

Adoption: 7 December 2018
Publication: 16 January 2019

Public
GrecoRC3(2018)12

Third Evaluation Round

Second 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 81st Plenary Meeting
(Strasbourg, 3-7 December 2018)

I. INTRODUCTION

1. This second Addendum assesses further measures taken by the Belgian authorities, since the adoption of the Addendum to the Second Compliance Report, in response to the recommendations issued by GRECO in its Third Round Evaluation Report on Belgium. The Third Evaluation Round covered two themes:
 - **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 15 recommendations to be implemented.
3. In the Compliance Report adopted at its 51st plenary meeting (27 May 2011), GRECO had considered the very low level of compliance with the recommendations (only one recommendation out of 15 was implemented and four were partly implemented) to be “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure and had 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: 12 recommendations had been partially or fully implemented and consequently GRECO decided not to continue applying the enhanced compliance 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 15 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.
6. In the Addendum to the Second Compliance Report, adopted at its 76th plenary meeting (23 June 2017) and published on 6 September 2017, GRECO stated that no tangible progress had been made with regard to the outstanding recommendations.
7. On 31 August 2018, the Belgian authorities submitted further information on developments regarding the outstanding recommendations, which forms the basis of this report drawn up by Ms Patricia QUILLACQ on behalf of Andorra and Mme Cindy COUTINHO on behalf of Luxembourg, assisted by the GRECO Secretariat.

II. ANALYSIS

Theme I – Incriminations

8. In its Evaluation Report, GRECO made four recommendations to Belgium in respect of Theme I. These recommendations have now been implemented with the exception of recommendation iv, which has still been only partly implemented.

Recommendation iv.

9. *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.*
10. GRECO notes that hitherto this recommendation has been judged to have been “partly 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 opted to amend its legislation to take account of Article 17 of the Convention. However, the Belgian authorities have stated that it has been decided not to effect any provisional changes to the legislation because, in accordance with the Justice Plan and its associated policy statements for 2015 and 2016, the Minister of Justice intended to completely rewrite the Code of Criminal Investigation. The project, which is now under way, is aimed at simplifying criminal procedure and making it more efficient.
11. The Belgian authorities now state that the multidisciplinary committee of experts set up to reform Belgian criminal procedure has drawn up a proposed set of coherent guidelines for making criminal procedure simpler and more efficient. In conjunction with the relevant departments of the Ministry of Justice, the rules governing the prosecution of serious and lesser offences committed beyond the country’s borders, laid down in Chapter II of the Introductory Part of the Code of Criminal Investigation, have been thoroughly reviewed. The discussions have taken account of various recommendations contained in international evaluations, including the aforementioned GRECO recommendation. The committee of experts proposes that the future Code will authorise the prosecution of Belgian nationals and foreign persons resident in Belgium for offences of bribery and trading in influence with regard to foreign officials and to private sector corruption, and will abolish the double incrimination condition. It also proposes repeal of the condition that suspects must be located in Belgium.

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.

12. However, the authorities state that the reform of criminal procedure and the drafting of a new code are long-term projects and that the multidisciplinary committee of experts is still meeting. The draft proposals that they have so far produced are not yet available to the public. Consequently, the new rules on extra-territorial jurisdiction in corruption cases have not yet been approved.
13. GRECO notes that reform of the criminal procedure code is still under way. It notes that the authorities are committed, at this stage of the reform, to taking account of the GRECO recommendation regarding extra-territorial jurisdiction in public and private sector corruption cases in foreign countries. Nevertheless, in the absence of any published proposals on this subject it is unable to reach any further conclusion and would simply urge the Belgian authorities to continue the reform process with a view to securing full compliance with the above recommendation.
14. GRECO concludes that recommendation iv remains partly implemented.

Theme II – Transparency of political party funding

15. In its Evaluation Report, GRECO made 11 recommendations to Belgium in respect of Theme II. The second interim compliance report concluded that recommendations i, v and vi had been implemented satisfactorily, recommendations ii, iv, vii, viii, ix, x and xi had been partly implemented and recommendation iii had still not been implemented.

Recommendations ii, iii, iv and vii to xi.

16. *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).*
17. GRECO refers to the second Compliance Report for details of the work and legal reforms carried out to date, especially by a series of four items of legislation adopted in November and December 2013 and published in the Official Gazette (*Moniteur belge/Belgisch Staatsblad*) of 31 January 2014² (pp. 8546,. 8592,. 8664 and 8675), amending the rules on political party funding and on election campaign funding at federal and regional entity levels.
18. A “Political Parties” working group was re-established in 2015, whose tasks included reviewing the statutes and rules of procedure of the Control Commission, developing a new model financial format for political parties, and continuing with implementation of the outstanding GRECO recommendations. Owing to delays in establishing these bodies and the adoption of the new financial format, the entry into force of the new legislation had to be deferred 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
19. The new regulations on sponsorship – referred to in the report of March 2016 – came into force on 1 January 2015 (see recommendation iv). In view of the complexity of the regulations the “Political Parties” working group and the Control Commission are now considering adapting these regulations or even abandoning the sponsorship system. GRECO noted with satisfaction in its

² See www.senate.be/actueel/homepage/Staatsvorming/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 www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2015061105

First Addendum to the Second Compliance Report that consideration was being given to abandoning the sponsorship system. It had already noted that rules legitimising indirect support from legal entities were clearly contrary to both the letter and the spirit of the federal legislation, which in principle prohibited any form of donation from legal entities. Discussions on this subject are apparently continuing (see recommendation iv).

