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**Public**  
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**Addendum**

## **Second Evaluation Round**

### **Addendum to the Compliance Report on Belgium**

Adopted by GRECO  
at its 42<sup>nd</sup> Plenary Meeting  
(Strasbourg, 11-15 May 2009)

## I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Belgium at its 21<sup>st</sup> Plenary Meeting (2 December 2004). The report (Greco Eval II Rep (2004) 1E) was made public by GRECO on 24 January 2005, following authorisation from the Belgian authorities.
2. Belgium submitted the situation report required under GRECO's compliance procedure on 8 June 2006. On the basis of this report, and following a discussion in plenary session, GRECO adopted the Second Round Compliance Report (RC report) on Belgium at its 33<sup>rd</sup> Plenary Meeting (1 June 2007). It was made public on 25 June 2007. The compliance report (Greco RC-II (2006) 9E) concluded that recommendations ii and vii had been implemented satisfactorily. Recommendation i had been dealt with in a satisfactory manner. Recommendations iv, v, vi and ix had been partly implemented and recommendations iii and viii had not been implemented. GRECO requested additional information on their implementation. This information was submitted to it on 2 December 2008, and on 18 March 2009 in a supplementary report.
3. Pursuant to Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, the purpose of this addendum to the second round compliance report is to assess the implementation of recommendations iii, iv, v, vi, viii and ix in the light of the additional information referred to in paragraph 2.

## II. ANALYSIS

### **Recommendation iii.**

4. *GRECO recommended to undertake a more systematic assessment of the risks of corruption in public administration and the evaluation of the measures introduced to combat corruption.*
5. In the RC report, GRECO noted that no new measures had yet been taken on the basis of recommendation iii concerning the analysis of corruption and that there had been no evaluation of existing anti-corruption measures (for example, surveys, tests, studies or case analyses).
6. The Belgian authorities state that the vulnerability analysis of public procurement procedures, already referred to in the evaluation and then the compliance reports, has finally been completed by the federal police and was approved in late 2008<sup>1</sup>. The first analysis of corruption in Belgium for the period 1996-2000 may also be updated.
7. In 2009, the administrative ethics and good practice office of the Federal Budget and Management Control Department<sup>2</sup> plans to carry out, in conjunction with the institute of criminology of Louvain Catholic University, a survey of federal public services (SPFs) and public programming departments (SPPs) to determine how those working in the federal public service perceive the integrity of federal public bodies and their staff. The questionnaire covers corruption and other forms of non-ethical conduct. This empirical data collection process will be followed by

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<sup>1</sup> The analysis shows that in 25% of fraudulent cases studied, the legislation on public procurement had simply not been applied and that in a further 20% there had been no published invitation to tender – the most vulnerable form of procedure – mainly after contracts had been divided up to make this possible. The public works and construction sectors were the most frequently involved, and locally elected members, particularly at municipal level, were the most frequent offenders. Another important lesson is therefore that such fraudulent practices depend more on the personality of the perpetrators, and on long-established relationships, than on the procedures themselves.

<sup>2</sup> This office serves as the United Nations focal point for the purposes of Chapter II of the United Nations Convention against Corruption. It was strengthened in 2008 and currently has a staff of five officials.

other sectoral studies and a general horizontal survey of integrity. An integrity audit of the federal public departments will be undertaken in late 2009 to establish the application of the Council of Ministers' 2006 decision on federal policy on integrity, which requires all GRECO's recommendations in its second round report to be taken into account.

8. The administrative ethics and good practice office is not empowered to undertake internal audits and risk assessments concerning corruption. The management support section of the Federal Budget and Management Control Department is responsible for supporting and coordinating the initiatives of the departments responsible for implementing the new audit arrangements established in 2007<sup>3</sup>. The management support section also has a level of expertise which enables it to assist the various departments in implementing these activities, but it has no authority to force them to introduce internal audit activities nor to evaluate their work. Since the federal audit commission (see footnote 3 below) has not been established yet, the Belgian authorities are not in a position to say how far the audit departments and arrangements introduced until now have contributed, or might contribute, to the implementation of recommendation iii.
9. Nevertheless, according to the office's work schedule, in late 2009 an assessment will be made of progress made by the various federal services in applying internal integrity policies. The Court of Auditors has also carried out an initial audit of integrity policies. In the first half of 2007 it examined the situation in federal public authorities via a questionnaire sent to 18 central departments, including all the federal public services (SPFs), three public programming departments (SPPs), defence and the federal police<sup>4</sup>. In its conclusions, published in November 2007 (164<sup>th</sup> *Cahier d'observations*, 2007/2008 session), it identifies a number of possible improvements. A similar assessment is being carried out in respect of the various public service bodies and the Court intends to take account of the results of these examinations in drawing up its audit programmes.
10. There are currently no reports of practical steps at regional level to implement this recommendation. The audit unit of the general secretariat of the Brussels-Capital Region is currently drawing up transversal procedures that should secure a more rigorous approach to management, public spending and respect for the principles of good governance.
11. GRECO notes the information provided. The proposal to update the 1996-2000 federal analysis of corruption deserves support and should be implemented. The proposed study of perceptions of integrity at federal level by the administrative ethics and good practice office is also consistent with the first part of recommendation iii and GRECO hopes that audit and internal control sections of the different federal departments and services will co-operate with this activity. Turning to the second part of the recommendation, on the evaluation of anti-corruption measures, the assessment work undertaken by the Court of Auditors goes in this direction to some extent (it deals with integrity issues rather than corruption as such) and it is envisaged to pursue this work on a more systematic basis and to use the results in the context of the Court's control function; here too, the administrative ethics and good practice office intends to follow the same path.

