

Adoption: 23 June 2017
Publication: 6 September 2017

Public
GrecoRC3(2017)11

Third Evaluation Round

Addendum to the Second Compliance Report on Belgium

“Incriminations (ETS 173 and 191, PDC 2)”

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“Transparency of Political Party Funding”

Adopted by GRECO
at its 76th Plenary Meeting
(Strasbourg, 19-23 June 2017)

I. INTRODUCTION

1. This Addendum assesses further measures taken by the Belgian authorities, since the adoption of the Second Compliance Report, in response to the recommendations issued by GRECO in its Third Round Evaluation Report on Belgium. It is recalled that the Third Evaluation Round covers two distinct themes, namely:
 - Theme I – Incriminations: Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - Theme II – Transparency of party funding: Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. GRECO adopted the Third Round Evaluation Report on Belgium at its 42nd plenary meeting (15 May 2009). The report was made public on 22 June 2009 following authorisation by Belgium (Greco Eval III Rep (2008) 8E [Theme I](#) & [Theme II](#)). It contained fifteen recommendations to be implemented.
3. In the Compliance Report adopted at its 51st plenary meeting (27 May 2011), GRECO considered the present very low level of compliance with the recommendations “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure and accordingly decided to apply Rule 32 concerning members’ failure to comply with the recommendations contained in the mutual Evaluation Report.
4. The first Interim Compliance Report was adopted by GRECO at its 55th plenary meeting (16 May 2012). The second Interim Compliance Report was then adopted at its 61st plenary meeting (18 October 2013). In its third Interim Compliance Report, adopted at the 65th plenary meeting (10 October 2014), it found that Belgium had at last made progress and had initiated a large number of reforms: twelve recommendations had been partially or fully implemented and consequently GRECO decided not to continue applying the compliance enhancing procedure (as the level of compliance was no longer “globally unsatisfactory”).
5. In the conclusions to its Second Compliance Report, adopted at its 71st plenary meeting (18 March 2016), GRECO stated that six of the fifteen recommendations had been satisfactorily implemented or dealt with, that eight others had been partially implemented and one had not been implemented. It noted that only slight progress had been made and that overall results were still inadequate, almost seven years after the adoption of the Evaluation Report of May 2009. In particular, a majority of the recommendations relating to Theme II were still only partially implemented, including in respect of particularly important aspects. Parliamentary work on these questions had resumed with collaboration taking place with the federated entities, which, according to the Belgian authorities, was quite exceptional. GRECO had accordingly requested that Belgium provide a new situation report on future developments concerning the nine outstanding recommendations. This report, which was received on 15 March 2017, has served as a basis for this addendum to the Second Compliance Report.
6. GRECO selected Andorra and Luxembourg to appoint the rapporteurs for the compliance procedure. Andorra appointed Mrs Patricia QUILLACQ and Luxembourg appointed Mr Laurent THYES, Deputy Attorney General. The GRECO Secretariat assisted the rapporteurs in drawing

up this addendum, which evaluates the progress made since the Second Compliance Report in the implementation of the outstanding recommendations and once again provides an overall assessment of the extent of Belgium's compliance with those recommendations.

II. ANALYSIS

Theme I – Incriminations

7. It will be recalled that GRECO addressed 4 recommendations to Belgium in respect of Theme I in its Evaluation Report. These recommendations have now been implemented with the exception of recommendation iv, which has still been only partly implemented.

Recommendation iv.