20. In parallel to the work of the aforementioned working group, the parliaments of the federated entities have finally been involved in the work at federal level (see the First Addendum to the Second Compliance Report). Moreover, in connection with recommendations iv to viii, x and xi (see also the information contained in the Second Compliance Report), the Flemish Parliament adopted the Decree of 3 June 2016 on the transposition of the GRECO recommendations. Nevertheless, in its first Addendum, GRECO pointed out that its recommendations were addressed to the country's federal level.
21. An opinion of 18 July 2016 issued by the Council of State on a preliminary draft decree of the Flemish Region also states that the federal legislature is authorised to lay down rules on limiting local and provincial election expenses, including campaign expenditure. In the first addendum to its Second Compliance Report, GRECO thought that this legal opinion could help to expedite harmonisation of the regulations on the transparency of political funding, failing the possible establishment of a unified supervision system (as proposed in recommendation viii).
22. The Belgian authorities state that, unfortunately, the situation has not changed in the meantime. The two working groups – the “political parties” and the “political reform” groups – of the lower house of parliament, the House of Representatives, published reports on the state of their work in July 2017.⁴ However, both groups have focused on GRECO's fourth evaluation round recommendations. The financing of political parties has been examined only indirectly.
23. GRECO notes the work undertaken on various issues relating to political parties but regrets that there has been no tangible progress on implementation of the outstanding recommendations. It therefore maintains its previous conclusions on these recommendations.
24. GRECO concludes that recommendations ii, iv, vii, viii, ix, x and xi remain partly implemented and that recommendation iii has still not been implemented.

III. CONCLUSIONS

25. **With the adoption of this Second Addendum to the Second Compliance Report on Belgium, GRECO concludes that out of the fifteen recommendations issued to Belgium, six in total have been dealt with in a satisfactory manner. Eight remain partly implemented and one has not been implemented.**
26. More specifically, with respect to Theme I - Incriminations, recommendations i, ii, and iii have been implemented satisfactorily and recommendation iv has been partly implemented. As regards Theme II - Transparency of political party funding, recommendations i, v, and vi have been implemented satisfactorily, recommendations ii, iv, vii, viii, ix, x and xi remain partly implemented and recommendation iii has still not been implemented.
27. In the case of Theme I - Incriminations, GRECO notes that some progress has been made. In particular, it welcomes the legislative amendments and circular of 28 January 2016, which finally

⁴ www.lachambre.be/FLWB/PDF/54/2584/54K2584001.pdf; www.lachambre.be/FLWB/PDF/54/2608/54K2608001.pdf

enshrined the notion of “receiving” into the definition of the criminal offence of passive bribery. GRECO also welcomes the decision to lift the reservation to Article 17 of the Criminal Law Convention on Corruption. It also notes that the proposed reform of the Code of Criminal Investigation includes provisions that would bring Belgium’s extraterritorial powers into line with the aforementioned Article 17. GRECO also notes that, as it hoped, the authorities have given consideration to rewording the offences of bribery in the private sector in Article 504bis of the Criminal Code, to not maintaining their reservation to Articles 7 and 8 of the Criminal Law Convention on Corruption, to the possibility of establishing a criminal offence of trading in influence in accordance with the provisions of Article 12 of the Criminal Law Convention on Corruption and to not maintaining their reservation to this article. However, these reservations have been maintained. Overall, GRECO is satisfied that positive progress has been made towards implementing its Theme I recommendations and encourages the Belgian authorities to complete the current reform of the Code of Criminal Investigation to bring it into line with the single recommendation that is still partly outstanding.

28. In the case of Theme II - Transparency of political party funding, GRECO notes that work has been carried out for many years by the parliamentary committee responsible for monitoring electoral expenditure and political party accounts and its working groups, particularly with a view to improving the legislation on party and election campaign funding. These activities have involved at various times the different political parties and the parliaments of the federated entities, which had been invited to give effect to GRECO’s recommendations in their own spheres of responsibility. Some progress has been recorded, in particular through amendments to legislation reflecting GRECO’s expectations concerning the transparency and monitoring of political financing. Belgium has taken a number of measures: to ensure that the relevant rules are also applied to political parties that do not receive public financial assistance at federal level; to strengthen the supervisory arrangements and establish a wider, balanced and effective range of penalties; to improve the traceability of donations; to extend the accounting period for election campaigns from three to four months (to ensure that declarations more closely reflect the actual situation regarding the resources and expenditure associated with these campaigns); and to extend the period over which documentation on electoral expenses must be retained.
29. The working groups of the parliamentary committee responsible for monitoring electoral expenditure and political party accounts have adopted two reports on the state of their work in July 2017 but GRECO is very disappointed to note that political party funding has not been tackled as such in these reports, even though numerous aspects of the recommendations in the Evaluation Report have still not been resolved more than nine years later. These include the lack of operational independence of the supervisory body, the federal control commission, *vis-à-vis* political parties and their influence, the lack of criteria for extending parties’ accounting obligations to their local branches, the lack of transparency concerning private support for parties and/or candidates at elections and the ambiguous situation regarding support from legal persons falling under the heading of sponsorship. So while noting the progress that has been made over the years, GRECO urges the authorities to give fresh impetus to the work under way, specifically with regard to transparency of political party funding, to meet the requirements of the recommendations that have not been fully implemented, namely recommendations ii, iii, iv, vii, viii, ix, x and xi.
30. The adoption of this second Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Belgium. However, in view of the number of recommendations still outstanding, particularly on the transparency of political party funding, the

Belgian authorities have committed themselves to informing GRECO of future progress on the full implementation of these recommendations.

31. Finally, GRECO invites 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.