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<sup>3</sup> The new federal internal audit and control policy is based on the three new decrees in 2007: a) the royal decree of 17 August 2007 on the internal control system for certain federal executive departments, which establishes machinery to ensure that objectives that have been set are achieved; b) the royal decree of 17 August 2007 on the internal audit of certain federal executive departments, which aims to develop internal audit, and therefore control, activities; c) the royal decree of 17 August 2007 establishing a federal audit commission, which is responsible for harmonising the audit arrangements that various federal bodies are now required to introduce.

<sup>4</sup> This therefore excludes ministers, state secretaries and private offices. Nor has there been any examination of the judiciary, particularly from the standpoint of the relevant powers of the judicial services commission.

GRECO finally notes that no practical steps have been reported in the Brussels-Capital Region concerning this recommendation. Overall, it is thus difficult to conclude that it has been implemented yet.

12. GRECO concludes that recommendation iii has been partly implemented.

**Recommendation iv.**

13. *GRECO recommended that conflicts of interest be subject to stricter regulation, in particular i) the legislation of 2/5/95 (requirement to file a statement of offices, functions and occupations and a declaration of assets) should be rapidly implemented; ii) the conditions governing the performance of ancillary activities should be tightened or further clarified; iii) provision should possibly be made for the rotation of officials most exposed to the risk of corruption; iv) guidance should be provided to public officials regarding the existing ban on seeking or receiving gifts, and finally, v) “pantouflage” (i.e. the improper movement of public officials to the private sector) should be regulated, with a view to prohibiting.*
14. GRECO notes that points ii to v of the recommendation<sup>5</sup> had been considered by an inter-ministerial working group, following the adoption of the federal policy memorandum on integrity. Specific measures were planned to limit the performance of ancillary activities (point ii) and were expected early in 2007. There had been little concrete follow up on the rotation of staff, and even though the recommendation in this area was quite "soft" GRECO wanted to know more about the final outcome. The question of guidance to staff on gifts (point iv) had to be considered in the light of the future code of conduct. The issue of “pantouflage” (migration to the private sector, point v) would also be dealt with in connection with the code of conduct. It was too early to anticipate whether the issue of “pantouflage” would also be the subject of regulations, so as to ensure the system’s effectiveness through more detailed rules, notably concerning periods of restrictions applicable to movements to the private sector. Finally, GRECO found that no significant progress has been made in the Brussels-Capital Region<sup>6</sup>. The recommendation had been forwarded to that region and it hoped that the measures adopted at federal level would be a source of inspiration for similar measures in the regions.

General information

15. The Belgian authorities report the adoption of circular no. 573 of 17 August 2007 on an ethical framework for staff of the federal public service, which was referred to in the compliance report. Each organisation within the federal public service must implement this circular at its own level of activities (including by possibly adopting a complementary ethical framework and providing training that would take into account the specificities of its sector / organisation). The purpose of the ethical framework is to familiarise officials with values such as respect, impartiality, professional integrity and loyalty, and make them an integral part of the management of federal

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<sup>5</sup> Regarding point i of the recommendation, the compliance report noted the entry into force on 1 January 2005 of the legislation implementing the Acts of 2 May 1995 at federal level. The Belgian authorities state that the legislation is applied. The lists of offices, posts and occupations are filed and published in the *Moniteur belge*. The most recent publication of these lists was on 14 August 2008. In late February 2009, the Brussels public prosecutor informed the press of his intention to prosecute political office holders who had not complied with their obligation to declare their office and their assets (article in *De Tijd*, 28 February 2009). The first to be prosecuted would be those who had failed to make the required declaration in 2005. The number of persons concerned was not yet known. Since the circumstances varied greatly, each case would be studied carefully before deciding what action was required.

