

32. GRECO regrets that no effect has been given to this recommendation. The evaluation report pointed to a disparate situation lacking transparency with regard to financial flows and financial responsibilities within political parties[8], as well as to consolidation of the accounts, as already recalled in connection with the previous recommendation. GRECO therefore cannot be content to grant Belgium general and theoretical approval as regards the quality of the regulations already established and the practice followed by the political parties in the consolidation of accounts.

33. GRECO concludes that recommendation iii remains not implemented.

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large towns and cities. Discussions also confirmed that parties, which in any case enjoy considerable latitude regarding their internal organisation, do not systematically include certain bodies such as ones that have a humanitarian purpose. It is often the same with bodies such as youth or women's associations. However, the question still arises as to whether such bodies must be treated as third parties within the meaning of the Act of 4 July 1989, which requires their contributions to election campaigns to be taken into account."

[8] As stated in paragraphs 72 and 73 of the Evaluation Report:

"Political parties that receive public assistance are, in principle, required to maintain accounts. The court of auditors, in consultation with the institute of auditors, has made proposals for revising the applicable accounting model. The new model would take better account of political parties' activities and the different types of resources. Meanwhile, the federal control commission has proposed a revision of the rules on the consolidation of accounts, which are somewhat varied and do not always permit the identification the movement of funds within parties or between parties and candidates. These are positive initiatives.

(…) Political parties are required to set up a non-profit organisation to receive federal public assistance. Non-profit organisations are also used to receive regional financial aid, which is provided by the parliaments of all the regions other than Brussels-Capital. In practice, all or part of the administration and management of political parties is very frequently devolved to various non-profit organisations, including the management of funds received by parliamentary groups and property holdings, training activities, advisory and research activities and related matters at regional federation level. Above all, discussions showed that political parties are sometimes seen by their officials as distinct entities from their management associations, or even as bodies with no legal capacity, to the extent that the GET has often felt forced to ask where the obligations in the legislation, and the associated responsibilities and liability to sanctions, really lie. In particular, although only the financing association designated by the party can receive federal financing (likewise similar associations in the case of other forms of public financing) and must maintain its party's general accounts and the list of donations and donors, both the party and its various components can receive donations."

Recommendation iv.

34. *GRECO recommended that 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.*

35. GRECO recalls that this recommendation has been considered unimplemented to date owing to the lack of any tangible progress.

36. The Belgian authorities state that it has been decided not to follow up the first part of the recommendation. They explain that amounts in respect of donations and sponsoring below EUR 125 must indeed be declared, not only in the declaration of electoral expenditure and source of funds but also in the financial report of the political party.

37. As to the second part of the recommendation, measures have been taken: new section 16*bis* (3) of the Act of 4 July 1989 (as amended by section 20 of the Act of 6 January 2014) now provides that *"Any donation of EUR 125 or more shall be remitted electronically by a bank transfer, a standing payment order or a bank or credit card. The total cash amount of donations by one and the same person shall not exceed EUR 125 per year."* An identical provision has been included in the Acts of 19 May 1994 on European elections and elections to the federated entities (sections 13 and 24 of the Act of 6 January 2014) (cf. also paragraph 40 below).

38. Regarding the third part of the recommendation, the Belgian authorities consider the legal definition of the concept of donation sufficiently clear. Under section 16*bis* of the Act of 4 July 1989, all donations are meant, "*in whatever form*". For the setting of ceilings, reference is made to donations not only in cash but also in kind: donation of a maximum sum of EUR 500 "*or its equivalent value*". Services free of charge or performed for less than the real cost are equated to donations. Thus there has been no follow-up in that regard. It has nevertheless been decided to respond to the recommendation by regulating sponsorship on the legal plane, both in the context of elections (by limiting in particular sponsorship during the regulated period) and with regard to accounting. New section 16*bis*/1 of the Act of 4 July 1989 (introduced by section 21 of the Act of 6 January 2014) regulates sponsorship as follows:

> ***Act of 4 July 1989***
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> *"Section 16bis/1. Enterprises[9], de facto associations and legal persons may, by way of sponsorship, that is in exchange for publicity, place funds or goods at the disposal of political parties and their components, lists, candidates and political office holders, on the condition that the market prices are upheld. The identity of enterprises, de facto associations and legal persons which have carried out sponsoring worth EUR 125 or more, in any form whatsoever, for political parties, their components, lists, candidates and political office holders shall be recorded each year, notwithstanding the recording obligation set forth in section 6(3) of this Act and in Article 116, § 6(3) of the Electoral Code.*

[9] The concept of "enterprise" is defined in new section 1(5) of the Act of 4 July 1989 (section 3(7) of the Act of 6 January 2014): *"an enterprise: any natural or legal person lastingly pursuing an economic aim, including their associations."*

A political party which accepts sponsorship in breach of this provision shall forfeit, at a rate of twice the value of the sponsorship, its entitlement to the grant which under chapter III of this Act would be paid to the institution referred to in section 22 during the months following the finding of this infringement by the control commission.