8. *GRECO recommended i) to take the necessary steps in order to clarify, notably for practitioners, the scope of Article 12bis of the [Introductory Part of the] Code of Criminal Procedure, which enables Belgium to assume jurisdiction on the basis of Article 17 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173) in any case where the domestic rules of law fail to satisfy that provision, and make it clear that dual criminality is not a requirement in cases of bribery and trading in influence; ii) to consider withdrawing or not renewing the reservation concerning Article 17 of the Convention.*
9. GRECO points out that this recommendation has so far been considered “partially implemented”. In response to the second part of the recommendation, the reservation concerning Article 17 of the Convention was withdrawn with effect from 1 July 2010 as the Belgian authorities had indicated that it was no longer justified given the current situation regarding the interpretation of the texts (it was considered that the principle of universal jurisdiction established by Article 12bis of the [Introductory Part of the] Code of Criminal Investigation – CCI – was not limited to the humanitarian sphere). A draft circular on Article 12bis CCI was therefore subsequently drawn up but then abandoned in view of the implications of universal jurisdiction.¹ Belgium finally preferred to amend its legislation to take account of Article 17 of the Convention, and a draft amendment to Articles 10 quater and 12 CCI was drawn up in January 2013. After the formation of the new government, this draft was submitted to the new Minister of Justice in a memorandum dated 11 March 2015. The Federal Prosecutor's Office and the Board of Prosecutors General were involved in the consultations. No further progress has since been recorded.
10. The Belgian authorities state that it was decided at Ministry of Justice level not to provisionally adapt the legal framework because, according to the Justice plan and the Minister of Justice's policy statements for 2015 and 2016, the latter had indicated his intention to completely rewrite the Code of Criminal Investigation. The idea is to simplify criminal procedure and make it more efficient. On the subject of rules on jurisdiction concerning offences committed outside the territory of the Kingdom (Chapter I of the Introductory Part of the Code), which will also be reviewed, discussions are underway to take into consideration the various recommendations made in international evaluations, including that of GRECO discussed here.

¹ A general circular on the prosecution of corruption-related offences was nonetheless adopted on 10 September 2015, with the reference COL 11/2015; it does not address the issue of the applicability of article 12 bis in relation to the jurisdiction rules of article 17 paragraph 1 of the Criminal Law Convention.

11. GRECO takes note of Belgium's desire to reform its criminal procedure and to deal with the present recommendation in this context rather than by a specific amendment. It therefore again calls on the authorities to step up its efforts to fully implement the present recommendation.
12. GRECO concludes that recommendation iv remains partly implemented.

Theme II – Transparency of political party funding

13. In its Compliance Report, GRECO had made 11 recommendations to Belgium concerning Theme II. Following the Second Compliance Report, the situation to date is as follows: recommendations i, v and vi have been implemented satisfactorily; recommendations ii, iv, vii, viii, ix, x and xi have been partly implemented and recommendation iii remains to be implemented.

Recommendations ii, iii, iv, vii, viii, ix, x and xi.

14. GRECO recommended:

- *that the Act of 4 July 1989 and other relevant legislation be amended i) to extend their coverage to parties that do not receive federal public financing and ii) to introduce criteria for extending more systematically the scope of the consolidated accounts of parties and political groups to include associated structures, in particular the party's local sections, so that oversight is also exercised in respect of the local level. (recommendation ii)*
- *that the federal legislation on the respective obligations and responsibilities of parties and their components be further clarified, to ensure that financial transactions are effected to the highest extent possible through each party's financial association. (recommendation iii)*
- *i) the registration of donations of less than EUR 125 to parties and candidates be made a formal obligation; ii) the use of modern and more secure means of payment for donations be encouraged to make them more traceable; iii) the notion of donation be clarified or defined so as to better address services rendered free of charge or below market value on the one hand, and to ensure consistency as regards sponsorship by legal persons and the existing rules governing donations on the other hand; iv) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation. (recommendation iv)*
- *i) parties and/or candidates be obliged – within the limits of the Constitution – to declare individual donations above a certain minimum value, together with the donors' identity; ii) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation. (recommendation vii)*
- *i) to set up a system – unified if possible – to supervise the financing of parties and election campaigns, that would be as independent as possible from the political parties and be allocated the means needed to exercise adequate substantive control; ii) to invite the regions to take this recommendation into account should the creation of a unified system prove too difficult in the national institutional context. (recommendation viii)*
- *i) agreement be reached with the Institut des Réviseurs d'Entreprise (institute of company auditors) on more stringent standards for auditing the accounts of political parties, including rules for ensuring the auditors' necessary independence and ii) consideration be given to*

extending audit obligations beyond the parties' annual accounts so as to cover notably their reports on electoral expenditure. (recommendation ix)