<sup>6</sup> GRECO noted that the Code of Ethics for the Brussels-Capital Region did not deal with the issue of conduct in relation to gifts.

departments and institutions. They are also a means of securing good governance because they offer officials a document that is understandable, accessible and transparent and summarises the relevant points. As noted under recommendation iii, in late 2009 the administrative ethics and good practice office of the Federal Budget and Management Control Department will assess progress made by the various federal departments in applying internal integrity policies. The Belgian authorities stress that although the document does not specify how to deal with the consequences of a breach of the ethical rules, disciplinary measures can be applied on the basis of the general provisions contained in article 77 of the statute applicable to state employees.

16. The office also produced a "Manual on the management of conflicts of interest in the public sector" in March 2009, setting out the areas of risk of conflicts of interest, such as holding several elective offices, gifts and public procurement, identified by the OECD. This is a decision-making aid of some 45 pages aimed at all federal staff to help them decide for themselves about any potential conflicts of interest. It includes a number of self-assessment tests for the various at-risk areas. It has been translated and will be made available to the entire federal public service on the Federal Budget and Management Control Department site in the first half of 2009. Consideration is being given to a blog to enable staff to exchange questions, comments and criticisms. It would serve as a training and educational tool for all federal employees.
17. Finally, a circular on public procurement and conflicts of interest was finally adopted by the Committee of Ministers on 6 March 2009 and entered into force on 16 March. It had already been finalised in June 2008 but the State Secretary for the Budget wanted its scope to be extended to the defence ministry, the police and ministerial private offices, including ministers and state secretaries.
18. In Brussels-Capital Region two draft orders, modifying the regulations governing officials of, respectively, the government of the region and other public bodies, will significantly extend the rights and duties of staff. The two orders have not yet been finally approved. Hitherto, the only reference to officials' rights and duties has been a single sub-paragraph of an article (2§4) of the regulations, which refers to articles 4 to 8 of the royal decree of 22 December 2000, laying down general principles in this area. The draft amending orders introduce a chapter 1bis into the staff regulations. As it stands at present, Article 3§§3-6 would read:

*§3. Without prejudice to article 29 of the Code of Criminal Procedure, staff shall inform their hierarchical superior or, if necessary, a more senior hierarchical superior, of any unlawfulness or irregularity to which they are privy.*

*§4. Staff shall treat the users of their services favourably. When responding to users' requests and dealing with cases, they shall abide strictly by the principles of neutrality, equal treatment and respect for laws, regulations and directives.*

*§ 5. Staff may not request, demand or receive, directly or through a third party, even outside of their normal duties but nevertheless on account of them, gifts, gratuities or any other donations. This does not include symbolic gifts of small value exchanged between staff in the normal course of their duties.*

*§ 6. Staff shall not place themselves, or allow themselves to be placed, in a situation of conflict of interest, that is one where they themselves or via a third party have a personal interest likely to influence the impartial and objective performance of their duties or to create a legitimate suspicion of such an influence.*

*When staff consider or fear that there may be such a conflict of interest they shall immediately inform their hierarchical superior, who will acknowledge this in writing.*

*Where a conflict of interest is established, the hierarchical superior shall take appropriate measures to end it.*

*Staff may seek the written advice of the chair of the management board or his representative to establish whether any particular situation might constitute a conflict of interest.*

19. The draft orders also modify and simplify the disciplinary arrangements to rectify certain shortcomings that have emerged from disciplinary proceedings.
20. The Federal Budget and Management Control Department is currently collecting information in connection with planned regulations on conflicts of interest. The procedures to be established will pay particular attention to a. defining at-risk areas; b. deciding whether a conflict of interest exists in difficult cases, for example determining whether officials' private interests are of a nature and value that make them relevant to their official duties, and whether a conflict of interest is real, potential or apparent; and c. clarifying the boundary between the need for action and infringements of private interests and privacy.