Anyone who contrary to this provision has carried out sponsoring for a political party, one of its components – whatever its legal form -, a list, a candidate or a political office holder or who, as candidate or political office holder, has accepted sponsorship, shall be punishable by a fine of EUR 26-100 000. Anyone who, without being a candidate or political office holder, has accepted such sponsorship on behalf of a political party, a list, a candidate or a political office holder shall receive the same sanction.

Book I of the Penal Code, including Chapter VII and Article 85, is applicable to these offences.

If the court so directs, the judgment can be published in full or as an extract in the newspapers and weeklies which it indicates."

39. Besides, the obligation to lodge with the control commission not only the lists of donations but also the records of sponsorship has also been incorporated into section 16*ter* of the same Act (section 22 of the Act of 6 January 2014). Records of sponsorship will be published in the parliamentary documents (and thus also on the website of the Chamber). New section 16*ter*(2*bis*) accordingly provides that "*the record of sponsorship shall mention the names of the enterprises, the de facto associations and the legal persons which have carried out the sponsoring, the full address, the value of any sponsoring, the date on which it was received and the total value of all sponsoring received during the preceding year.* (…). Section 16*ter*(3) provides: *"§ 3. Not later than 30 June of the year following the year to which they refer, the records shall be lodged in return for a receipt with the control commission supervising compliance with the obligations prescribed in sections 16*bis*, 16*bis*/1 and in this section. The record of sponsorship referred to in paragraph 2*bis *shall be published in the parliamentary documents.".* For the sanctions prescribed in this connection, see comment on the recommendation no. 2, i, b.

40. Concerning the final part of the recommendation, the Belgian authorities state that identical provisions appear in the Acts of 19 May 1994 on the European elections and on elections to the federated entities (sections 6, 7, 14, 15, 20, 21, 25 and 26 of the Act of 6 January 2014).

41. GRECO takes note of the foregoing information. It regrets that nothing has been undertaken to ensure that recipients of donations systematically identify the donors in their own documentation irrespective of the value of the support. GRECO cannot be satisfied with the assurances given to the effect that in practice all donations must be shown in the accounts of the recipients. It recalls in fact that the in situ talks showed 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). It is plain that the absence of a uniform reading of the statutes finally detracts from the objectives of transparency and compliance with the law. Moreover, in the absence of identification it is hard to see how the financial and administrative officials of the parties, or the official supervisory body, can ensure observance of the rules particularly as regards limits to the amount of donations if payments are made repeatedly or to different persons or entities of the same party.

42. Concerning the second part of the recommendation, Belgium has introduced the recommended measures for wider use of the financial system.

43. Concerning the third part of the recommendation, Belgium has confined itself to introducing rules on sponsorship in a manner which finally confers full legitimacy on a practice prohibited in principle but which was given a designation which apparently distinguishes it from donations. Thus for GRECO this aspect came under the broader problem of the need for an adequate definition of donations. It should be remembered that Belgium has opted since 1993 (following controversial episodes) to prohibit support originating from legal persons, but that the legislation and the supervisory bodies have not adequately or explicitly "outlawed" it in every conceivable case[10]. However, Belgium states that the definition of donations is the broadest possible and takes in all forms of support (financial, in kind, "*in whatever form*"). In order to ensure greater transparency of direct and indirect financial support and greater coherence as required by this part of the recommendation, Belgium would therefore have needed to revert to a pre-1993 situation as regards contribution of legal persons, while identifying the methods of recording sponsorship in the political accounts, or otherwise to outlaw this practice in a clear manner accepted by all. The solution adopted by Belgium follows neither of these two approaches and merely confirms an unsatisfactory situation. Furthermore, the sponsorship rules introduced are actually confined to stipulating compliance with market prices in the assessment of support in kind emanating from sponsors, or of expenses directly defrayed by them. The rules which exist on ceilings to donations are not applicable except during the election campaign, see under footnote 6 above, article 5 paragraph 1.6 of the Law of 4 July 1989. This is another inconsistency having regard to the logic of the Belgian regulations. This is based on ceilings both for the amounts of individual support and for electoral expenditure. In addition, and in the present state of available information, differentiating between permitted support by legal persons and prohibited donations by legal persons is liable to be problematic in practice, for the purposes of general transparency and of supervision. In conclusion, this item of the recommendation has not been implemented.

44. Finally, where the last item of the recommendation is concerned, plainly Belgium has not taken measures to settle the question at the level of the sub-regional elections (normally coming under the competence of the regions). In their most recent comments, the authorities underline however, that the regional law-makers will be informed about the federal law amendments and the GRECO recommendations. Thus, to date only the second item of the recommendation has been taken into account by Belgium.

45. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

46. *GRECO recommended that i) consideration be given to 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, the regions be invited to amend their legislation in accordance with this recommendation.*

[10] As stated in the Evaluation Report (paragraph 74): "(…)in order to clarify the boundary between politics and business the law forbids donations and services to political parties and candidates from legal persons. But apparently to permit certain forms of militant support, it does not ban or restrict certain forms of indirect support such as those connected to sponsorship, even when it comes from those same legal persons. The approach to sponsorship therefore seems to be fairly liberal, and has not so far been condemned by the federal, or probably any of the other, control commissions. This is incompatible with the legal ban on donations from legal persons and offers ample scope for circumventing it. At meetings, party representatives said that the law would in any case be improved by a definition of donations or use of the term "advantages of any kind", which would help to clarify matters, among other things with regard to forms of support emanating from legal persons."

