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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

Corruption prevention in respect of members of parliament, judges and prosecutors

INTERIM COMPLIANCE REPORT

BELGIUM

Adopted by GRECO at its 79th plenary meeting
(Strasbourg, 19-23 March 2018)

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I. INTRODUCTION

1. The Fourth Evaluation Round Report on Belgium was adopted by GRECO at its 63rd plenary meeting (28 March 2014) and made public on 28 August 2014, following authorisation by Belgium. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".

2. As required by GRECO's Rules of Procedure, the Belgian authorities submitted a Situation Report containing information on measures taken to implement the recommendations. GRECO selected France (in respect of parliamentary assemblies) and Monaco (in respect of judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Agnès Maîtrepierre, Chargée de mission, Directorate of Legal Affairs, Ministry of Foreign Affairs, on behalf of France and Mr Eric Senna, judge at the Court of Appeal, on behalf of Monaco. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

3. In the Compliance Report, adopted by GRECO at its 73rd plenary meeting (21 October 2016), it had been concluded that Belgium had not implemented satisfactorily, or dealt with in a satisfactory manner, any of the fifteen recommendations contained in the Fourth Evaluation Round Report. In the light of these results, GRECO had concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It had therefore decided to apply Rule 32, paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report and called on the head of the Belgian delegation to submit a report on progress in implementing the outstanding recommendations (i.e. recommendations i to xv) by 31 October 2017. This report was received on 6 November 2017 and supplemented on 6 December 2017. Both these documents form the basis for the Interim Compliance Report.

4. This Interim Compliance Report assesses the implementation of the fifteen recommendations since the adoption of the Compliance Report, and provides an overall assessment of Belgium's level of compliance with these recommendations.

II. ANALYSIS

Corruption prevention in respect of members of parliament

5. Firstly, the Belgian authorities state that the GRECO recommendations issued under the fourth evaluation round were examined by two Chamber of Representatives working groups: the "political parties" and the "political renewal" working groups, which submitted their reports on 18 and 20 July 2017 respectively.[1]

6. In accordance with the decision taken by the Conference of Speakers of Parliamentary Assemblies, the composition of the "political parties" working group was enlarged, for the purposes of examining the GRECO 4th round recommendations, to representatives of the parliaments of the federated entities. The "political parties" working group restricted its examination to recommendations i (foreign donors), vii (parliamentary immunity) and viii (training courses on questions of integrity) so as not to interfere with the "political renewal" working group, which focused on the other GRECO 4th evaluation round recommendations.

[1] DOC 54 2584/001, http://www.lachambre.be/FLWB/PDF/54/2584/54K2584001.pdf for the "political renewal" working group and DOC 54 2608/001 http://www.lachambre.be/FLWB/PDF/54/2608/54K2608001.pdf for the "political parties" working group

7. The proposals from the two working groups will be further developed in the competent bodies of the Chamber (Committee on the Revision of the Constitution, Committee on the Rules of Procedures, Conference of Speakers, Bureau). Private member's bills picking up on some of these proposals were tabled before the Chamber of Representatives on 29 November and 6 December 2017.

8. The Belgian authorities wish to emphasise that the conclusions of the "political renewal" working group which were incorporated into the bills mentioned above are the result of long negotiations between the recognised political groups represented in the Chamber of Representatives. It is important to note that all proposals were signed by representatives of all recognised political groups. This shows they had all agreed on the proposals which are not likely to be amended and that the discussions in the commissions and plenary of the Chamber could therefore be very limited.

9. It is also important to note that several of these proposals require a special majority for adoption (majority in each linguistic group and two-third majority overall). The co-authors of the bills represent enough political groups to reach this special majority.

Recommendation i.

10. *GRECO recommended to ensure that consistent and effective regulations are in place for MPs i) in respect of gifts, donations and other benefits accepted by MPs, providing in particular for their public disclosure, as well as of donors' identities, and ii) regulating the question of foreign donors.*

11. GRECO reiterates that this recommendation had been deemed not to have been implemented in the Compliance Report, as it was merely at the stage of being examined by the aforementioned "political parties" working group of the Chamber of Representatives.