Information relating specifically to points (ii) to (v) of recommendation iv

21. Regarding the need to tighten or further clarify the conditions governing the performance of ancillary activities (point ii of the recommendation), the Belgian authorities state that at federal level, paragraphs 18 and 19 of the August 2007 ethical framework<sup>78</sup> establish the principles of incompatibility and the need for staff to secure authorisation to perform other paid activities, and the conditions governing such authorisation. The March 2009 Manual on the management of conflicts of interest in the public sector provides more details on the procedure for declaring, checking and approving the performance of such ancillary activities, including criteria for identifying ancillary activities that might be incompatible with the dignity of the office, the possibility of revising an official's duties to avoid any potential conflict of interest and clarifications concerning any additional remuneration and the frequency with which the ancillary activity is performed. No specific measures are reported concerning the Brussels-Capital Region.
22. With regard to the possible rotation of staff (point iii of the recommendation), the Belgian authorities state that at federal level this is exclusively the responsibility of each federal department. No further information is supplied. Nor are any specific measures reported concerning the Brussels-Capital Region.
23. Regarding guidelines on gifts (point iv of the recommendation), at federal level paragraph 17 of the federal ethical framework of August 2007<sup>9</sup>, which is new, states that *to ensure the impartiality of staff, they are forbidden to request, demand or receive gifts, gratuities or any other donations for themselves or others, whether or not in the performance of their duties, if the gifts, gratuities or donations in question are linked to these duties. It should be noted that the personal enrichment resulting from the acceptance of gifts, gratuities or any other donations is less important than the loss of impartiality required from officials in the exercise of their duties. Officials shall not accept any gratuities, gifts or financial or other benefits for services rendered to*

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<sup>7</sup> The matter is essentially governed by article 12 of the federal staff regulations (see the second round evaluation and compliance reports).

<sup>8</sup> 18. The status of official is incompatible with any activity that is inconsistent with the dignity of the post, or interferes with or prevents the performance of the duties attached to the post, whether these activities are performed by the official him or herself or by a third party such as a spouse or cohabitee.

19. Staff may only perform other paid activities after receiving authorisation. Such authorisation is granted for a maximum of four years, after which fresh authorisation is required. Such authorisation may not be retrospective. Authorisation may only be granted if the activity is performed outside normal working hours. The activity must in all cases be totally ancillary to the duties performed. Ancillary activities may only be exercised in accordance with the legislation and regulations governing the activity in question. Where necessary, the body issuing the authorisation shall be provided with relevant documentary proof.

<sup>9</sup> This is still the subject of article 8§3 of the federal staff regulations and articles 246 to 249 of the Criminal Code on corruption in the public sector (see the second round evaluation and compliance reports).

users. *The exchange of symbolic gifts of small value between officials in the performance of their duties is permitted.* The Belgian authorities indicate that the circular of March 2009 on public procurement and conflicts of interest requires that the ethical framework be handed over to all undertakings and candidates involved in a public tender, with a view notably to remind that advantages, gifts or gratuities of any kind to a federal civil servant are prohibited. Chapter 4.7 of the March 2009 Manual mentioned earlier devotes half a dozen pages to test questions and comments on the risks attached to gifts and other benefits. In the Brussels-Capital Region the matter is apparently to be dealt with in the planned changes to article 3bis paragraphs 5 and 6 of the staff regulations, as referred to in paragraph 18 above, under the heading general information.

24. Regarding closer regulation and control of “pantouflage” (migration to the private sector – point v of the recommendation), the Belgian authorities state that, as planned, this matter has been tackled, at least in part and at federal level, in paragraphs 20 and 21 of the ethical framework<sup>10</sup>. The administrative ethics and good practice office has investigated the feasibility of more binding regulations on the subject. In particular, it has examined the workings of the French ethics commission. It has concluded that this type of commission is not suitable for the Belgian federal level, given its composition, which includes senior judges and private sector representatives, and also the absence in Belgium of so-called *grandes écoles* such as ENA or Polytechnique. No specific measures are reported concerning the Brussels-Capital Region.
25. GRECO notes this information and finds that efforts have been made to settle conflicts of interest through non-binding ethical and decision-making guidelines. The August 2007 ethical framework and the March 2009 Manual on the management of conflict of interest in the public sector have added significant clarifications to the rules governing public officials' involvement in ancillary activities (point (ii) of recommendation iv) that go in the direction suggested by the recommendation. This being said, concrete steps are still needed to ensure the practical implementation of the August 2007 ethical framework by each federal department, to ensure that it is fully operational and effective. Even though the recommendation on staff rotation (point iii) has been characterised as a "soft" one, the Belgian authorities merely state that this is a matter for each individual federal department. They do not say whether and which departments have given the issue proper consideration. Guidelines have certainly been issued on gifts (point iv) that ought to help staff to understand and identify the risks attached to accepting various advantages, even when these are gifts of little value. GRECO notes that steps have been taken to regulate so-called *pantouflage* (point v) in order to exercise closer control over, rather than ban, migration of staff to the private sector and movements between the two sectors. Finally, GRECO is pleased to learn that reforms are under way in the Brussels-Capital Region to exercise closer control of conflicts of interest in general. These are currently just proposals and the various elements of recommendation iv do not appear to be covered, apart from the question of gifts and advantages. In conclusion, undoubted progress has taken place at federal level, including in connection with point i which was dealt with in the compliance report, but it is difficult for GRECO to conclude that this important recommendation has been fully implemented or dealt with in a satisfactory manner.
26. GRECO concludes that recommendation iv remains partly implemented.