47. GRECO recalls that it considered recommendation v partially implemented since the parliamentary proceedings in hand had plainly begun to address this question and thus to carry out the recommended examination of expediency.

48. The Belgian authorities state that this first part of the recommendation has been implemented in that the duration of the election campaign has been increased from three to four months. This extension applies to European elections, federal elections and elections to the federated entities (section 7 of the Act of 6 January 2014 – federal elections and sections 4, 6, 18, and 20 of the Act of 6 January 2014 – European elections and elections to the federated entities). The authorities explain that this relatively limited extension arises chiefly from the fact that a more extended reference period for financial reporting purposes would not fulfil its purpose since the last two or three weeks before the elections are the most important period of the campaign. The new campaign duration has the advantage of leading the parties and candidates to reconsider the need for a pre-campaign – 5 or 6 months ahead of the election day – during which they could use campaigning methods which are normally prohibited during the election campaign. The authorities also advert to the fact that the ceiling of authorised expenditure has not been raised: given the extension of the duration of the election campaign, parties and candidates will have to manage their electoral budget still better. In that sense, the extension can be regarded as a limitation of electoral expenditure.

49. As to the second part of the recommendation, the authorities recall that the federal legislator is competent for European elections, federal elections and elections to the federated entities, whereas the regions are only competent for local elections. Their attention will be drawn to the amendments made in federal legislation and to GRECO's recommendations.

50. GRECO takes note of the modifications introduced. GRECO recalls that according to the information collected during the talks in situ, in Belgium preliminary campaigns are being witnessed. These begin as early as six months before the election, so that the funding activity carried out during the preliminary campaign has not been recorded in the parties' campaign accounts and (lists of) candidates (they may nevertheless theoretically appear under another head in political parties' annual accounts). GRECO considers that the responses made to the first part of the recommendation thus tend towards better recording of information linked with financing of campaigns, although it is plain that the question should continue to engage the attention of Belgium. It therefore remains for Belgium to implement the second part of the recommendation, as it states the intention of doing.

51. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

52. *GRECO recommended that 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.*

53. GRECO recalls that the recommendation vi was considered unimplemented, owing to the lack of any tangible progress.

54. The Belgian authorities state that since the amendments of January 2014, parties are henceforth required to retain documentation on election expenditure and the source of funds for five years

instead of two years after the elections (section 6(1.3) of the Act of 4 July 1989 (federal elections), amended by section 10(2) of the Act of 6 January 2014). The same requirement applies to European elections and elections to the federated entities (sections 7(1) and 21(1) of the Act of 6 January 2014). For candidates, the legislation has not been altered. It should nevertheless be observed in this regard that in the event of criminal investigation, the prosecution and the investigating judge have at their disposal the requisite methods of investigation for obtaining information over two years old.

55. Concerning the second and third items of the recommendation, the authorities recall that the federal legislator has competence in respect of European elections, federal elections and elections to the federated entities, whereas the regions are only competent for local elections. Their attention will be drawn to the changes made in the federal legislation, and to GRECO's recommendations.

56. GRECO takes note of the extension of the retention period for documentation on election expenditure and the source of funds in the electoral framework, and of its applicability to the various elections (first part of the recommendation) except at sub-regional level, concerning which co-ordination with the federated entities has yet to be carried out (second and third items of the recommendation). The Evaluation Report stressed that the rules on retention of documentation were already for more than two years, by virtue of the general accounting rules. Pending the implementation of the last two items of the recommendation, GRECO considers that the recommended measures have been given partial effect.

57. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

58. *GRECO recommended that 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.*

59. GRECO recalls that it considered recommendation vii unimplemented owing to the lack of any tangible progress.

60. The Belgian authorities state concerning the first part of the recommendation that it has been decided after deliberation not to implement the recommendation out of consideration for scruples over private life and in particular for opinions delivered earlier by the protection of privacy commission. However, as indicated above with regard to recommendation iv (third item of the recommendation), an exception now applies in respect of sponsorship. In accordance with section 16*ter*(3) amended of the Act of 4 July 1989, records of sponsorship will be published each year in the parliamentary documents, giving the names of the enterprises/de facto associations/legal persons which have given support in the form of sponsorship, the full address, the value of the support, the date on which it was received and the aggregate value of all support by way of sponsorship received over the previous year.

61. Regarding the second part of the recommendation, the authorities recall the federal competence for any matter related to elections at European, federal and entity level, and that the regions are responsible for rules on local elections. Their attention will be called on the changes made to the federal rules and to the GRECO recommendations.