12. The Belgian authorities now state that proposals made by the "political parties" working group, were endorsed by the Conference of Speakers[2] on 26 September 2017. Accordingly:

- the regulations on donations also apply to services provided free of charge or invoiced below their cost price – or, conversely, to services invoiced above the market price – and to credit lines without any reimbursement obligation;
- the regulations on donations also apply to foreign natural persons. This is pursuant to Article 3 of the Royal Decree of 10 December 1998 setting out the arrangements for registering the identity of natural persons making donations, stipulating that the nationality of the donor is one of the mandatory items of information;
- the regulations on donations apply both in and outside election periods. The law provides that statements of donations must be drawn up each year.

13. The working group believes that these principles could certainly be dealt with in training courses on integrity-related issues for members of the Chamber. The Conference of Speakers decided that it should be underlined during training courses (see recommendation vii) that the regulations on donations also apply to foreign natural persons.

[2] The Conference of Speakers comprises the Speaker and Vice-Speaker of the Chamber, former speakers who are still members, the head and a member of each political group.

14. Finally, the authorities explain that the "political renewal" working group had also considered whether gifts and travel should be registered. A handbook will specify the content of article 6 of the code of deontology but the setting up of a register of gifts and travel is not foreseen.

15. GRECO takes note of the conclusions of the "political parties" working group, but considers that they are not a sufficient response to the concerns which led to the recommendation. The fact that the regulations on donations apply to all forms of donations or gifts, regardless of their nature or equivalent value, was already established by the Evaluation Report. Similarly, the fact that the regulations apply continuously, even outside election periods, can be clearly seen from the existing regulations, as highlighted by the Report.

16. As regards the application of the regulations on donations in respect of foreign natural persons, it can be inferred from a regulatory provision requiring the nationality of the donor to be mentioned. GRECO does not believe that this is sufficient compensation for the lack of regulations dealing specifically and explicitly with the question of foreign donors, to which attention was already drawn in the third and fourth round Evaluation Reports. Furthermore, it is probable that this point is just as little known to members of parliament.

17. GRECO reiterates that one of the purposes of the recommendation is to rectify the to some extent apparent contradiction between the Law of 4 July 1989 authorising donations to candidates running for election and the Codes of Conduct of the Chamber of Representatives and the Senate of December 2013 which would appear to lay down the principle of prohibiting any financial or material benefit except gifts which have a symbolic value. Despite the conclusions of the working group, this contradiction remains, which cannot but complicate in practice the task of members of parliament responsible for applying the regulations and the actual application of those regulations.

18. Another purpose of the recommendation is to ensure public disclosure in respect of gifts, donations and other benefits accepted by MPs. GRECO regrets, therefore, that the "political renewal" working group did not foresee the setting up of a register of gifts and travel.

19. GRECO concludes that recommendation i has still not been implemented.

Recommendation ii.

20. *GRECO recommended that rules should be introduced for Members of Parliament on how to engage in relations with lobbyists and other third parties seeking to influence the parliamentary process.*

21. Given that the recommendation was in the process of being examined by the "political renewal" working group, GRECO had concluded in the Compliance Report that it had not been implemented.

22. The Belgian authorities now state that the "political renewal" working group has suggested creating a register of lobbyists in Parliament. This register would be public, published on a dedicated website and managed by a department specifically tasked for this purpose.

23. The working group believes that the same six categories as those in use in the European Parliament should be used. The register of lobbyists would contain, in addition to the personal details of the lobbyists, information on the companies/ institutions/organisations concerned. This register will not mention the name of the

persons in parliament with whom the lobbyists are in contact. It is also planned to draw up a code of good conduct for lobbyists. Signature of the register of lobbyists would automatically entail agreement to comply with the code of good conduct. A private member's bill to this end was tabled in the Chamber of Representatives on 29 November 2017. The Chamber received on 11 January 2018 opinion 2017/2 of the Federal Commission of Deontology on the bill.

24. GRECO welcomes the private member's bill to create and publish a register of lobbyists and to introduce a code of conduct for lobbyists. Even though this bill has not yet been considered by the Chamber of Representatives, GRECO notes that it is consensual. It reflects the proposals of the "political renewal" working group and it has been signed by representatives of each parliamentary group within the Chamber (see paragraphs 8 and 9). On this basis, the recommendation may be considered as partly implemented. However, GRECO points out that the recommendation calls for other measures to supplement the introduction of a register of lobbyists and relating to members of parliament themselves, such as rules of conduct, an obligation to publish third party contacts concerning legislative work outside committee meetings, etc. It therefore calls for this register to also include the members of parliament met by lobbyists and for this information to be made public. Lastly, GRECO notes that the Chamber of Representatives' Federal Ethics Committee has also called for clarification of relations between public office-holders and third parties in relation to the drafting of legislation,[3] in particular by appending to any legislative initiative the list of interests whose intervention has had an impact on the substance. Such a measure would undoubtedly have a positive effect on transparency and GRECO encourages the Belgian authorities to follow this up.

