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**Public**  
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## **Second Evaluation Round**

### **Compliance Report on Belgium**

Adopted by GRECO  
at its 33<sup>rd</sup> Plenary Meeting  
(Strasbourg, 29 May – 1<sup>st</sup> June 2007)

## **I. INTRODUCTION**

1. GRECO adopted the Second Evaluation Round 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 on 24 January 2005 following the authorisation of the Belgian authorities.
2. On 8 June 2006, pursuant to Article 30.2 of GRECO's Rules of Procedure, the Belgian authorities submitted their Situation Report (RS Report) on measures taken to implement the recommendations in the Second Evaluation Round Report. Additional information was submitted on 2 March 2007.
3. At its 26<sup>th</sup> Plenary Meeting (5-9 December 2005), pursuant to Article 31.1 of the Rules of Procedure, GRECO charged Andorra and Moldova with appointing rapporteurs for the compliance procedure. Mr Ivan ALIS SALGUERO was appointed by Andorra and Ms Cornelia VICLEANSCHI by Moldova. The GRECO Secretariat assisted the rapporteurs with the drafting of the Compliance Report (RC Report).
4. The present report was subject to a first reading during the 32<sup>nd</sup> Plenary Meeting (Strasbourg, 19-23 March 2007). In view of the low level of implementation of the recommendations, but taking into account the fact that various legal measures were announced as imminent by the Belgian authorities, GRECO agreed to adjourn the adoption of the report and to re-examine it at its 33<sup>rd</sup> Plenary Meeting. The authorities of Belgium were asked to transmit to the Secretariat any pertinent additional information for consideration by the Bureau at its 39<sup>th</sup> meeting (11 May 2007). The requested information was provided on 4 May and submitted to the Bureau.
5. The purpose of the RC Report is to evaluate the measures taken by the Belgian authorities to comply with the recommendations in the evaluation report.

## **II. ANALYSIS**

6. GRECO addressed 9 recommendations to Belgium in its evaluation report. Compliance with those recommendations is examined below.
7. In the RS Report, the Belgian authorities emphasise the difficulties encountered in implementing some of the recommendations. Most are connected with the fact that, in view of the various stages of the legislative process, it is difficult to finalise the required legislative amendments in eighteen months.

### **Recommendation i.**

8. *GRECO recommended that current legislative activities aimed at supplementing and simplifying the current provisions on seizure and confiscation be actively pursued.*
9. The Belgian authorities recalled (see also para. 18 of the evaluation report) that the Minister of Justice appointed in January 2005 a working group including the central seizure and confiscation office (OCSC) and the board of crown prosecutors to simplify and clarify existing Belgian legislation in this field. Two draft laws have been prepared and then adopted and published together at the end of 2006 (Law of 27 December 2006 amending various provisions (II), M.b. of 28 December 2006, edition 3, entered into force on 7 January 2007).

10. The first series of amendments supplements the Act of 26 March 2003 establishing a central seizure and confiscation office and providing for the management of seized assets at constant values and the application of certain property-related penalties, to adapt it to the practices developed by the OCSC since its establishment in September 2003; the draft concerns in particular:
  - the definition of the concept of financial assets and enables the Crown to determine a value threshold which will be used to establish OCSC jurisdiction;
  - a new measure for managing confiscated assets, by assigning the property either to the person from whom it has been seized or to a third party in return for a contract of guarantee;
  - simplification of the procedure for transfer or restitution subject to compensatory payment provided for in Articles 28octies and 61sexies of the Code of Criminal Investigation (CCI): the injured party him- or herself may no longer request management measures: the existing procedure was very rarely used by injured parties or was used improperly; notification of intention to transfer by the crown prosecutor or investigating judge has been abolished; the number of persons who have to be informed of the decision of the crown prosecutor or investigating judge has been limited; the notification procedure has also been simplified.
11. The main purpose of the second series of amendments is to simplify the procedure for transferring vehicles seized because they are uninsured.
12. In addition to these two draft laws of limited scope, the working group meets regularly to review all the provisions of the CCI and the Criminal Code (CC) that deal with seizure and confiscation. The aim is to define clearly the various types of confiscation: preventive measures, penalties, fines to compensate for unlawful gain, compensatory measures. With respect to confiscation as a penalty, it is planned to allow confiscation to be ordered as a principal penalty, to decide whether confiscation should be mandatory or optional and to distinguish more clearly between confiscation of goods and confiscation of financial benefits. It is also planned to simplify seizure procedures, special asset investigations and the broader confiscation provided for in Article 43.4quater of the Criminal Code, taking into account the Council of Europe 1990 and 2005 money laundering conventions. In order to standardise procedures, the working group will examine the possibility of removing the special provisions for certain offences (distinct system for drugs, trafficking and trafficking in human beings, etc).
13. The Belgian authorities emphasise with respect to this last point that the working group completed its work in June 2006. A draft text was submitted to the Minister of Justice. Due to the heavy agenda of the Council of Ministers and the Parliament until the forthcoming elections in June 2007, this preliminary draft will not be discussed under the current legislature.
14. GRECO takes note of the significant number of measures and consultations undertaken. It recalls that the report emphasised the importance of actively pursuing legal reforms aimed at supplementing and simplifying existing provisions on seizure and confiscation, because the numerous appeals against such measures have caused a logjam in appeal courts asked to rule on decisions taken at first instance.
15. GRECO recalls the evaluation report which also emphasised (paragraphs 17 and 18): a) that equivalent confiscation was possible under Articles 42 para. 3 and 43bis para. 2 of the Criminal Code with respect to the general system but not under Article 505 on the confiscation of the object of laundering; b) the difficulty of distinguishing between the notions of financial benefits and