62. GRECO takes note of the above information. The authorities make reference to the establishment in January 2014 of a system of public declaration of "all donations by legal persons classed as sponsorship", whatever their amount. The Belgian authorities reiterate certain reservations about public disclosure of donors who are natural persons. GRECO stresses that most of its member countries, which also have rules on personal data protection, are able to publish the identities of natural and/or legal persons making donations above a certain amount, in so far as the statutes provide for it. GRECO already took note of the opinions delivered by the privacy protection commission in 2007 and above all in 1999[11] on the question of publication of the identity of persons making donations. It seems that the unfavourable conclusion was prompted essentially by the absence of a legal basis authorising publicity of the information; quite the contrary, the 1989 Act lays down the principle of anonymity for the public and reserves the information for the sole use of the political financing review agencies. It therefore appears that, subject to certain essential precautions as are in fact advocated by the recommendation, Belgium has scope for its implementation. Lastly, GRECO recalls that under Belgian regulations, support of legal persons has been prohibited in principle since 1993. The new arrangements thus heighten these contradictions by finally giving sponsorship a certain legitimacy by way of publicity (cf. also the considerations concerning this situation in recommendation iv). Having regard to this problematic situation and to the absence of follow-up to the recommendation where support by natural persons is concerned, GRECO cannot grant even partial approval. It would be otherwise if Belgium took the necessary action first of all to make its regulations coherent in respect of private support as required by recommendation iv.

63. Finally, concerning the second part of the recommendation, in the continuum of the work called for by the above finding, the regions remain to be invited to review as required their own regulations on sub-regional elections (provincial, district and municipal).

64. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

65. *GRECO recommended that i) a system – unified if possible – be set up 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) the regions be invited to take this recommendation into account should the creation of a unified system prove too difficult in the national institutional context.*

66. GRECO recalls that it considered recommendation viii unimplemented owing to the lack of any tangible progress.

67. The Belgian authorities state that where the first part of the recommendation is concerned, several measures have been taken for its implementation. Firstly, the composition of the federal control commission has been altered (section 1(4) of the Act of 4 July 1989, amended by section 3 (5) of the Act of 6 January 2014). Since the Senate has more directly elected senators, the control commission is now made up of 17 House of Representatives members and – this is new –

[11] The 1999 opinion is extensively referenced 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.*"

4 outside experts[12]. The call for applications concerning candidate-experts was published on 18 August this year. All have the right to vote. Secondly, the supervisory competences of the Court of Audit have been extended, as section 24(2) of the Act of 4 July 1989, amended by section 28 of the Act of 6 January 2014, now gives it three months instead of one month to deliver an opinion on the accuracy and exhaustiveness of the political parties' financial reports. In addition, the Court of Audit can request further information of the institution referred to in section 22 (non-profit fund-raising association). These changes do not apply to supervision of electoral expenditure. Thirdly, in keeping with the more general aim of the sixth State reform, the decisions of the federal control commission and the four regional commissions will in future be appealable before the Constitutional Court and/or the Conseil d'Etat as the case may be[13].

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[12] The law does not provide for any specific conditions for their appointment or selection criteria etc.

[13] Before the Constitutional Court:

In accordance with new Article 142, paragraph 5 of the Constitution, incorporated at the revision of 6 January 2014, the law may assign the Constitutional Court competence to determine by judgment the appeals made against decisions of the legislative assemblies or their organs regarding control of electoral expenditure incurred for elections to the Chamber of Representatives. The decisions referred to in Article 142 of the Constitution are those specified in section 14/1 of the Act of 4 July 1989, inserted by section 15 of the Act of 6 January 2014:

"*section 14/1. § 1. The control commission can decide to impose one of the following sanctions on an elected candidate for offences mentioned in section 14 (1):*

1. a warning;

2. withholding of 5% of the parliamentary grant for a period of one month minimum and twelve months maximum;

3. suspension of mandate for a period of one month minimum and six months maximum;

4. termination of mandate.

§ 2. Within the same time limit of 200 days after the elections as is specified in section 14 (3.1), any person with a demonstrable interest can lodge a complaint with the control commission against an elected candidate alleged to have committed an offence mentioned in section 14 (1).

§ 3. If the control commission deems the complaint admissible, it shall summon the candidate concerned for a hearing by registered letter.

The summons shall mention:

1. the acts ascribed to him/her;

2. the sanction contemplated;

3. the date, time and place of the hearing, which shall take place a fortnight after the serving of the summons at the earliest;

4. the right of the person concerned to be assisted by a person of his/her choice or to be represented by that person in the event of justifiable unavailability;

5. the place where and the time (at least a fortnight after the serving of the summons) within which the person concerned and/or his/her adviser can acquaint themselves with the file, and the right to make photocopies free of charge.

§ 4. Within thirty days after hearing the person concerned, the control commission shall rule by simple majority of votes in each language group, in so far as the majority of the members of each language group are present. Reasons shall be stated for this decision.

§ 5. The decision shall be notified to the person concerned by registered letter within ten days of its delivery.

§ 6. if the decision contains a sanction, this shall be published forthwith in the Moniteur belge and communicated to the other legislative assemblies.

The commission's decision cannot take effect until the expiry of the time allowed for an application to set aside before the Constitutional Court as provided in § 7 or, where an application to set aside is brought within this time, until after the Constitutional Court has dismissed the application.

§ 7. In accordance with sections 25bis to 25duodecies of the special Act of 6 January 1989 on the Constitutional Court, an application may be brought to set aside the decision of the control commission imposing a sanction.

Such application is only admissible if lodged within thirty day following notification of the control commission's decision.