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

Recommendations iii and iv.

26. *GRECO had recommended:*

- *i) that the system of declarations clearly includes income, the various assets and an estimate of their value – whatever their form (including those held directly or indirectly, in Belgium or abroad) as well as liabilities, and that there is a duty to update the information in the course of a mandate; ii) that consideration be given to extending the system so as to include information on the spouse and dependent family members (it being understood that this information would not necessarily be made public); (recommendation iii);*

- *that the various declarations, including those on assets, as supplemented in particular by information on income, should be subject to public disclosure and made more easily accessible through an official internet website (recommendation iv).*

27. GRECO reiterates that in the absence of any steps taken to give effect to recommendation iii, it had been deemed not to have been implemented. Recommendation iv had been deemed to have been partly implemented, as the declarations of mandates were now published on the Court of Audit's website. However, at the date of adoption of the Compliance Report, the declarations were not accessible.

[3] https://www.rtbf.be/info/belgique/detail_les-lobbyistes-sous-surveillance?id=9803685

28. The Belgian authorities now state that the "political renewal" working group has proposed:

- publication of the lists of mandates on the Court of Audit's website,[4] with a link to the profile of the member of parliament appearing on the Chamber of Representatives website;[5]
- supplementing the list of mandates with the business identification number of all companies, associations and organisations in which the member has a position;
- publication of all the gross public remunerations in the list of mandates, based on the tax statement;
- publication of the remuneration paid to a person subject to the law on the declaration of mandates, within specified ranges, similar to the arrangements for members of the European Parliament.

29. These recommendations have been taken up in various private member's bills, which were tabled in the Chamber of Representatives on 29 November 2017 and adopted on 1 March 2018. Now they have to be adopted by the Senate. Lastly, the authorities state that the list of mandates carried out in 2016 and the list of those subject to the declaration by default were published in the Moniteur belge/Belgisch Staatsblad of 11 August 2017.[6]

30. With regard to the first part of recommendation iii, GRECO welcomes certain improvements brought by the bills adopted by the Chamber of Representatives on 1 March 2018. The fact that gross public remunerations must now be declared each year is progress.

31. To a certain extent, the same can be said regarding the declaration of remuneration from the carrying out of private activities. However, GRECO finds it regrettable that the exact amount of remuneration received does not have to be declared, only the range within which it falls. This could prevent the public and the Court of Audit from making relevant comparisons, for example when remunerations increase but remain within the same range. It calls on the Senate to rectify this shortcoming when considering the bills.

32. Nevertheless, there are no reported measures regarding the other parts of the recommendation, i.e. a more systematic inventory of assets, a declaration of their value, liabilities and updated declarations of assets in the course of a mandate. Nor has any consideration been given to extending the system to include information on spouses and dependent family members, as requested in the second part of the recommendation.

33. With regard to recommendation iv, GRECO welcomes the publication on the Court of Audit's website of the list of mandates exercised in 2016. This information is now more easily accessible through an official internet website, as called for in the recommendation. This needs to be supplemented by the publication of the level of remuneration received, which is provided for by the private member's bills adopted by the Chamber of Representatives. GRECO also approves of the working group's recommendation that a link be included to the declarations of mandate in the biographical pages of the members of parliament appearing on the Chamber's website. It calls on the authorities to act on this bill, which would undoubtedly further facilitate access to such information.

[4] https://www.ccrek.be/FR/MandatsPatrimoine.html
[5] www.lachambre.be
[6] http://www.ejustice.just.fgov.be/mopdf/2017/08/11_1.pdf

34. However, GRECO regrets that the date of submission of yearly mandate declarations was pushed back compared to the current regime. This means the later publication of information on mandates and remuneration by the Court of Audit. It calls upon the Senate to review also this point when examining the bills. In addition, GRECO observes a lack of progress concerning the publication of declarations of assets and urges the authorities to remedy this situation.

35. GRECO concludes that recommendations iii and iv have been partly implemented.

Recommendation v.