financial assets. This situation resulted in a number of uncertainties. According to the information provided by Belgium in the situation report, the working group has started to examine the second question, but not as yet the first. However, Belgium has on the whole made substantial progress along the lines suggested by the recommendation.

16. GRECO concludes that recommendation i. has been dealt with in a satisfactory manner. It invites the authorities to ensure that the question of the coherence of the provisions on equivalent confiscation is dealt with during the work in progress.

#### **Recommendation ii.**

17. *GRECO recommended that consideration be given to supplementing existing rules on ethical conduct for public officials, whether or not established (statutaires), notably by explicit references to corruption; that the authorities continue to adopt, particularly in potentially vulnerable sectors, codes of conduct concerned with personal integrity and the risks of corruption, and that practical training be offered in these areas, based on concrete examples.*
18. The Belgian authorities report various changes at federal level and in the Brussels-Capital Region.

#### At federal level:

19. With respect to federal officials as a whole, following the decision taken by the Council of Ministers in April 2005, the question was examined by an interministerial working group drawn from ministerial private offices and federal public departments, with a view to the adoption of a federal policy memorandum on integrity covering *all GRECO's recommendations*. The above-mentioned comprehensive memorandum was submitted to the Council of Ministers and approved on 30 June 2006. On that occasion, the future priorities regarding the work to be finalised in the beginning of 2007 were also established, i.e. the drafting of a code of ethics, a proposal for a system for the reporting of ethically unacceptable behaviour by members of the federal administration, and of a legal proposal for the implementation of international requirements and recommendations concerning conflicts of interests through amendments to the federal civil service regulations. In addition, since September 2006, an inter-ministerial advisory group (the Advisory Group on Administrative Ethics) has met on a regular basis to discuss the above-mentioned issues and to formulate concrete proposals as requested by the Council of Ministers. These proposals concerning the first two themes were submitted at the end of December 2006 to the Minister of the Budget, who is responsible for such matters, and were finally approved by the Council of Ministers in March 2007. Consultations are still under way (an opinion of the State Council is expected), after which these texts will be signed and published in the *Moniteur belge*.
20. With respect to the type of code of ethics or conduct to be adopted, the Belgian authorities stress that the federal level has finally retained as a working basis the model code of the Council of Europe, apart from a few changes to take into account the Belgian federal administrative environment. The standards will be included in the state staff regulations and explanatory details will be incorporated into a deontological framework. Furthermore, as regards the sector-specific draft codes that were under consideration at the time of the on-site visit, the "code for tenders" for the national defence administration has been in force for a few months within all military administration services dealing with public procurement matters (the staff concerned must acknowledge receipt of this code in writing, become familiar with it and apply it correctly). Finally,

the code for federal communicators was disseminated to the staff concerned in June 2005. These two texts notably put emphasis on conflicts of interest, integrity and impartiality issues.