- *i) steps be taken to ensure that if a party fails to meet its obligations under the Act of 4 July 1989, or other relevant legislation, and this would normally entail the loss of federal funding, it should lose all the services and benefits it receives in the form of public assistance throughout the country; ii) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation. (recommendation x)*
 - *i) the powers of the authorities responsible for ordering sanctions for breaches of the rules on political financing be clarified; ii) steps be taken to ensure that there is a more proportionate and dissuasive scale of sanctions in place for the various infringements by parties and candidates, for example by making ineligibility generally applicable, diversifying the available penalties, establishing more severe criminal penalties and establishing rules on repeat offending; iii) if appropriate, the regions be invited to amend their legislation in accordance with this recommendation. (recommendation xi)*
15. GRECO refers to the previous report in the compliance procedure (Second Compliance Report) for details of the work and legislative reforms carried out to date, especially by a series of four laws adopted in November and December 2013 and published in the Official Gazette (*Moniteur belge*) of 31 January 2014² (p. 8546, p. 8592, p. 8664, p. 8675), amending the rules on political party funding and those on election campaign funding at federal and regional entity levels.
16. A "Political Parties" working group was set up again in 2015, in particular to review the statutes and rules of procedure of the Monitoring Commission and develop a new financial format model for the political parties, but also to continue the implementation of the outstanding GRECO recommendations. Owing to the delays in establishing these bodies and in the adoption of the new financial format, the entry into force of the new legislation had to be put back to 1 January 2016, including the filing of accounts in the new format in 2016 for the 2015 financial year (Act of 11 June 2015 – Official Gazette of 22 June 2015).³
17. The work by the above working group continued, even though in March 2016 (when the previous report in the compliance procedure was adopted) there was no new development to be reported. At the same time, the President of the Chamber of Representatives – who also chairs the parliamentary committee responsible for scrutinising federal political funding – had officially brought the substance and expectations of the GRECO recommendations to the attention of the Community and Regional parliaments in a letter dated 19 June 2015. That letter enabled recommendations v and vi to be considered as having at last been implemented. The parliaments of the federated entities have finally been involved in the work at federal level.
18. The Belgian authorities now state that:
- a) the new regulations on sponsorship – mentioned in the report of March 2016 – came into force on 1 January 2015 (cf. recommendation iv). The first review of sponsorship conducted in the 2015 calendar year was consequently carried out by the Monitoring Commission with effect from

² See http://www.senate.be/actueel/homepage/Staats hervorming/Moniteur_%20du_31-01-2014.pdf. The authorities point out that some of the provisions of these laws came into force on the day of their publication in the Official Gazette and others on the day of the elections of 25 May 2014, while yet others would enter into force on the date laid down in the law (for example, 1 January 2015).

³ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2015061105

1 July 2016 (the overviews were to be submitted to the commission by 30 June 2016). In view of the complexity of the regulations, consideration is currently being given within the "Political Parties" working group and the Monitoring Commission to adapting these regulations or even to abandoning the sponsorship system. The discussion on this subject is continuing in 2017 (cf. recommendation iv);

b) in connection with recommendations iv to viii, x and xi (see also the previous information contained in the Second Compliance Report), the Flemish Parliament adopted the Decree of 3 June 2016 amending the Decree on Local and Provincial Elections of 8 July 2011 and the Decree of 4 April 2014 on the organisation and procedure of certain Flemish administrative courts with regard to the transposition of the GRECO recommendations. This Decree was published in the Official Gazette of 8 July 2016. A copy of the Decree has been provided by the authorities.