36. *GRECO recommended that i) compliance with the current and yet to be adopted rules on the integrity of parliamentarians in the Codes of deontology and other pertinent rules (such as those on donations), be subject to effective supervision by the parliamentary assemblies themselves rather than only by the parliamentary political groups, and that at the same time the ability to act ex officio be granted to the future Federal Ethics Committee also in individual cases; ii) declarations of mandates and of assets be subjected to effective verification by strengthening the role of and interaction between the Court of Audit and the prosecutorial authorities, or by designating as the need may be another institution equipped with adequate means for these purposes.*

37. GRECO reiterates that this recommendation had been deemed not to have been implemented in the Compliance Report.

38. The Belgian authorities now state that the "political renewal" working group has examined the private member's bill amending the Law of 6 January 2014 establishing a Federal Ethics Committee (DOC 54 2098/001) and forwarded its observations to the relevant committee of the Chamber of Representatives.

39. The "political renewal" working group also proposes granting greater powers to the Court of Audit to verify the declarations of mandates: in addition to the existing criminal proceedings, administrative proceedings should be instituted, with the possibility of appeal to the Court of Audit. A rule of priority between the administrative penalty and the criminal penalty would help enhance interaction with the prosecution service. In order to facilitate the verification and monitoring carried out by the Court of Audit, the list of mandates must be submitted electronically and include the business identification number of the institution in which a mandate is exercised. Furthermore, the (semi-)public institutions in which those mandates are exercised will be encouraged to show greater responsibility, in order to enhance the effectiveness of the verification.

40. These recommendations were taken up in the private member's bills tabled in the Chamber on 29 November 2017 (DOC 54 2809/001 and 2810/01) and adopted on 1 March 2018. Bill 2810 has now been sent to the Senate for adoption and bill 2809 was adopted directly and has been sent to the royal assent. In particular, provision is made for the Court of Audit to be able, following a warning, to impose administrative fines on persons violating the legislation on the list of mandates and the declaration of assets. Should this happen on more than one occasion, a criminal-law judge could declare the offender to be ineligible.

41. GRECO approves of the measures to give greater punitive powers to the Court of Audit in the event of failure to comply with the legislation on declarations of mandates and assets, to define an order of priority between the criminal and administrative proceedings and to introduce the electronic submission of the list of mandates to facilitate verification. This represents the beginning of the implementation of the recommendation.

42. GRECO points out, however, that the recommendation calls for much broader enhancement of the verification system and refers to numerous shortcomings identified in the Evaluation Report (paragraphs 56 et seq.). To cite only the most important of these, no measure has yet been taken concerning reinforcement of the resources and powers of verification strictly speaking of the Court of Audit, or formalisation of the interaction between the latter and the prosecution authorities. Moreover, the declarations of assets and compliance by elected representatives with the codes of professional ethics are still not subject to any supervision.

43. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

44. *GRECO recommended that infringements of the main present and future rules in respect of integrity of parliamentarians carry adequate sanctions and that the public be informed about their application.*

45. This recommendation had been deemed not to have been implemented in the Compliance Report.

46. As indicated above (see paragraph 36), the Belgian authorities state that the bills adopted by the Chamber of Representatives stipulate that the Court of Audit may, following verification of the declarations of mandates and prior warning, impose administrative fines on those in breach of the provisions. The amount of these fines has yet to be determined, but it is planned to have a lower fine for the first offence and a maximum penalty of ineligibility – ordered by a judge – for repeat offences. By contrast, the "political renewal" working group took the view that the Federal Commission of Deontology should not be given sanctioning powers.

47. GRECO welcomes the planned introduction of more gradual sanctions imposed by the Court of Audit in the event of non-compliance with the rules on declarations of mandates and hopes that this system will facilitate its application.

48. GRECO points out, however, that full implementation of the recommendation will require the introduction and application of sanctions for breaches other than those relating to the declarations of mandates, such as unauthorised multiple office-holding and failure to comply with other rules relating to the integrity of members of parliament introduced following the Evaluation Report and with the Codes of professional ethics. The public will also need to be informed about the application of sanctions.

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

Recommendation vii.