21. The introduction of a whistle-blowing mechanism was subject to an opinion expressed by the Committee on Privacy on 29 November 2006 in the context of the establishment of such a mechanism in one of the country's major banks. The Committee has specified a series of requirements that any whistle-blowing system should comply with. Although the opinion concerns a reporting procedure in the private sector, it is an essential step for the introduction of such a mechanism in the public sector, for which a draft has now been prepared.
22. The legal basis for the integrity of the integrated police force (federal police + 196 area police forces) is Article 130 of the Act of 7 December 1998 establishing an integrated, two-tier police force. The purpose of this article is to guarantee the integrity of police officers and prohibit them from seeking, demanding or accepting advantages of any kind.
23. Article 50 of the Act of 26 April 2002 on police staff regulations and various other provisions requires the Crown to establish a Police Code of Ethics. The Code was published in the *Moniteur Belge* on 30 May 2006 and during the year, all members of staff received a personal copy from their supervisor. The requirements of the aforementioned Article 130 are detailed in Article 26 of the Code in the paragraph entitled "Integrity and dignity of the post". It states that, with the exception of small symbolic gifts, members of police forces may accept neither gifts nor donations, even implicitly and without consideration.
24. There is a regular one-day course entitled "culture, professional ethics and integrity". It is one of the courses useful for reaching the next grade. Police officer training also includes a 20-hour module on police ethics. Finally, integrity in general is taken into account in a whole series of courses since it is one of the values featuring in the basic police charter. There have also been integrity campaigns involving internally distributed posters and magazines.
25. A code of ethics for Treasury auditors, who are responsible to the finance ministers of the federal and federated governments and many of whom the GET met during the evaluation visit, was approved by the inter-ministerial auditing committee on 13 February 2004. The code deals with various forms of pressure, avoiding conflicts of interest (real or supposed, direct and indirect), refusing gifts and advantages of a kind that threaten the official's independence, incompatibilities, etc.
26. A memorandum to all tax officers recalling the general ban on granting benefits of any kind is being finalised in collaboration with the board of crown prosecutors network of experts on economic, financial and tax crime and with the General Directorate of Legislation of the federal Department of Justice. The memorandum which is being finalised will be published after the publication of the law amending the legal framework on corruption (see the information provided in respect of recommendation vii).

#### In the Brussels-Capital Region

27. In 2005 a "code of ethics" was drafted by the Ministry of the Brussels-Capital Region on values and ethics at work. During the drafting, awareness-raising initiatives were organised during which, 11 common values connected with optimum public duties were identified on the one hand, and a practical approach was taken in relation to ethical dilemmas in specific professional situations on the other hand. The code of ethics was communicated to all staff members at the beginning of

2006. In order to ensure its implementation in daily practice, one value is selected every year with a view to identifying examples of best practices. Implementation was prepared in 2006 and began in 2007. It will be pursued in the years to come.

28. Alongside the code of conduct, specific recommendations have been sent to officials performing particular types of duty. For example, those on oversight and inspection deal with the issues of responsible management, neutrality, quality of work, integrity and respect. Those on tax collection and disputes deal with proper application of the law, efficiency and effectiveness, responsible management, impartiality and respect for individuals.
29. GRECO takes note of the information provided by Belgium, which reports significant developments with regard to the adoption of ethical standards. It notes, however, that the Code of Ethics adopted in Brussels-Capital Region is quite brief and that it could be made more specific by drawing inspiration from the federal level's efforts. It welcomes the progress made and hopes that once the Federal Code has been adopted it will be applied to all officials – whether civil servants or not– and that awareness-raising/training activities will be undertaken to ensure that those concerned are familiar with it.
30. GRECO concludes that the recommendation has been implemented satisfactorily.

**Recommendation iii.**

31. *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.*
32. The Belgian authorities have not reported any new measures at federal level to implement this recommendation. They stressed that the upcoming adoption of a regulatory framework (three royal decrees) on internal audit and control will enable the administrations to go ahead at federal level.
33. With respect to analysis by the federal police, they report that the study of public procurement – announced in the evaluation report – was delayed and will not be finalised before June 2007. A similar study of corruption at borders may follow, in co-operation with Europol.
34. There are already arrangements for the tax authorities' internal audit unit (established in 1991) and the internal audit unit of the public service and Treasury (established in 2000) to use data mining of available data and statistics to detect anomalies in certain tax departments. They also have authority to assess the impact of general internal oversight mechanisms.
35. No mention is made of any analysis of corruption or evaluation of anti-corruption measures in the Brussels-Capital Region. GRECO takes note of the fact that the latter was informed of the recommendation and it hopes that the research work conducted at federal level will inspire similar initiatives at its level.
36. GRECO takes note of the information provided by Belgium and notes that no new measures have yet been taken on the basis of recommendation iii concerning the analysis of corruption and that there has been no evaluation of existing anti-corruption measures (e.g., surveys, tests, studies, case analyses, etc).
37. GRECO concludes that recommendation iii has not been implemented.



## **Recommendation iv.**

38. *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.*
39. The Belgian authorities report various changes at both federal level and in the Brussels-Capital Region.