The limitation period for the applications referred to in this section begins only if the control commission's notification of its decision to impose a sanction indicates the existence of this remedy and the procedures and time limits to be complied with.

Where this condition is not fulfilled, the limitation period begins four months after the person concerned has been acquainted with the control commission's decision.

§ 8. The control commission may decide to fine, as prescribed in section 14 (4), anyone who has lodged a complaint which proves unfounded and in respect of which malicious intent is proven".

Remedy before the highest administrative court (Conseil d'État)

In accordance with section 25*ter* of the Act of 4 July 1989, inserted by section 30 of the Act of 6 January 2014, an application may be brought before the Conseil d'État to set aside any other penalising decision taken by the federal control commission

68. Concerning the second part of the recommendation, Belgium points out that as shown by the foregoing information, supervision and possible introduction of a unified system in this field is an essentially federal prerogative, for example where the jurisdiction of the Constitutional Court is concerned. As to the membership of the regional control commissions, the attention of the parliaments of the federated entities will be drawn to the changes made in the federal legislation, as well as to GRECO's recommendations.

69. GRECO takes note of the legislative changes reported above which occurred in January 2014. It is a pity that Belgium did not seize the opportunity provided by these reforms to make the radical changes called for by the Evaluation Report. The report had highlighted numerous weaknesses in the present machinery (cf. paragraphs 47, 48, 78 et seq.), among them its proven ineffectiveness, its dispersal, and the weakness of the organs of the supervisory authorities concerned. Regarding in particular the federal control commission (CCF), GRECO noted its lack of independence from the political parties especially given its composition, its lack of resources and expertise (its secretariat consists of two jurists with two or three extra staff at election time, and the CCF and its secretariat do not have any special expertise in finance or accountancy and do not call in outside specialists for specific briefs), its unsuitable decision-making procedures with voting mechanisms which allow obstruction of decisions or outright non-pronouncement on violations. Ultimately, the CCF relies extensively on the prior work done by the Court of Audit, though without sufficiently following up the latter's findings of infringements or reservations, etc. Secondly, the Court of Audit remains a collateral organ of the federal parliament and its members may be dismissed, its mandate concerns strictly formal review, it does not have access to the accounting documents and vouchers, it is not consulted in practice by the four regional parliamentary commissions, etc. Bearing this in mind, GRECO of course welcomes the new composition of the CCF now including four outside personalities among the 21 members of whom it consists. However, for the time being no specific competences or background are required, nor is the level of desirable independence of these experts addressed (at least in the amended legislation) and GRECO therefore cannot draw positive conclusions about this change. On the other side, clear improvements have been made concerning the Court of Audit which is now allowed more time to carry out its task of verification, and has the possibility of requesting further information. Such improvements have not been made in respect of the CCF which is the central political finance supervisory body. Belgium also mentions the introduction of remedies against CCF decisions ordering sanctions and explains that this offers guarantees of independence and impartiality. However, in GRECO's views, such guarantees have only an indirect benefit and they do not concern the CCF in itself. In conclusion, the advances clearly remain insufficient regarding the first part of the recommendation and for the time being nothing has been done to meet the expectations of the second part.

70. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

71. *GRECO recommended that 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*

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in pursuance of this Act, in accordance with section 14 (1. 2) of the Acts on the Conseil d'État, co-ordinated on 12 January 1973.

There is a possibility of a similar remedy before the Conseil d'État against all penalising decisions taken by control commissions at the federal or regional level in pursuance of the Acts of 19 May 1994, in accordance with section 14 (1.2) of the Acts on the Conseil d'État, co-ordinated on 12 January 1973 (sections 35 and 36 of the Act of 6 January 2014).

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.

72. GRECO recalls that this recommendation was considered unimplemented owing to the lack of any tangible progress.

73. The Belgian authorities indicate that the first part of the recommendation was not implemented to the extent that, on the one hand, the auditors' independence is already required of them by law and, on the other hand, the existing supervision system in respect of political parties was modelled on the system applicable to the supervision of savings banks, this supervision being considered already the strictest possible[14]. Concerning the second part of the recommendation, the authorities state that the consultations conducted since the beginning of the parliamentary work, also with most political parties as parliamentary reports show, have given an opportunity to assess the pros and cons of an audit extended specifically to the parties' reports on electoral expenditure. It was pointed out that this could be excessively burdensome bearing in mind that in any event electoral expenditure should appear in the financial report which must be lodged each year and the scope of the prior audit already extends to the whole of the financial situation.

74. GRECO takes note of the above information and regrets that no action has been taken on the first part of the recommendation despite the shortcomings observed in the Evaluation Report (paragraph 83), especially the fact that auditors see their role primarily as verifiers of proper presentation who will make sure the amounts appear in the right column and with credible figures. GRECO noted the absence of specific rules to ensure some degree of independence from the political party, particularly non-involvement in party activities mainly to ensure systematic separation of auditors' accounting and auditing functions, as well as reasonable rotation. At present, auditors are appointed for three years and their term is renewable indefinitely. Concerning the second part of the recommendation, GRECO notes that the possible extension of the audit to the parties' reports on electoral expenditure was examined, as it is required by the