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<sup>10</sup> 20. Staff should advise their employers as rapidly as possible if they are transferring to the private sector and their future employer's business activities could bring them into a business relationship with their public service of origin.  
21. Staff may not grant other staff who have terminated their employment any undue advantages linked to their previous administrative duties.

## Recommendation v.

27. *GRECO recommended that i) officials are informed of their duty to report any possible corruption offences to the prosecution authorities, pursuant to Article 29 of the Code of Criminal Investigation, and of the consequences of failure to comply; ii) the relevant auditing services are called upon to carry out evaluations of the efficiency of disciplinary procedures; and finally, iii) machinery is established to offer formal protection to whistle blowers acting in good faith and that a procedure to appoint confidential advisers is put in place.*
28. GRECO notes that the compliance report concluded that the recommendation had been partly implemented and that i. with regard to informing officials of their duty to report offences under Article 29 of the Code of Criminal Procedure, no initiatives had yet been taken at federal level but the question was being studied in the context of the drafting of a federal code of conduct and the proposed introduction of a whistleblowing mechanism; ii. with regard to calling on the auditing services to evaluate the efficiency of disciplinary procedures, the question was being examined at federal level, the police having already concluded that there was a need to simplify its own procedures. The recommendation had not yet been followed up by the federal tax authorities or the Brussels-Capital Region; iii. the question of formal protection for whistleblowers was being studied at federal level in the context of inter-ministerial consultations and discussions on the introduction of such machinery.
29. The Brussels-Capital Region had been informed about the recommendation but had not yet taken any measures. GRECO hoped that the measures to be adopted at federal level would inspire similar initiatives in this region.
30. The Belgian authorities state that with regard to informing officials of their duty to report offences (point i of the recommendation), at federal level the ministry of justice consulted other ministries in September 2008 about the possibility of disseminating the ethical framework to all contractual and established officials and reminding them of their obligation to comply with Article 29 of the Code of Criminal Procedure<sup>11</sup>. A draft memorandum on the subject will shortly be submitted to the (new) Committee of Ministers. In the federal finance department, circular CAF 16/2008 of 7 October 2008 reminds officials of the obligation to report offences under Article 29 of the Code of Criminal Procedure (see also recommendation viii). In 2009, the government of the Brussels-Capital Region will undertake a comprehensive review of procedures governing the internal disclosure of information concerning irregular practices and regulations on conflicts of interest, including gifts, gratuities and advantages.
31. No information is forthcoming about the use of auditing services to evaluate the efficiency of disciplinary procedures (point ii of the recommendation) at federal level, where the compliance report stated that the matter was under consideration. The federal police have concluded that they need to simplify their disciplinary procedures. In Brussels-Capital Region, where the proposed changes to the staff regulations include a significant reform of the disciplinary arrangements, an audit of the current provisions is deemed to be premature.
32. At federal level, the administrative ethics and good practice office is continuing to investigate arrangements to protect whistleblowers (point iii of the recommendation). The future reporting

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<sup>11</sup> In the longer term, an interdepartmental working group will be set up to consider a revision to this article to clarify its scope and authorise the administrative ethics and good practice office to consider this reform and consider what links need to be established between this article and, firstly, the disciplinary rules governing state officials and, secondly, the future system of disclosure to be presented to the state secretary for the budget.



system will establish institutionalised protection arrangements for whistleblowers acting in good faith and provide for the appointment of "persons of confidence". The proposals will be presented, with a few modifications, to the state secretary for the budget. In the Brussels-Capital Region it is proposed to collect information from the other entities of the country in 2009 on their proposals and/or experience with a view to developing protection arrangements.

33. GRECO notes that the Belgian authorities at federal level and in Brussels-Capital Region are gradually clarifying the different features of various current projects concerned with public officials' reporting duties and the protection of whistleblowers (points i and iii of the recommendation). However, progress is still slow. GRECO also notes that so far, the main emphasis has been on internal reporting<sup>12</sup>, which is different from reporting to the prosecution authorities, as specified in Article 29 of the Code of Criminal Procedure and point i of its recommendation. There is insufficient information on the auditing of disciplinary procedures (point iii of the recommendation) to reach a conclusion, even though it is possible that this part of the recommendation will partially lose its purpose because the need to reform the disciplinary arrangements appears to have already been acknowledged, at least in part, at the federal level in the police and in Brussels-Capital Region. GRECO concludes that there has not been decisive progress on the first two elements of this recommendation and that the situation regarding the third part still needs to be clarified.
34. GRECO concludes that recommendation v remains partly implemented.