### **(i) Declaration of assets**

#### At federal level

40. The Belgian authorities report that two acts of 26 June 2004 (one special and one ordinary, already mentioned in a footnote in the evaluation report) were adopted, which implement and supplement the acts of 2 May 1995, including the one requiring a statement of offices, functions and occupations and a declaration of assets to be filed (MB 30.06.2004). The 2004 acts came into force on 1 January 2005. This system applies to the country as a whole (federation, regions, communities). The Belgian authorities stressed that the acts have been applied throughout the federal government service (federal public and para-governmental services).
41. Under Article 6, paragraph 9 of the ordinary act, the chair of the management committee of each federal public service or, pending his or her appointment, the permanent secretary of the ministry concerned, on behalf of its managers and the head of the Strategy Unit, is required to transmit in February each year the surnames, forenames, place and date of birth, home address and duties of all persons subject to the Act of 2 May 1995, as well as the dates on which they took up and left their posts and the expiry of the five-year period mentioned in Article 3, para. 2 of the Act<sup>1</sup>.

#### In the Brussels-Capital Region:

42. It is stated that the abovementioned acts are now being implemented and the lists of offices, posts and occupations have been filed. In application of Article 5 of the special Act of 2 May 1995, the Ministry of Brussels-Capital Region has sent the Auditor-General's Department the list of public interest bodies supervised by the Brussels-Capital Region.

### **(ii) Limiting ancillary activities**

#### At federal level

43. With respect to all federal departments, the Belgian authorities state that the principle of the incompatibility of certain occupations is provided for in Article 49 of the federal government

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<sup>1</sup> " (...) when they are appointed for an indefinite term or for a term of more than six years, the persons concerned shall submit a new declaration of assets, at the latest within the month that follows the expiry of every 5 year period after the appointment. (This declaration concerns the situation of assets on the day after the 5 year period mentioned in the previous paragraph.) "

officials staff regulations: “Any occupation exercised by the official him- or herself or by his or her spouse or through an intermediary that might prejudice the performance of the duties of the office or is contrary to the dignity of that office is incompatible with the status of federal government official”.

44. The question was considered at inter-ministerial level, following the adoption of the federal policy memorandum on integrity that covers all GRECO's recommendations. The topic of conflicts of interest is among those to be dealt with as a priority at the beginning of 2007.
45. The Belgian authorities state that police officers are barred from performing most ancillary activities, subject to individual exemptions. This is laid down in Articles 134-136 of the Act on the integrated police referred to above. Details of the ban were set out in a ministerial decree of 28 November 2001 and a ministerial memorandum dated 19 September 2002, supplemented by a memorandum dated 19 May 2003. Directives on the procedure to be followed and further details were given in a note dated 5 May 2003.
46. With respect to the tax authorities, there is also an internal note issued by the Ministry of Finance, dated 18 November 1997 on multiple office-holding and incompatibility.

#### In the Brussels-Capital Region

47. The Belgian authorities state that existing statutory provisions on incompatibility and multiple office-holding stipulate that any activities performed by officials either themselves or through intermediaries that prevent them from performing their duties as officials or result in conflicts of interest are incompatible with their posts. Officials who do not respect this provision will be subject to disciplinary proceedings. In addition, multiple office-holding is forbidden unless authorisation has been given and provided there are no conflicts of interest. There is, however, no new provision limiting or stating more fully the conditions under which ancillary activities may be performed.

### **(iii) Rotation of officials**

#### At federal level

48. The question was considered by the inter-ministerial working group referred to above with respect to all federal departments. The group agreed that the matter falls more specifically under the responsibility of the internal control and internal audit services, and of the budget and management control services' senior staff.
49. The tax authorities do not operate an automatic rotation system for officials most vulnerable to corruption. However, in certain cases where officials may be at greater risk, because of the activities of their spouses, for example, the management committee can, if necessary, decide to change their administrative location (for example, if a spouse is a tax adviser or an accountant working in the administrative district the official supervises). This is in no sense a disciplinary measure but simply a precautionary or preventive measure with no punitive connotations.

#### With respect to the Brussels-Capital Region

50. The rules governing ministry officials and public interest bodies in the Brussels-Capital Region now provide for a system of terms of office for the higher grades of officials occupying managerial



positions. As a result there are no longer permanent appointments to the grades corresponding to these managerial positions, but simply temporary, renewable, periods of office.