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[14] On this point the Belgian authorities refer to the hearing of representatives of the Institut des Réviseurs d'Entreprises ((institute of company auditors) organised by the "Political parties" working group (see the interim report: doc. Chambre, no. 53-2854/1, pp. 77-78):
"*In terms of independence, the Institute considers it inexpedient to guarantee more "detachment" of company auditors from political parties than is stipulated at present vis-à-vis a financial group raising funds from the public.*
The present statutes thoroughly guarantee the company auditor's independence since in that respect the relevant provision has transposed the provisions of the European recommendation of 16 May 2002 on "Statutory Auditors' Independence in the EU", the provisions of the audit directive concerning the principle of independence in general, remuneration of the auditor's assignment and other services, and in particular the provisions on economic independence and contingent fees.
Most of these provisions are concordant with the rules already laid down under Belgian legislation and regulations, particularly in Articles 133 et seq. of the Company Code, sections 183bis to 183sexies of the royal decree of 30 January 2001 giving effect to the Company Code, the Act of 22 July 1953 creating an Institute of Company Auditors and the royal decree of 10 January 1994 on the obligations of company auditors.
This amply demonstrates that there is no need to strengthen the rules of independence further. However, it would be desirable to prescribe that the company auditor certifying the consolidated accounts of a political party be appointed commissioner of the association (Article 22) by the general assembly of members in order to ensure that he comes under the same rules of independence and review.
Concerning rotation, it should be observed that the principle of external rotation was kept out of all applicable legislation in Belgium, and that of internal rotation has no scope for application given that political parties are not regarded as entities of public benefit.
Regarding the need to prescribe more stringent requirements for auditing the accounts of political parties, it should again be recalled that the applicable requirements are identical to those employed in financial groups raising funds from the public. It does not seem expedient to strengthen requirements which are accepted at international level and are the severest that could possibly exist.
The IRE is nevertheless prepared to draw up a circular to that effect for purposes of clarification."

recommendation. GRECO appreciates the Belgian authorities' assurances that campaign expenditure of the parties already fall within the scope of the annual audit of their overall income and expenditure. This second part of the recommendation was thus addressed.

75. GRECO concludes that recommendation ix remains unimplemented.

Recommendation x.

76. *GRECO recommended that 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.*

77. GRECO recalls that this recommendation was deemed unimplemented owing to the lack of any tangible progress.

78. The Belgian authorities consider that this recommendation cannot be implemented for two reasons: first, it would be contrary to the principle of proportionality upheld by GRECO itself in recommendation xi; next, it is not in accordance with the apportionment of powers between the federal state and the federated entities, embedded in the Constitution, which is founded on the principle of exclusiveness. The Belgian authorities consider it inexpedient that the imposition of sanctions by a first tier of authority should automatically lead to other sanctions which, according to the current apportionment of powers, can only be imposed by another tier of authority for breach of the regulations whose observance that tier supervises. The implementation of GRECO's recommendation would render void the punitive power of the various tiers of authority. The outcome would be that one tier of authority would assume the punitive power of another tier although in principle these tiers are on an equal footing with regard to the hierarchy of norms.

79. GRECO takes note of the lack of follow-up to this recommendation. It stresses that the two components thereof afford Belgium flexibility for transposing the recommendation in the manner best suited to the national context.

80. GRECO concludes that recommendation x remains unimplemented.

Recommendation xi.

81. *GRECO recommended that i) the powers of the authorities responsible for ordering sanctions for breaching 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.*

82. GRECO recalls that it considered recommendation xi unimplemented owing to the lack of any tangible progress.

83. The Belgian authorities make reference, as regards the first part of the recommendation, to the information provided in connection with recommendation viii. They explain that, as indicated in

paragraph 64 and the corresponding footnote, the sixth State reform established a two-tier system providing that all penalising decisions taken by the control commissions at the federal level or that of the federated entities could be appealed before the highest courts.

Concerning the second part of the recommendation, the Belgian authorities state that in order to follow up this recommendation the scale of sanctions that can be ordered against parties and candidates has been significantly extended, both for infringement of the legislation on electoral expenditure and official communications, and for infringement of the legislation on financial reports and party funding, donations and sponsorship included. The authorities provide abstracts of the amendments made by the Act of 6 January 2014 to the Act of 4 July 1989 (on political party funding and elections to the national parliament) and to the Act of 19 May 1994 (on European elections). The new provisions now prescribe a range of measures comprising warnings, graduated administrative fines in proportion to the delay or the infringement, doubling of fines for reoffending, and suspension of the public grant. Concerning regional elections, the authorities recall that it is for the regional law-makers to decide on the regional control mechanisms. Their attention will be drawn on the federal changes and GRECO's recommendations.