50. *GRECO recommended that the appropriate measures be taken i) in order that parliamentary inviolability is invoked in practice only for acts having an obvious connection with parliamentary activity and ii) in order that the criteria for waiving immunity do not constitute an obstacle to the prosecution of corruption-related acts by parliamentarians.*

51. This recommendation had been deemed not to have been implemented in the Compliance Report.

52. The Belgian authorities state that the "political parties" working group has proposed that the Prosecutions Committee incorporate GRECO's recommendations in its

criteria for waiving parliamentary immunity. To this end, the committee could draw on the criteria used by the Senate in this area. On 26 September 2017, the Conference of Speakers addressed a recommendation thereon to the Prosecutions Committee. The authorities stress that these measures can only be taken if a new request to lift inviolability is addressed to the Prosecutions Committee, which has not yet been the case.

53. GRECO cannot but deplore the fact that the deliberations on this issue are still only at a very preliminary stage and that, almost four years after the adoption of the Evaluation Report, no specific practical measure has yet been taken to give effect to the recommendation. It takes the view that the fact that no request to lift inviolability has been addressed to the Prosecutions Committee should not prevent it from working *in abstracto* towards further specifying the criteria for lifting inviolability.

54. GRECO concludes that recommendation vii has still not been implemented.

Recommendation viii.

55. *GRECO recommended that at the level of the two houses of parliament regular specialised training courses be given on questions of integrity for all parliamentarians.*

56. This recommendation had been deemed not to have been implemented in the Compliance Report.

57. The Belgian authorities now state that the "political renewal" working party has reached consensus on the organisation of regular training courses for both new members of the Chamber and old members. Given that there was already agreement on this point in the "political parties" working group, it had been decided that the further discussions and the drafting of the point in question would be assigned to the latter working group. The "political parties" working group proposes giving all members of parliament regular specialist training on integrity-related issues. These training courses could be organised after the elections and in the course of the parliamentary term, for example, when new members are sworn in. These proposals were endorsed by the Conference of Speakers of the Chamber of Representatives on 26 September 2017.

58. GRECO welcomes the consensus within the two working groups regarding the organisation of regular training courses for new and old members of the Chamber, as well as the endorsement of the corresponding proposals by the Conference of Speakers. Nonetheless, no specific practical measure to this end has yet been taken.

59. GRECO concludes that recommendation viii has still not been implemented.

Corruption prevention in respect of judges and prosecutors

60. By way of introduction, the Belgian authorities point out that a preliminary draft law amending the Judicial Code, in response to the recommendations regarding combating corruption has been approved by the Council of Ministers and will soon be sent to the Chamber of Representatives. This draft is designed as a response to the GRECO recommendations by supplementing the Judicial Code with provisions aimed, on the one hand, at enhancing the recruitment requirements for substitute judges and members of the court and, on the other, strengthening their functioning.

61. The question of ethics is also taken into account and will be incorporated into the Judicial Code. Measures will be taken to ensure greater transparency in the field of disciplinary sanctions. The authorities wish to point out that the proposals put forward are based to a large extent on the proposals put forward by the High Council of Justice, approved by the general assembly on 21 June 2017.

Recommendation ix.

62. *GRECO recommended that to the widest possible extent, the judges concerned at federal and regional level be subject to appropriate safeguards and rules as regards their independence, impartiality, integrity (professional conduct, conflicts of interest, gifts, etc.), supervision and the applicable sanctions.*

63. This recommendation had been deemed not to have been implemented in the Compliance Report.

64. The Belgian authorities make no reference to any measures taken to implement the recommendation.

65. GRECO concludes that recommendation ix has still not been implemented.

Recommendation x.

66. *GRECO recommended reforming the conditions for the appointment of substitute judges in accordance with Article 87 of the Judicial Code (and possibly of substitute "magistrats" in accordance with Article 156bis of the Judicial Code) to perform the functions of judge or prosecutor.*

67. GRECO reiterates that in the absence of any measure to reform the system of substitute judges and members of the court, this recommendation had been deemed not to have been implemented in the Compliance Report.

68. The Belgian authorities report a drop in the number of substitute judges, of whom there were 1,532 in 2017 compared with 2,056 in 2004. By way of comparison, there were 1,555 full judges and 812 full prosecutors in 2017. The authorities claim that this reduction is due to a lack of interest in the position. In point of fact, no applications are received for a large proportion of the vacancies published in the Moniteur belge/Belgisch Staatsblad and there are regular resignations of substitute judges.

69. The draft modification of the Judicial Code approved by the Council of Ministers provides for a range of measures, including:

- abolishing the possibility of replacing members of the prosecution service;
- the obligation to pass a recruitment examination;
- providing for mandatory initial training dealing amongst other things with professional ethics. The syllabus will be drawn up by the Judicial Training Institute;
- prohibition on simultaneously fulfilling the position of judicial trustee;
- abolishing the possibility of acting as a substitute judge and as counsel in the same hearing.