#### **Recommendation vi.**

35. *GRECO recommended to establish a register of legal persons with criminal convictions.*
36. The Belgian authorities report that the draft legislation to establish a central criminal register for legal persons and amend certain provisions of the Code of Criminal Procedure, referred to in the first situation report, has not made any further significant progress. The establishment of such a register for legal persons, and a data base of professional disqualifications, has been included in the 2008-2009 action plan of the working group on combating tax evasion and social fraud<sup>13</sup>, which has been approved by the ministerial committee to combat tax evasion and social fraud<sup>14</sup>. This should support the introduction of the criminal register concerned and work on updated draft legislation resumed in January 2009. The Belgian authorities stress that pending the final creation of a criminal register for legal persons, temporary measures have been taken: the service responsible for the management of the criminal record database has created an Excel file in which all offences concerning legal persons are already registered. The possibility, created hereby, for practitioners to obtain information on the criminal background of legal persons was explicitly mentioned in a memorandum of November 2008 that was sent to the various services concerned. The prosecutors most likely to be concerned were also informed of these possibilities

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<sup>12</sup> Principle 30 of the August 2007 ethical code only refers to internal reporting and does not appear to provide for any exceptions. Similarly, Brussels-Capital Region has started to consider the internal reporting of possible cases of corruption.

<sup>13</sup> A body answerable to the prime minister and established by the royal decree of 29 April 2008 (MB. 8.5.2008). It is chaired by the state secretary for co-ordinating the fight against tax evasion and social fraud, who is a deputy to the prime minister and the minister of justice. It is composed of senior officials from departments concerned, members of the college of prosecutors for whom this is part of their remit (the public prosecutors of Brussels and Liège) and the federal prosecutor. It meets monthly.

<sup>14</sup> A government committee established by the royal decree of 29 April 2008 (MB. 8.5.2008). It is chaired by the prime minister and includes the members of the government responsible for finance, social affairs, the interior, justice, employment, small and medium-sized enterprises, the economy and the co-ordination of anti-fraud activities. The committee lays down the general policy on tax evasion and social fraud and the priorities of the departments concerned.

through the networks of specialists of the College of Prosecutors in the areas of ECOFINFISC (economic, financial, fiscal) and corruption. Practitioners can obtain relevant information from the above-mentioned service.

37. GRECO notes that, although the establishment of a criminal record for legal persons has not yet been finalised, provisional measures have been taken in 2008 to record all the relevant offences concerned and to make the information available to interested practitioners; this goes in the direction suggested by the recommendation. It concludes that recommendation vi has been dealt with in a satisfactory manner.

#### **Recommendation viii.**

38. *GRECO recommended that the tax authorities pay particular attention to the problem of corruption, particularly through directives and specific training modules on the detection of corruption offences and enforcement of the relevant legislation.*
39. GRECO recalls that this recommendation had not been implemented because the strengthening of the tax authorities' anti-corruption measures only had an internal preventive objective whereas the evaluation report had been particularly concerned with detecting external corruption as part of these authorities' oversight responsibilities. GRECO had stressed the need for training measures and directives (for example, taking inspiration from the OECD).
40. In their additional information for this addendum, the Belgian authorities refer to their anti-corruption circular CAF 16/2008 of 7 October 2008. This nearly 20-page circular, the result of three years' collaboration between several departments, has been sent to all officials of the departments concerned with fiscal affairs, company and income taxes, direct contributions, recovery of sums owed, VAT, registration and estates, the land registry, customs and excise and the special tax inspectorate. Its contents include a reminder of the obligation to report serious and lesser offences directly and immediately to the public prosecutor, a presentation of the tax provisions of the legislation of 11 May 2007 amending the anti-corruption law<sup>15</sup> and practical advice on how to seek out and identify corruption, including several points from the OECD handbook on corruption. The circular has been placed in the current news section of the federal finance department Intranet page, which is the automatic opening page for all finance department staff. The Belgian customs and excise administration, on its side, has adopted a global project aimed at raising the level of ethical behaviour of its staff and decreasing risks of corruption; it comprises three components: 1) training/awareness raising initiatives have been implemented since December 2008, for all of the 4000 staff, with a focus on the topic of corruption; a general presentation entitled « Corruption – a definitional approach » was prepared in cooperation with the Liege and Ghent Universities; 2) courses will be organised as from September 2009 for all managers on such topics as circular no. 573 on an ethical framework (see paragraph 15), disciplinary rules and internal controls; 3) drafting of a *vademecum* meant to be a practical tool for staff when they are confronted with situations of corruption.
41. Steps have been taken to include corruption in general in the continuing training of tax and customs officials. This includes two training sessions already run by the national taxation and finance training college and a planned one day anti-corruption training session for all customs and excise officials. Corruption, including its ethical aspects, has also been incorporated into the