19. The authorities also draw attention to a development regarding the provisions of paragraph 45 (recommendation vi) of the Second Compliance Report of March 2016. Up to now, it has been accepted that, in addition to verifications being carried out after elections, the establishment of rules governing the limitation of election expenses in local and provincial elections, including funds allocated to the campaign, is a matter for the regions, but it emerges from an opinion of 18 July 2016 issued by the Council of State on a preliminary draft decree of the Flemish Region that the federal legislature is also authorised to lay down the rules.
20. GRECO takes note of the continuation of the work at federal level, in association with the Regions and Entities. It is pleased to learn that a review of the sponsorship regulations is being considered. GRECO had in fact noted that the legitimisation in the rules of indirect support from legal entities was clearly contrary to both the letter and the spirit of the federal legislation, which in principle prohibited any form of donation from legal entities.
21. Relevant regulatory developments have been announced at the level of the Flemish Region to implement the GRECO recommendations. For the moment, in the absence of a consolidated version of the amended regulations and of more specific information on the impact of the reform, it is difficult to draw any precise conclusions. GRECO takes this opportunity to reiterate that, at any rate, its recommendations are addressed to the country's federal level.
22. Belgium has also pointed to an interesting development in case law in the form of an opinion of the Council of State of July 2016, which could help to speed up the harmonisation of the regulations on the transparency of political funding, failing the possible establishment of a unified supervision system (suggested by recommendation viii).
23. In conclusion, on the basis of the information currently available GRECO cannot but maintain its previous conclusions on the various recommendations discussed above.
24. GRECO concludes that recommendations ii, iv, vii, viii, ix, x and xi remain partly implemented and that recommendation iii remains not implemented.

III. CONCLUSIONS

25. In the light of the foregoing, GRECO concludes that no tangible progress has been made since the Second Compliance Report with regard to the outstanding recommendations. Of the fifteen recommendations contained in the Third Round Evaluation Report, eight remain partly implemented and one has not been implemented. The remaining six – i.e. fewer than half – have been satisfactorily implemented.
26. To be more precise, with regard to Theme I – Incriminations, recommendation iv remains partly implemented. The three others were considered implemented in the conclusions to the Second Compliance Report. As regards Theme II – Transparency of political party funding, recommendations ii, iv, vii, viii, ix, x and xi remain partly implemented and recommendation iii has still not been implemented. Recommendations i, v and vi were considered satisfactorily implemented in the conclusions to the Second Compliance Report.
27. As far as the incriminations theme is concerned, GRECO notes that after several policy changes in the last few years, Belgium has now announced that the Code of Criminal Investigation is being rewritten in order to simplify criminal procedure and make it more efficient. The provisions establishing jurisdiction in Belgium – in accordance with Article 17 paragraph 1 of the Criminal Law Convention on Corruption – could therefore be clarified in this context, as expected.
28. As far as political party funding is concerned, the parliamentary work is continuing with a view to giving effect to the recommendations that have not yet been fully implemented. GRECO notes with interest that the regions are involved in these efforts and that the Flemish Region has apparently already enacted legislation on the matter. However, the absence of consolidated provisions and detailed information makes it impossible to analyse the situation. GRECO therefore once again reiterates its appeal to Belgium to continue with the implementation of the various outstanding recommendations with greater determination.
29. GRECO cannot but repeat its previous conclusions, namely that the results of the action taken by Belgium are still inadequate at this stage, more than eight years after the adoption of the Evaluation Report of May 2009. Consequently, GRECO, in accordance with Rule 31.9 of the Rules of Procedure, once again calls on the head of the Belgian delegation to provide additional information on the implementation of recommendation iv (Theme I – Incriminations) and recommendations ii, iii, iv and vii to xi (Theme II – Party Funding) and to do so by 31 March 2018 at the latest.
30. Finally, GRECO calls on the Belgian authorities to authorise the publication of this report at the earliest opportunity, to translate it into Dutch (and possibly German) and to make the translation(s) public.