70. GRECO welcomes the measures contained in the draft modification of the Judicial Code, which should make it possible to fill certain gaps identified in the Evaluation Report, if the system of substitute judges is not to be abolished. It would be worthwhile examining this latter possibility given the disaffection noted by the authorities.

71. As the draft Judicial Code has not yet been presented to Parliament, there could still be some major changes to the measures announced. GRECO also points out that the recommendation relates not only to the use and training of substitute judges, but also to effective supervision and sanctions. It therefore calls on the authorities to supplement the announced measures in this regard.

72. GRECO concludes that recommendation x has still not been implemented.

Recommendation xi.

73. *GRECO recommended that the requisite measures be taken to reinforce and increase the effectiveness of those performing managerial functions at the head of courts and public prosecution services.*

74. This recommendation had been deemed to have been partly implemented in the Compliance report given that management bodies had been set up in the courts and the prosecution services, and that standard profiles had been drawn up for managerial positions. Nonetheless, no measures have been taken to reclassify in financial terms the managerial functions and to introduce periodic appraisals of the heads of courts.

75. The Belgian authorities indicate that the legislator chose to reclassify managerial functions in financial terms ex-post (law of 6 July 2017, art. 246 para. 4). This article foresees that after his/her term of office, the head of a court does not return to his/her former functions or become simply a judge of that court. Instead, s/he is appointed to a higher court or to a higher grade in the same court.

76. As regards periodic appraisals, the Belgian authorities explain that the heads of prosecutor's offices are evaluated mid-term according to the law of 18 December 2006. As the provisions of this law have been repealed regarding judges by a Constitutional Court decision, a rectifying law needs to be drafted. Meanwhile, the High Council of Justice evaluates the head of courts' managerial competences when they apply to a post, on the basis of the management plan they present and an analytical grid. Their term of office is also subject to appraisal by the High Council of Justice if they apply for a second term of office.

77. GRECO takes note of the financial reclassification of the heads of courts. While only indirect, this measure does respond to the recommendation. So do the measures taken by the High Council of Justice concerning the appraisal of heads of courts at the beginning of their term of office and if they seek renewal. On this basis, GRECO considers the recommendation as implemented satisfactorily. However, it invites the Belgian authorities to keep it informed of the adoption of the future rectifying law.

78. GRECO concludes that recommendation xi has been implemented satisfactorily.

Recommendation xii.

79. *GRECO recommended to carry out in due course an assessment of the arrangements for assigning cases between judges.*

80. This recommendation had been deemed not to have been implemented in the Compliance Report, given that there had been no assessment of the arrangements for assigning cases between judges in the courts. Moreover, no information had been provided on the administrative courts, other than the Council of State.

81. The Belgian authorities now state that the assignment of cases between judges is based on an objectified system. As provided for in the Judicial Code, the president of the court assigns cases in accordance with the rules for the allocation of cases and the court's own regulations. The president assigns judges to the various divisions and appoints the judges sitting in the various sections. A service order, renewed each year, determines the assignment of judges in the sections. The Judicial Code does not explicitly assign a role to the court's steering committee with regard to the drawing up of the court's regulations, the rules for the assignment of cases and the court's service order. It does, however, provide that the steering committee assists the president of the court in the general management and organisation of the court.

82. The High Council of Justice conducted an audit on the human resources-related problems in the courts of first instance. It has found that the vast majority of courts have a steering committee. The role of these committees and the frequency with which they meet vary from one court to another. It has also been looking at the problems relating to the assignment of cases to single judges and will complete that survey soon.

83. The authorities also refer to the operational reports and the courts' annual reports, comprising information on the division of the work-load. This shows that various criteria are used, such as the particular difficulties in certain civil or criminal hearings, the difference in the number of hearings assigned to a single judge as compared with those assigned to three judges, the exercise of a specific mandate, the workload involved in carrying out non-judicial functions, the specialisation and abilities of judges and prosecutors, the needs of the department, etc.

84. Tasks are allocated in consultation with the judges and prosecutors concerned, and in accordance with Article 90 of the Judicial Code. The presidents of division are actively involved in this allocation within their division. Several annual reports specifically state that it is the steering committee that allocates tasks, on a proposal from the president following consultation of the judges and prosecutors concerned, or that this matter is regularly discussed in the steering committee, or that the workload of the various sections and judges/prosecutors is decided upon by the steering committee.