#### **(iv) Gifts**

##### At federal level

51. This question was considered by the inter-ministerial working group referred to above with respect to all federal departments. The group agreed that the future code of conduct (under preparation - see recommendation ii) should recall the general prohibition to accept any gifts - a prohibition which is already contained in the federal staff regulations and in Art. 246 of the Criminal Code. Nevertheless, the group insisted on the need, in the working plan for 2006-2007, to put emphasis on the training of staff on these issues (aim of gifts, loss of impartiality, moral pressure, risk of blackmail, etc.). Customary exchanges between civil servants in the framework of normal working relations would remain acceptable.
52. More specifically with respect to the Police, reference is made to the reply to recommendation ii.

##### In the Brussels-Capital Region

53. The Royal Decree of 22 December 2000 setting out the general principles of the administrative and financial status of public officials of the regions and communities, referred to in Article 2 paragraph 4 of the Ministry staff regulations, establishes various conditions for becoming a public official and lays down a series of ethical duties in Articles 4 and 5, including one (Art. 5.2.2) *inter alia* banning public officials from seeking, demanding or receiving gifts, gratuities or any other donations in relation to their post. The recent code of ethics of the Brussels-Capital Region Ministry, mentioned under recommendation ii, has also made officials more attentive to the notion of integrity.

#### **(v) “Pantouflage” (i.e. the improper movement of public officials to the private sector)**

54. This question was considered by the inter-ministerial working group referred to above in relation to all federal departments (it has elaborated the outline of a preliminary proposal dealing with this issue in the code of conduct).
55. With respect to all of this recommendation, GRECO takes note of the progress made in managing conflicts of interest through the entry into force on 1 January 2005 of the legislation implementing the Acts of 2 May 1995 at federal level. Furthermore, it notes that the other questions have for the most part been considered by the inter-ministerial working group, following the adoption of the federal policy memorandum on integrity, which takes into account all the recommendations made by GRECO in the second round report. GRECO welcomes this fact. There will be a need to examine the results in the light of specific initiatives to come regarding the limitation of ancillary activities (expected at the beginning of 2007), and in the light of the content of the future code of conduct regarding gifts. It is also foreseen to deal with the issue of “pantouflage” in the code of conduct – this is to be welcomed. It is too early to anticipate whether the issue of “pantouflage” will also be dealt with in regulation, 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, concerning the rotation of staff, it is regrettable that to date, there has been little concrete follow up. Even though the recommendation in this area is quite soft, it will be interesting for GRECO to know more about the final outcome. Finally, GRECO

notes that no significant progress has been made in the Brussels-Capital Region<sup>2</sup>. It notes that the recommendation was forwarded to that region and it hopes that the measures adopted at federal level will be a source of inspiration for similar measures in the regions.

56. GRECO concludes that, so far, recommendation iv has been partly implemented.

#### **Recommendation v.**

57. *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.*
58. The Belgian authorities report various initiatives taken in accordance with this recommendation and its different elements.

#### **(i) Information on reporting and (iii) formal protection machinery**

##### At federal level

59. With respect to all federal departments and as indicated under recommendation ii, a working group was set up in 2005 to examine all of GRECO's recommendations. A preliminary draft for a whistle-blowing system is currently under consideration. As underlined earlier, the opinion of the Committee on Privacy was a prerequisite for going ahead. This opinion was given on 29 November 2006.
60. The federal police code of ethics makes no specific reference to Article 29 of the CCI. The purpose of the new code is not to paraphrase existing legislation (Police Act, CC, CCI). The Belgian authorities state that Article 48 contains in a different form the same duty to report to the relevant judicial authorities without delay or restriction information that comes to their attention in the exercise of their police duties.

##### The Brussels-Capital Region

61. At present there are training courses for officers entering the Ministry during which trainees are introduced to the rights and duties they must respect during their career, i.e. the provisions contained in the general principles as well as the code of ethics. They are reminded of the duty to report any corruption offences and still more emphasis will be placed on this in future. Machinery to protect whistle-blowers has yet to be put in place.

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<sup>2</sup> GRECO notes that the Code of Ethics for the Brussels-Capital Region does not deal with the issue of conduct in relation to gifts.