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<sup>15</sup> The changes include abolition of the system whereby secret commissions can be authorised by ministerial order, new arrangements concerning the non-deductibility of professional expenses, and new arrangements governing unacceptable expenditure in connection with the definitively taxed income (RDT) and income from investments (RME) exemptions.

initial training on new staff. In 2009, the national taxation and finance training college plans to run special seminars on how to identify and punish corruption offences, based on the new circular.

42. GRECO notes with interest the anti-corruption circular CAF 16/2008 of 7 October 2008, which is consistent with the recommendation and involves the various fiscal authorities in the detection of corruption. Planned training sessions on the identification of expenditure, accounting tricks and other arrangements linked to corruption are to be welcomed. These are merely proposals but steps have also been taken in the short term to ensure that in principle all tax officials are aware of the October 2008 circular. GRECO also notes with interest the ambitious initiatives which are being introduced by the customs administration.
43. GRECO concludes that recommendation viii has been implemented satisfactorily.

#### **Recommendation ix.**

44. *GRECO recommended that arrangements be introduced to enable auditors and accountants to report corruption offences directly to the relevant authorities and that these professions' representative bodies be encouraged to issue directives and organise training on the detection and reporting of corruption, accompanied by rules of conduct and appropriate sanctions.*
45. According to the compliance report, auditors and accountants are already required to report suspected laundering to the Belgian financial intelligence unit and the Belgian authorities consider that this is one means of identifying possible corruption cases, namely ones concerning the laundering of proceeds from corruption since all serious offences, including corruption, are considered to be predicate offences of money laundering. There was nothing in the compliance report on guidelines on the identification and reporting of offences of (money laundering linked to) corruption while future training on corruption for accountants was planned by the auditors and accountants' professional association. In the case of auditors such training remained part of their general training on financial crime. GRECO noted with satisfaction the strengthening of accountants' disciplinary machinery but regretted the absence of any steps by the authorities to encourage the adoption of ethical standards to deal with the issue of corruption by accountants and auditors.
46. The Belgian authorities state that on 20 February 2009, the Committee of Ministers approved the second reading of draft legislation to amend the Act of 11 January 1993 to prevent the use of the financial system for terrorism financing and money laundering purposes, and the Companies Code, thereby transposing into Belgian law the third directive, 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The accounting and audit professions were involved in preparing the preliminary draft legislation.
47. The authorities list the steps taken by the accountants' and financial advisers' professional association (IPCF) to familiarise its members with the preventive and enforcement aspects of the anti-laundering legislation. This includes the publication of an article in a journal, making information on reporting suspected laundering and relevant forms available on-line, training seminars and an explanatory memorandum that also includes certain general references to corruption.
48. The Institute of Registered Auditors (IRE-IBR) has approved a new rule governing certain aspects of auditors' independence, which came into force on 29 June 2008. It has been published on the institute's Internet site and an individual copy has been sent to every auditor. The Institute is

currently finalising proposed modifications to the royal decree of 10 January 1994 on company auditors' obligations, to transpose into domestic legislation the Audit Directive of 17 May 2006 and to comply with international standards in the IFAC Code of Ethics. The proposals will shortly be submitted to the competent authorities. In July 2008, the auditors' institute made proposals to the High Council for the Economics Profession (CSPE-HREB) and the minister for the economy for a work programme that would include the mandatory application of the international audit standards, in particular ISA 240 on the auditor's responsibility to consider fraud (which includes corruption) in an audit of financial instruments. At all events, the institute's general accounting rules and its recommendation of 5 June 1998 on fraud and other illegal acts require auditors who identify fraud, including corruption, to report this to the management and, if appropriate, the body responsible for company governance (the audit committee), or, when this appears to be the only way to put an end to the fraud, to a general meeting of shareholders, specially convened under Article 532 of the Companies Code. If the company's management takes no steps to rectify the fraud in the annual accounts and financial statement, the auditor must draw attention to this in his report. Supervision of company auditors has also been strengthened by an amendment to the Act of 22 July 1953 following the transposition of the Audit Directive of 17 May 2006, via various public supervisory bodies such as the Chamber of Disciplinary Transfer and Indictment (CDTI) *Chambre de renvoi et de mise en état* (an independent disciplinary, complaints and supervisory body), the aforementioned national council for the financial professions, the state prosecutor and the minister for the economy. The Institute continues its familiarisation activities through its training programme<sup>16</sup>, in the form of seminars on the international audit standards and its own standards and recommendations. In particular, these look at auditors' responsibilities when they identify fraud, including corruption, and continue to draw the profession's attention to those specific risks.