85. GRECO notes with regret that the recommendation has still not been implemented, since there has been no assessment of the arrangements for assigning cases between judges. The High Council of Justice's audit and survey cannot be seen as an appropriate substitute for this assessment, as they relate to a more general set of issues, and the audit focuses solely on the courts of first instance. GRECO would point out that this recommendation had been formulated in view of the lack of standard criteria or practices with regard to the assignment of cases such as to ensure a degree of objectivity and randomness (see paragraph 96 of the Evaluation Report). The setting up in 2014 of steering committees had been presented by the Belgian authorities as a means of improving this large diversity of rules and situations. Unfortunately, the information provided by the Belgian authorities shows that this diversity continues to be the rule.

86. GRECO concludes that recommendation xii has still not been implemented.

Recommendation xiii.

87. *GRECO recommended that the compendia of rules of conduct (applying to judges and prosecutors) be combined into a single text and that all necessary further measures be taken to ensure that these rules are clearly binding on all judicial court judges and prosecutors, whether professional or not.*

88. This recommendation had been deemed not to have been implemented in the Compliance Report.

89. The Belgian authorities now state that the draft modification of the Judicial Code requires all judges and prosecutors, whether professional or not, to follow mandatory training in professional ethics run by the Judicial Training Institute. It also introduces a legal basis for the Code of Professional Ethics. It further foresees that the annual reports on the functioning of the judicial entities will contain a (new) section on initiatives taken to ensure compliance with general deontological principles. These measures will be compiled in a report by the High Council of Justice, which will be published.

90. Furthermore, the appointment boards of the High Council of Justice have taken specific initiatives in order to incorporate ethical issues in the examination for entry to the judiciary. The curricula now provide that in the oral examinations, candidates are questioned on the "standards and ethics of judges and prosecutors" In addition, as part of the psychological tests, an evaluation is made of candidates' "integrity" and "appropriate management of power".

91. Lastly, concerning the appointment procedure, the High Council of Justice has drawn up new forms for the opinions to be submitted by the heads of court and the chairs of the Bar. The opinions must mention whether the candidate is the subject of a disciplinary procedure, a complaint or a criminal procedure, or of a complaint or particular investigation by the Council.

92. GRECO points out that the aim of this recommendation was to ensure wider dissemination, in particular among non-professional judges/prosecutors and substitute judges, of the 2012 Handbook for Judges and Prosecutors. It also concerns clarification of the status of the rules of professional conduct specific to certain courts and, in order to ensure consistency, confirmation of the applicability of the 2012 Handbook to judges in those courts. Lastly, it seeks to ensure enhanced status and scope of the Handbook, for example in the form of a personal undertaking by addressees to comply with it. None of these measures has been taken.

93. GRECO notes that the draft Judicial Code sets out general ethical principles by which all categories of judges and prosecutors (including substitutes) must abide. These principles are drawn up by the High Council of Justice following an opinion from the Judicial Advisory Council. GRECO hopes that the additions to these articles in the Judicial Code will at last result in harmonisation of the ethical rules applicable to all judges and prosecutors, in accordance with the recommendation. Pending this, GRECO has no option but to find that this recommendation has still not been implemented.

94. GRECO concludes that recommendation xiii has still not been implemented.

Recommendation xiv.

95. *GRECO recommended that the High Council of Justice introduce periodic general reports on the functioning of the courts and the prosecution service and, at the same time, expand its audit and investigation activities.*

96. This recommendation had been deemed to have been partly implemented in the Compliance Report. The High Council of Justice had proposed various measures to remedy the lack of periodic general reports on the functioning of the courts and the prosecution service, but these measures still had to be put into practice. GRECO had also welcomed the development of audits and investigations and had called on

the Belgian authorities to pursue their efforts in this regard. Lastly, GRECO was awaiting additional information on potential risks associated with fee-setting.

97. The Belgian authorities now report that the High Council of Justice is strengthening its competences for evaluating how the courts are organised and function and making proposals for improvement. This process involves reinforcing its audit department with five additional auditors who are currently being recruited.

98. GRECO welcomes the current strengthening of the High Council of Justice's competences for evaluating the functioning of the courts and the connected recruitment of new auditors. The outcome of this process remains to be seen and specifically, whether it will lead to the drawing up of period general reports on the functioning of the courts and the prosecution service, as required by the recommendation.

99. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xv.

100. *GRECO recommended that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning judges and prosecutors, including possible publication of the relevant case-law, while respecting the anonymity of the persons concerned.*

101. This recommendation had been deemed to have been partly implemented in the Compliance Report. No specific measure had been taken to give effect to the recommendation. However, the activity report of the francophone disciplinary body contained statistics on disciplinary proceedings and a summary of decisions mentioning the facts of the case and the sanction pronounced. These positive elements were not to be found in the other reports examined. Moreover, the disciplinary bodies' activity reports were not made public and the francophone disciplinary body had no registry, raising problems regarding the keeping and archiving of decisions and public access to decisions.

102. The Belgian authorities now state that the draft modification to the Judicial Code provides that a form will be produced for the drawing up of the annual reports of the disciplinary bodies and that all future sanctions handed down by the disciplinary authorities in the course of the year will be included in those reports. The High Council of Justice will draw up a consolidated annual report on the disciplinary measures taken by the judicial entities, on the basis of their respective annual reports. The High Council of Justice's consolidated report will be made public.

103. GRECO is of the opinion that the adoption of a standard form for the drawing up of the disciplinary bodies' annual reports, including the sanctions handed down, may represent progress, provided that the behaviour in question is also specified. This disciplinary case-law should be made readily accessible to the judicial community and to the general public. Accordingly, the future publication by the High Council of Justice of a consolidated report on disciplinary measures taken by the judicial entities is welcome. These measures still need to be put into effect through the adoption of the draft modification to the Judicial Code. GRECO also wishes to assess the level of detail of the disciplinary information and data that will be kept.

104. GRECO concludes that recommendation xv remains partly implemented.

III. CONCLUSIONS

105. In the light of the foregoing, GRECO concludes that Belgium has satisfactorily implemented one of the fifteen recommendations contained in the Fourth Round Evaluation Report. Seven recommendations have now been partly implemented and seven have not been implemented.

106. More specifically, recommendation xi has been implemented satisfactorily, recommendations ii, iii, iv, v, vi, xiv and xv are partly implemented and recommendations i, vii, viii, ix, x, xii and xiii have still not been implemented.

107. With regard to the prevention of corruption of parliamentarians, the reflection and reform process remains at an embryonic stage, almost four years after the adoption of the Evaluation Report. Private member's bills incorporating certain measures proposed by the multi-party working groups were adopted by the Chamber of Representatives on 1 March 2018 and others are pending. These bills could result in some progress regarding the creation of registers of lobbyists, the publication of lists of mandates held by members of parliament together with the remuneration received, enhanced powers of sanction for the Court of Audit in the event of non-compliance with the legislation on declarations of mandates and assets, and the introduction of more gradual sanctions. A consensus has also been found on organising regular training on integrity-related issues for members of parliament, but no measure to this end has yet been adopted. All these initiatives must therefore be translated into practice and supplemented. Moreover, GRECO finds it regrettable that the reflection on parliamentary immunity is only at a very preliminary stage.

108. With regard to judges and prosecutors, the progress made here too has overall been slow and limited. Some measures have been taken towards the appraisal and indirect reclassification of managerial functions in courts. A draft modification of the Judicial Code could also in some advances, particularly with regard to strengthening the requirements for the recruitment of substitute judges and members of the court, to ethical matters and to keeping and publishing disciplinary data. But this draft alone cannot provide a response to all the outstanding issues. Additional progress is expected regarding the rules on the integrity of all judges and prosecutors, an effective supervisory and disciplinary system for substitute judges, an assessment of the arrangements for the assignment of cases between judges.

109. In the light of the foregoing, GRECO concludes that the current level of compliance with the recommendations remains "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.

110. In application of paragraph 2.i) of Article 32 of the Rules of Procedure, GRECO asks the head of the Belgian delegation to provide a report on the measures taken to implement the outstanding recommendations (namely recommendations i to x and xii to xv) by 31 March 2019 at the latest.

111. In addition, in accordance with Rule 32, paragraph 2, sub-paragraph (ii.a), GRECO invites its President to send a letter – with a copy to the President of the Statutory Committee – to the head of the Belgian delegation, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.

112. Lastly, GRECO invites the Belgian authorities to authorise, at their earliest convenience, the publication of this report, to translate the report into the other national languages and to make those translations publicly available.