## (ii) Calling on the relevant auditing services to carry out evaluations of disciplinary procedures

### At federal level

62. In relation to all federal departments, this question is still the subject of consultations following the adoption of the federal policy memorandum on integrity on 30 June 2006 which covers all of GRECO's recommendations.
63. There is an external audit service for the police forces, the Standing Committee for Supervision of Police Forces, which is an independent body directly responsible to Parliament. The authorities report that this body attaches great importance to ethics and corruption in police forces and has even held an international conference on the subject that has been the subject of a publication<sup>3</sup>. In 2006 it expressed an opinion on the existing disciplinary machinery, which the Bruggerman working group, acting on behalf of the Interior Minister, has recommended should be improved and simplified.
64. All the instruments for the application and effectiveness of disciplinary procedures applicable to the tax authorities are already in place, as indicated under recommendation iii. The Belgian authorities wonder whether the expense would justify an audit of disciplinary procedures (whether external or internal), particularly since the operation of the disciplinary system in the Finance Department already has an internal case-law, precise regulations and well-developed practice. They add that disciplinary proceedings are a last resort and are used *a posteriori* to rectify abuses identified. Preventive and incentive measures such as the oversight and supervision of each local tax office by a general official are preferable to disciplinary measures.

### In the Brussels-Capital Region

65. There has as yet been such an evaluation.
66. GRECO takes note of the information provided. With respect to the recommendation to inform officials of their duty to report offences under Article 29 of the CCI, it notes that no initiatives have yet been taken at federal level but that the question is being studied in the context of the drafting of a federal code of conduct and the proposed introduction of a whistle-blowing mechanism. It welcomes the examination in progress and trusts that it will generate awareness of the importance of such a mechanism. GRECO hopes that the final outcome of this examination will reflect its recommendation. It takes note that the Brussels-Capital Region was informed about the recommendation and hopes that it will inspire similar initiatives in this region.
67. With respect to the recommendation to call on the auditing services to evaluate the efficiency of disciplinary procedures, GRECO notes that the question is being examined at federal level, the police having already concluded that there is a need to simplify its own procedures. The recommendation has not yet been followed up by the federal tax authorities or the Brussels-Capital Region. In the former case, however, there is reason to believe that if the discussions started at inter-ministerial level result in the adoption of an audit such as that recommended by GRECO they will also have repercussions on the tax authorities. In the latter case, GRECO notes that the Brussels-Capital Region was informed about the recommendation and hopes that measures adopted at federal level will inspire similar initiatives in this region.

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<sup>3</sup> Gilles L. BOURDOUX and G. CUMPS *Policing, Ethics and Corruption*, Politeia, Brussels, 2004, 464 pp.

68. GRECO also notes with satisfaction that the question of formal protection for whistle-blowers is being studied at federal level in the context of inter-ministerial consultations and discussions on the introduction of such machinery. The Brussels-Capital Region has not yet taken any measures and has not reported any plans to do so. GRECO notes that the Brussels-Capital Region was informed about the recommendation and hopes that the measures to be adopted at federal level will inspire similar initiatives in this region.
69. GRECO concludes that recommendation v has been partly implemented.

**Recommendation vi.**

70. *GRECO recommended to establish a register of legal persons with criminal convictions.*
71. The Belgian authorities state that preliminary draft legislation to establish central criminal records for legal persons and amend certain provisions of the CCI and certain provisions concerning the Banque-Carrefour des Entreprises<sup>4</sup> were submitted to the State Council, which issued its opinion on 22 March 2006. The text was amended to take its remarks into account and it has not yet been sent to Parliament. The draft legislation is based on the principle that as far as possible legal persons should be treated in the same way as natural persons, meaning that judicial decisions will be recorded and information transmitted in the same way as for natural persons. Legal persons will be able to request copies of their criminal record from the clerk of the commercial court where their articles of association are lodged and, if articles of association have not been lodged in Belgium, from central criminal records. Legal persons will also obtain rehabilitation in the same way as natural persons.
72. GRECO takes note of the planned establishment of central criminal records for companies and the fact that a preliminary draft law has been prepared to this effect.
73. GRECO concludes that, at present, recommendation vi has been partly implemented.

**Recommendation vii.**

74. *GRECO recommended to amend legislation in order to exclude tax-deductibility of undue advantages (including secret commissions in commercial transactions).*
75. The Belgian authorities state that a draft law to amend the legislation on corruption was approved by the Council of Ministers on 28 April 2006 and then by the Parliament on 12 April 2007. The text, which was published in the *Moniteur belge* on 4 May 2007<sup>5</sup>, repeals the article on secret commissions and excludes commissions and benefits of any kind from being offset against taxes as professional expenses.
76. GRECO takes note with satisfaction of these legal amendments which comply with recommendation vii.
77. GRECO concludes that recommendation vii has been implemented satisfactorily.

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<sup>4</sup> It removes Article 23 §1,20° of the Act of 16 January 2003 establishing a Banque-Carrefour des Entreprises. This article provided for the transmission to the BCE of judgments against legal persons and was adopted to make up for the lack of central criminal records for legal persons.