84. The logic of the system of sanctions has been completely overhauled in some places. For example, for the periodic financial reports of the parties, the arrangements are as follows in section 25 of the Act of 4 July 1989:

> ***Section 25 of the Act of 4 July 1989***
>
> *§ 1. The finding by the control commission that the financial report has not been lodged within the time specified in section 24(1) leads to automatic suspension of payment of the grant which would have been awarded to the institution defined in section 22 until the date of receipt of the report.*
>
> *Upon receipt of the report, the control commission shall impose the following sanctions on the political party concerned:*
>
> *- an administrative fine of EUR 1 000 per day of delay, up to a limit of EUR 30 000;*
> *- where lodged more than thirty days after the deadline set in section 24(1): seizure of the grant until the date of receipt of the report.*
>
> *§ 2. When it rejects the financial report, the control commission may impose one of the following sanctions:*
> *- a warning;*
> *- an administrative fine of EUR 1 000 to 10 000. The administrative fine shall be doubled for a second offence.*
>
> *§ 3. When it rejects the financial report, the control commission may impose one of the following sanctions:*
> *- an administrative fine of EUR 10 000 to 100 000;*
> *- seizure of the grant which would be made in accordance with chapter III of this Act to the institution mentioned in section 22 for the subsequent period set by the control commission, which may not be less than one month or more than four months.*
>
> *The administrative fine or the period prescribed in 1§ shall be doubled for a second offence.*
>
> *Within the framework of this section, the control commission shall rule in compliance with the rights of the defence.*

§ 4. The approval subject to reservation mentioned in section 24(3) carries the precautionary suspension of one-twelfth of the annual grant."

85. Concerning the annual lodging of the records of donations and sponsorship, the scale of penalties prescribed in section 16*ter* (5) of the Act of 4 July 1989 (section 22 of the Act of 6 January 2014) has also been radically altered:

Section 16 ter of the Act of 4 July 1989

(…)

"§ 5. If a political party or one of its components fails to lodge or delays in lodging the records mentioned in § 1, the control commission shall impose the following sanctions on the political party concerned:

1. an administrative fine of EUR 1 000 per day of delay, up to a limit of EUR 30 000;
2. if the record has not been received within thirty days: seizure of the grant until receipt of the record.

Within the framework of this section, the control commission shall rule in compliance with the rights of the defence.

If a political party or one of its components lodges the records referred to in § 1 incorrectly or incompletely, the control commission may impose one of the following sanctions:

1. a warning accompanied by a request to rectify or to complete the data within a fortnight;

2. if at the expiry of the fortnight following service of the warning, no rectification is received:
- an administrative fine of EUR 1 000 per further day of delay, up to a limit of EUR 30 000;

- where a rectification has not been received after thirty further days of delay: seizure of the grant until receipt of the rectification."

86. Concerning electoral expenditure of political parties, the regulations are now as follows under section 13 of the Act of 4 July 1989 as amended by the Act of 6 January 2014:

Section 13 of the Act of 4 July 1989

§ 1. If a political party fails to lodge or delays in lodging a declaration of electoral expenditure identifying the source of the funds allocated to it by the political party, the control commission shall impose the following sanctions on the political party concerned:

1. an administrative fine of EUR 1 000 per day of delay, up to a limit of EUR 30 000;
2. if the declaration has not been received within thirty days: seizure of the grant until receipt of the declaration.

§ 2. If a political party's declaration of its electoral expenditure, identifying the source of the funds allocated to it, is incorrect or incomplete, the control commission may impose the following sanctions:
1. a warning accompanied by a request to rectify or to complete the data within a fortnight;

2. if at the expiry of the fortnight following service of the warning, no rectification is received:
— an administrative fine of EUR 1 000 per further day of delay, up to a limit of EUR 30 000;
— if the rectification has not been received after thirty further days of delay: seizure of the grant until receipt of the rectification.

§ 3. If the maximum permitted amount referred to in section 2(1) is exceeded, the control commission shall impose on the political party concerned an administrative fine equal to the overspending, though with a lower limit of EUR 25 000 and an upper limit corresponding to four times the monthly grant.

§ 4. The control commission can impose one of the following sanctions on the political party concerned for infringing section 2(1.3 or 4), or any subdivision of section 5(1):

— a warning;
— an administrative fine of EUR 1 000 to 250 000. The administrative fine shall be doubled for a second offence.

§ 5. Within the framework of this section, the control commission shall rule in compliance with the rights of the defence."

87. In their latest comments, the Belgian authorities point out that concerning sanctions for election candidates, those contained in Section 181 of the Electoral Code – even if these have not evolved – are at present applicable also in case where a person wilfully states incomplete or false information on expenditure and sources of funding concerning the election campaign (which attracts imprisonment between eight days and one month and/or a fine of 50 to 500 EUR). This concerns the European elections, federal elections, and regional parliamentary elections (Section 14 of the Law of 4 July 1989, Section 10 of the Law of 19 May 1994). As indicated in paragraph 67 and footnote 13, Section 14/1 of the 1989 law also provides for a new mechanism of sanctions applicable in relation to persons elected at federal level which includes warnings, deductions on the parliamentary indemnity, suspension of the term of office and ineligibility.

88. Concerning the third item of the recommendation, the Belgian authorities explain that the question of penalties is an essentially federal prerogative (for example penalties relating to the electoral expenditure and accounting of political parties). As the regions are competent for local elections, the attention of the parliaments of the federated entities will be drawn to the changes made in the federal legislation, and to GRECO's recommendations.