49. GRECO notes the information supplied. Despite the undoubted efforts of the accountants' and financial advisers' professional association (IPCF) to associate these professions in anti-money laundering efforts, very little is said about how far predicate offences of corruption are taken into account in initiatives to help them to identify suspicious transactions for the purposes of reporting these to the financial intelligence unit. The Institute of Registered Auditors (IRE) is also trying to secure a stronger response among its members to various forms of fraud, including corruption. These efforts are praiseworthy but it appears that current and planned standards, in particular the transposition of ISA 240, do/will not extend to reporting to the authorities (even in those cases where the legal entities' managing bodies would take no appropriate measures after an auditor has informed them of possible serious misbehaviour or crimes). For the profession of auditors, there is no reference either to predicate offences of corruption in measures to facilitate the identification of suspicious transactions. It thus remains difficult to conclude that the current reporting arrangements (for suspicions of money laundering or fraud) applicable to accountants and auditors constitute a satisfactory alternative to the reporting of corruption offences to the authorities. Finally, the auditors' disciplinary machinery is also currently undergoing reform and ethical rules are planned for the profession, but still not for accountants.
50. GRECO concludes that recommendation ix remains partly implemented.

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<sup>16</sup> The Institute's seminar programme for 2007-2008 is available on its Internet site. Auditors are obliged to undertake a total of 120 hours of training per three-year period, with a minimum of 20 hours in any year. The number of persons may vary according to type of seminar: 30-40 for seminars in the strict sense and up to 250-300 for half or full study days.

### III. CONCLUSION

51. Apart from the conclusions in the second round compliance report on Belgium and in the light of the foregoing, GRECO concludes that recommendation viii has been implemented satisfactorily and recommendation vi has been dealt with in a satisfactory manner. Recommendations iii, iv, v and ix have been partly implemented.
52. Following adoption of this addendum to the second round compliance report, GRECO concludes that of the 9 recommendations addressed to Belgium, 5 have now been implemented satisfactorily or dealt with in a satisfactory manner. Decisive progress has only been made on two recommendations during the additional period of 18 months since the compliance report. This concerns on the one hand measures to secure closer involvement of tax authorities in identifying potential corruption and, on the other hand, the introduction of a register of legal persons which have committed a criminal offence. GRECO notes that the Belgian authorities have reported a number of proposals currently under consideration, including draft legislation, that could contribute to the almost total implementation of the remaining partly implemented recommendations. In general, however, progress is slow and the Belgian authorities are aware of this: "Besides the general difficulty – deriving from the various steps in the adoption of legislation – to finalise within 18 months the legal amendments required, the Belgian authorities wish to draw attention to the fact that the federal Parliament's term ended in May 2007 (4 years after the elections of 10 May 2003) and that its composition was renewed following the elections of 10 June 2007. Negotiations on the formation of a new government were concluded only on 21 December 2007. The long time needed to compose the government have delayed the projects under way in the area of the fight against corruption."
53. As a result, almost half the recommendations to Belgium remain only partly implemented. GRECO therefore calls on the country's authorities to take energetic steps to bring the initiatives referred to in this report to fruition to ensure the full implementation of these recommendations, which concern, among other areas, the need for more systematic assessment of the risks of corruption and anti-corruption measures, the regulation and management of conflicts of interest and the measures to protect whistleblowers. According to the Belgian authorities, the country's federal structure does not allow the state and the federal authorities to answer for the transposition of recommendations by the regions in areas that are within their exclusive jurisdiction, for example in connection with preventive measures and regulations governing their own departments and staff. It has to be said that the Brussels-Capital Region is still well behind the federal authorities in its implementation of recommendations iv and v, concerning various aspects of conflicts of interest, reporting corruption and protection for whistleblowers. The Belgian authorities are therefore invited to enter into closer dialogue with this region (and ideally other regions in a similar situation) on the implementation of anti-corruption measures relevant to their level.
54. The adoption of this addendum to the second round compliance report terminates the second round evaluation of Belgium. However, if they so wish the Belgian authorities can keep GRECO informed of any relevant developments concerning the implementation of recommendations iii, iv, v and ix.
55. Finally, GRECO invites the Belgian authorities to authorise publication of this addendum as soon as possible, translate it into Dutch (and possibly German) and make this (these) translation(s) publicly available.