<sup>5</sup> An erratum was published on 24 May 2007.

### **Recommendation viii.**

78. *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.*
79. The Belgian authorities state that data mining and risk analysis, referred to under recommendation iii, contribute to the detection of corruption offences. They also report that under the internal audit charter, the activities of the Internal Audit Unit concern all civil servants and tax officers, who have to lend their support to the unit's work. Furthermore, a general memorandum to the federal finance department recalling the principle that tax officials may not receive benefits of any kind is being drafted by a working group formed for the purpose by the office of the Secretary of State for Modernisation of Finances and Combating Tax Evasion (see also recommendation ii). The working group will soon finalise the memorandum. Following the note approved by the Council of Ministers on 30 June 2006, an inter-departmental working group led by the federal budget department has been set up. In view of the number of tax officials (around half of all federal officials), the federal finance department is represented. The working group met five times between September and December 2006, and its two sub-working groups (on conflicts of interest and on the code of conduct) met even more frequently. Its participation will enable it to co-ordinate its approach to the problem with the other federal departments and develop co-operation with them. It will also enable it to define more clearly its specific characteristics and needs and respond with appropriate initiatives.
80. GRECO takes note of this information and welcomes the strengthening of measures to prevent internal corruption in tax departments. Nevertheless, the Second Evaluation Round Report drew attention to corruption in general (especially external to the tax authorities) and stressed the need for training measures and directives (for example, taking inspiration from the OECD) on the detection of corruption offences in the context of tax audits. GRECO notes that, even though such training and directives have not been put in place, data mining can be very useful, among other things for detecting corruption in general.
81. GRECO concludes that recommendation viii has not been implemented.

### **Recommendation ix.**

82. *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.*
83. The Belgian authorities provide various types of information on company auditors (whose professional body is the Institute of Company Auditors – ICA) and accountants (whose professional body is the Institute of Accountants and Financial Advisers – IAFA). This information essentially concerns laundering and fraud.
84. In the case of accountants, the IAFA attends to the regular ongoing training of its members with respect to laundering and the financing of terrorism, for example, through study days organised in collaboration with various specialists, including the laundering and VAT sections of the economic

and financial crime directorate (Ecofin) of the federal police<sup>6</sup>. This draws the attention of members of the Institute to the fact that their profession, activities and the services they offer make them liable to be specially targeted by people committing economic offences.

85. Generally speaking, systematic reference is made to the increased likelihood that they will be confronted with such fraudulent mechanisms and therefore corruption as a result of practising their profession. This awareness-raising is done through various channels, in particular the Institute's bi-monthly newsletter *Pacioli*. For example, an article published in the February 2006 newsletter dealt specifically with the issue of laundering and highlighted the responsibility of professionals in the sector and the essential duty of vigilance. Similarly, the Institute is hoping, as far as possible and taking into account the various topical issues that need be covered, to organise seminars and/or courses exclusively on corruption in the near future.
86. A number of legislative steps have been taken since 2004 to strengthen the Institute's disciplinary powers over accountants. The authorities state that the functioning of the Institute's disciplinary chambers was completely amended by the Royal Decree of 19 November 2004. The amendments had two essential aims. One concerned the role of the legal assessor, the other that of the rapporteur appointed when a case is being investigated. The new Article 49 of the Royal Decree of 27 November 1985 allows assessors to play an essential role in the investigation of disciplinary cases. The new article explicitly confirms their role as "initiator of proceedings", while assessors' powers are described separately from those of the chamber. The resources available to assessors are also described in detail. They are now either informed of faults or have disciplinary complaints referred to them. No conditions have been added as to the nature or form of the fault, which means that legal assessors are able to take up offences entirely independently, whatever their provenance or basis, if they consider it appropriate to do so. Finally, effective collaboration is now possible between the departments of the Institute responsible for dealing with disciplinary cases and those of the country's various prosecuting authorities, which regularly send the Institute information about investigations, charges and any criminal convictions involving accountants (tax advisers) in the practice of their profession.
87. The role of company auditors in the event of fraud is laid down in a series of laws and regulations, including:
  - the duty to report laundering operations to the financial intelligence unit, in application of Belgian legislation and European directives against laundering;
  - the 1998 ICA recommendation on fraud and unlawful acts;
  - the new European Directive 2006/43/CE of 17 May 2006 on statutory audit and consolidated accounts, which is to be implemented in Belgian legislation before 29 June 2008, provides notably for the compulsory application of international auditing standards, which contain provisions on the auditor's role in the event of fraud, including corruption;
  - company auditors are subject to regulations on professional confidentiality, contravention of which is a criminal offence, in particular under Article 27 of the Act of 22 July 1953 establishing an Institute of Company Auditors and Article 458 of the Criminal Code;
  - regulations on professional confidentiality are also the subject of new provisions under the new European Directive on statutory audit;

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<sup>6</sup> Seminar on 16 September 2005, "Detecting fraud and laundering mechanisms", jointly organised by the federal police DJF-Ecofin – OCDEFO laundering and VAT sections.