89. GRECO takes note of the foregoing information. Concerning the first part of the recommendation, Belgium has instituted a system of remedies against decisions taken by the control commissions. This should indeed bring more clarity, but GRECO doubts that it really meets the concerns expressed by the interlocutors met during the evaluation visit: it was pointed out in particular that the procedures capable of leading to criminal sanctions remained seldom actuated in practice by the control commissions (or other originators of reports/complaints), also because of criminal justice authorities themselves being disinclined to act. Further moves therefore appear necessary on this first element of the recommendation, for a clearer indication of initiatives and transmission of case files. Concerning the second part of the recommendation, the Belgian authorities forward quite a long list of particulars and they indicate that the new provisions on sanctions for political parties now comprise a broader range of measures comprising warnings, graduated administrative fines in proportion to the delay or the infringement, doubling of fines for repeated offences, and suspension of the public grant. These are applicable for infringing the legislation on

electoral expenditure and official communications but also for infringing the legislation on financial reports and party funding, donations and sponsorship included. That said, and in the absence of more detailed explanations, the reading remains difficult, for instance as regards the administrative fines applicable when financial reports are rejected. Their level can be quite low in case of infringements concerning significant amounts, depending on the provisions considered: paragraphs 2 and 3 of Section 25 of the legislation of 4 July 1989 foresee a fine of 10 000 EUR or 100 000 EUR, basically for the same act[15]. It would also appear that in case financial statements are invalidated by the Control Commission, the loss of the public grant is still limited to 4 months, something the Evaluation Report had regretted. Ineligibility is now provided for under Section 14/1 of the law of 4 July 1989 in the context of federal elections (and not just of local elections, as was noted in the Evaluation Report) but this does not extend to further elections. Ineligibility as well as the other sanctions contained in the said Section 14/1 (warning, deductions on the parliamentary indemnity, suspension of the term of office) are important as they normally complement criminal sanctions which the authorities are unwilling to apply for their level is both excessive or on the contrary negligible (imprisonment and/or fine of 50 to 500 EUR). At this stage and in the light of the information available, there is a need for Belgium to pursue its efforts for the implementation of this second part of the recommendation. Finally, regarding the last item of the recommendation, Belgium has not yet taken action.

90. GRECO concludes that recommendation xi has been partly implemented.

III. CONCLUSIONS

91. **Belgium has made progress by partly implementing six further recommendations since the last interim report of October 2013, even though these improvements are not decisive enough to change the total number of recommendations which have been fully implemented.** Some areas where progress is noted have sometimes implied important changes. Overall, to date only three recommendations out of the fifteen contained in the Evaluation Report have thus been fully implemented. Nine other recommendations have been partly implemented and the remaining three have not been given effect.

92. More specifically, with regard to Theme I – Incriminations, recommendations i and iv remain partially implemented (recommendations ii and iii where already categorised as implemented in the previous interim report). With regard to Theme II – Transparency of political party funding, recommendation v is joined by recommendations ii, iv, vi, viii, ix and xi as partly implemented recommendations, and recommendations ii, vii and x remain unimplemented (recommendation i was deemed satisfactorily implemented in the first compliance report).

93. GRECO notes that the progress recorded is due to the fact that several amendments introduced in January 2014 go some way towards meeting expectations concerning transparency and control of political financing. For example, Belgium has taken steps to ensure that the regulations also apply to political parties ineligible for public grants at federal level, in order to strengthen the supervisory machinery or again to establish a wider, more proportionate and more effective scale of sanctions. But on the whole, these are partial and/or unambitious advances. GRECO had moreover already stressed in the previous interim report that parliamentary proceedings seemed

[15] During the discussion of the present report, the Belgian authorities indicated that this was a technical mistake (and not an isolated case) which will be addressed through an editing amendment. The Dutch version of the amended law is not affected by this mistake and it makes a clear distinction between the two types of situations addressed in article 25 depending on whether the Federal Commission approves with reservation the financial statements (paragraph 2) or rejects them (paragraph 3).

not to deal with or discuss all the recommended improvements. In the case of the new regulations on support by legal persons coming under the definition of sponsorship, Belgium even confirms in the statutes a problematic situation pinpointed by GRECO, since the support of such entities is strictly prohibited as a rule. The regulations on donations therefore require further revision, and for the sake of transparency and coherence Belgium is expected to decide more definitely whether or not it wishes to authorise again donations by legal persons. Measures also remain to be taken with regard to the federated entities and their regulations as well. With a single recommendation fully implemented for Theme II - political financing, the aggregate result remains disappointing. Concerning Theme I – incriminations, no definite advance is to be reported at the federal ministerial level for the implementation of the last two recommendations, one of them calling for a remedy, in particular, to a legal vacuum left by the removal of a reservation to the Criminal Law Convention on Corruption. Therefore GRECO again reiterates its appeal to Belgium to pursue more resolutely the implementation of the various outstanding recommendations.

94. In view of the above, GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

95. In accordance with paragraph 8.2 of Rule 31 revised of its Rules of Procedure, GRECO asks the head of the Belgian delegation to submit to it by 31 July 2015 a report on the measures taken for the purposes of implementing the outstanding recommendations (recommendations i and iv of Theme I and recommendations ii to xi of Theme II).

96. Finally, GRECO invites the Belgian authorities to authorise publication of this report as soon as possible, translate it into Dutch (and possibly German) and to make this (these) translation(s) public.