- the curriculum of the Institute of Company Auditors also includes seminars on the international auditing standards and the Institute's standards and recommendations, in particular auditors' role in the event of fraud, including corruption offences.
88. According to the Belgian authorities, taken together these measures allow the risk of fraud, particularly corruption offences, to be taken into account in company auditors' professional activities. Company auditors also play an important preventive role with respect to fraud. Finally, the ICA is continuing to raise the profession's awareness through its training programme, for example, study days organised jointly in 2005 and 2006 with the financial intelligence unit on combating laundering and the relevant aspects of corruption and fraud, and is continuing to draw the profession's attention to the specific risk connected with detection in general and corruption offences in particular.
  89. The Belgian authorities add that, generally speaking, the transposition through the Act of 12 January 2004 of Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering has also strengthened the anti-corruption machinery<sup>7</sup>, since the funds derived from such offences have to be laundered in order to be used and consequently the supervisory mechanisms put in place by Articles 2, 2bis, and 4ff of the Act have a deterrent effect on corruption and also give the authorities advance warning of corruption or laundering operations connected with this type of offence.
  90. Finally, the Belgian authorities add that with respect to encouraging the professions' representative bodies to issue directives and organise training on the detection and reporting of corruption, accompanied by rules of conduct and appropriate sanctions, self-regulation is also a relevant source of professional ethics, the principle of which is encouraged by the federal finance department.
  91. GRECO takes note of the information provided. With respect to the first part of the recommendation, i.e. *to enable auditors and accountants to report corruption offences to the relevant authorities*, GRECO notes that for both professions the duty to report offences to the authorities still essentially concerns suspected laundering. There has been no progress on this matter and no compromise seems to have been found between extending the duty to report to corruption offences and professional confidentiality and the duty of loyalty to boards of directors. Nevertheless, GRECO is not insensitive to the Belgian authorities' argument that the efforts made to encourage the reporting of suspected laundering by these professions also benefits the fight against corruption and the efforts made generally tend in the right direction, i.e. rejection of unlawful activities.
  92. With respect to the second part of the recommendation, *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*, the information provided makes no reference to any directives on the detection and reporting of corruption, which would have been a logical corollary to such a duty to report, as would training. On this last point, GRECO notes and welcomes the fact that IAFA is planning training courses on corruption for accountants. For auditors, this is a component of training on economic fraud in general. GRECO notes with satisfaction the strengthening of accountants' disciplinary machinery. Finally, there is no evidence of any steps by the authorities to encourage the adoption of ethical standards that deal with the issue of corruption by accountants and auditors.

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<sup>7</sup> For the purposes of this Act, money or property is of unlawful origin if it is derived from the commission of an offence connected with embezzlement by persons holding public office or from corruption (Article 3, §2 1°).

93. On the whole GRECO notes that few decisive concrete measures have so far been taken in connection with recommendation ix. The strengthening of anti-laundering measures is a step in the right direction, as is the disciplinary machinery in the accounting profession.
94. GRECO therefore concludes that recommendation ix has been partly implemented.

### III. CONCLUSIONS

95. **In view of the above, GRECO concludes that Belgium has implemented satisfactorily or dealt satisfactorily with one third of the recommendations contained in the Second Evaluation Round Report.** Recommendations ii and vii have been implemented satisfactorily. Recommendation i has been dealt with in a satisfactory manner. Recommendations iv, v, vi and ix have been partly implemented and recommendations iii and viii have not been implemented.
96. GRECO takes note of the efforts accomplished by the Belgian authorities to implement the recommendations contained in the Second Evaluation Round Report. However, the pace of the process leaves much to be desired and the lacunae remain significant. It expects the Belgian authorities to pursue vigorously the numerous initiatives under way or announced. It urges them to speed up the reform process to secure more significant results from the implementation of these recommendations at the earliest possible opportunity.
97. GRECO invites the Head of the Belgian Delegation to submit further information on the implementation of recommendations iii, iv, v, vi, viii and ix by 30 November 2008.
98. Finally, GRECO invites the authorities of Belgium to authorise, as soon as possible, the publication of the report.