



Adoption: 18 October 2017
Publication: 4 December 2017

Public
GrecoEval3Rep(2017)1

Third Evaluation Round

Summary of the Evaluation Report on Belarus

Incriminations (ETS 173 and 191, GPC 2)
(Theme I)

Transparency of party funding
(Theme II)

Adopted by GRECO
at its 77th Plenary Meeting
(Strasbourg, 16-18 October 2017)

The publication of Evaluation and Compliance Reports shortly after their adoption is a long-standing practice among GRECO member States. This serves two important purposes: ensuring overall transparency of the GRECO process and facilitating the implementation of recommendations at domestic level by raising awareness of GRECO's findings across society.

The Third Evaluation Round Report on Belarus (GrecoEval3Rep(2016)3 theme I on Incriminations and theme II on transparency of party funding) was adopted by GRECO at its 73rd Plenary Meeting (17-21 October 2016) and the authorities were invited to authorise, as soon as possible, its publication, to translate it into the national language and to make the translation public. At its 77th Plenary Meeting (16-18 October 2017), given the absence of an authorisation from the authorities of Belarus to publish the entire Evaluation report, GRECO decided that a summary would be made public on 30 November 2017 pursuant to Rule 35 paragraph 2 of the [Rules of Procedure](#).

As a result of the above decision, the following thus contains the conclusions from the Third Evaluation Round Report on Belarus¹:

Theme I – incriminations

75. Although the Criminal Law Convention on Corruption and its Additional Protocol entered into force in respect of Belarus without any reservations, it became obvious during the evaluation visit that the signature and ratification of those treaties have not entailed any proper revision of the Belarusian Criminal Code (CC). Therefore, compared to the standards enshrined in both legal instruments and which are subject to monitoring in the present report, the CC presents several major shortcomings. The way those standards have been understood/interpreted deviates in some respects from the spirit of the Convention and its Additional Protocol.

76. Bribery of public officials whether in the public or private sector is criminalised by Articles 430-432 CC which cover passive and active bribery and mediation in bribery. Since the offence of active bribery (Article 431 CC) is not defined and the corresponding passive bribery provision (Article 430 CC) must largely be relied on, similar deficiencies can be attributed to both. Thus, various forms of corrupt behaviour, such as “offering”, “promising” and “requesting” an advantage as well as “accepting an offer or a promise” are not covered. The objects of active and passive bribery are confined to material benefits. The offences themselves are construed in such a way as to only capture instances where the advantage is intended for the official him/herself or persons who are close to him/her. As for the concept of “public official”, it does not embrace all public sector employees, in particular those who do not exercise “organisational-executive” or “administrative-economic” functions, or who are not authorised to perform legally significant acts. The relevant CC provisions are furthermore not extended explicitly to bribery of foreign arbitrators and of foreign jurors, and trading in influence is not criminalised as an autonomous offence.

77. Turning to private sector bribery, the CC contains two specific offences: Article 252 CC (on commercial bribery, i. e. in respect of persons who are not public officials) and Article 253 CC (on corruption in sports and commercial entertainment contests). The deficiencies found in the former are many and pertain e.g. to the narrow coverage of corrupt behaviour (restricted to bribe-giving and bribe-taking), limited personal scope (application only to “employees of individual entrepreneurs and of legal entities who are not public officials”), the omission of immaterial advantages, third party beneficiaries, indirect commission of the offence, and the capture of only those acts and omissions that are capable of “wittingly damaging the interests of the company’s owner or his/her clients”.

¹ GrecoEval3Rep(2016)3 theme I and II

78. As concerns jurisdiction, the requirement of dual criminality in respect of bribery offences committed abroad by nationals and residents of Belarus has to be abolished and jurisdiction established over all such offences committed abroad by non-citizens and involving citizens or any other person referred to under Article 17, paragraph 1, sub-paragraph c of the Convention. Finally, the imperative exemption from criminal liability granted in certain instances to perpetrators of bribery needs to be abolished, and decisions on exemption from criminal liability are to be reasoned and decided upon solely by courts.

79. In view of the above, GRECO addresses the following recommendations to Belarus:

- i. introducing into the provisions of the Criminal Code on active and passive bribery the concepts of "offering", "promising" and "requesting" an advantage as well as "accepting an offer or a promise", in line with the Criminal Law Convention on Corruption (ETS 173) (paragraph 56);
- ii. extending the objects of active and passive bribery to explicitly include all forms of benefits, material and non-material, whether or not they have a calculable financial value, in accordance with the notion of "any undue advantage", as stipulated in the Criminal Law Convention on Corruption (ETS 173) (paragraph 57);
- iii. ensuring that the bribery offences of the Criminal Code are construed in such a way as to cover, unambiguously, instances where the advantage is not intended for the public official him/herself but for a third person, whether natural or legal (paragraph 58);
- iv. criminalising active and passive bribery of public sector employees who are not public officials in the meaning of the Criminal Code of Belarus (paragraph 62);
- v. criminalising explicitly bribery of foreign arbitrators and of foreign jurors, in conformity with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) (paragraph 64);
- vi. aligning Article 252 of the Criminal Code on commercial bribery with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), in particular, as regards the categories of persons covered, non-material advantages, the different forms of corrupt behaviour, indirect commission of the offence, third party beneficiaries and instances of breach of duty by the bribed person/briber (paragraph 67);
- vii. criminalising active and passive trading in influence in line with Article 12 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 68);
- viii. that i) the criteria used for the imposition of sanctions in all bribery cases proposed by prosecutors and imposed by the courts are subject to monitoring and analysis with a view to their more uniform application for specific categories of corruption crimes; and ii) appropriate measures are taken to ensure that the sanctions imposed for bribery crimes are effective, proportionate and dissuasive in law and in practice (paragraph 69);
- ix. (i) abolishing the imperative exemption from criminal liability granted to perpetrators of bribery under Articles 431 and 432 of the Criminal Code and under

Article 88 (2)CC read in conjunction with 881CC; and (ii) ensuring that the decisions on exemption from criminal liability granted to perpetrators of bribery offences in view of effective regret are reasoned and decided upon solely by courts (paragraph 71);

- x. (i) abolishing the dual criminality requirement in respect of bribery offences committed abroad; and (ii) establishing jurisdiction over all bribery offences committed abroad and involving Belarusian officials or any other person referred to under Article 17, paragraph 1, sub-paragraph c of the Criminal Law Convention on Corruption (paragraph 73).

80. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Belarus to present a report on the implementation of the above-mentioned recommendations by 30 April 2018.

81. Finally, GRECO invites the authorities of Belarus to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.

Theme II – Transparency of party funding

108. According to the Constitution, Belarus is a democratic state based on the rule of law and on the diversity of political institutions, ideologies and opinions. An express reference to a multi-party system is however omitted. In addition to the Constitution, parties are governed by the Law on Political Parties (LPP) as well as some other legal acts, including presidential orders, and rules on the financing of election campaigns are laid down in the Electoral Code (EC) and rulings of the Central Election Commission (CEC). Except for the list of prohibited sources of funding that includes donations from anonymous and foreign donors and is largely identical for parties, the legal persons they establish and election campaigns, there are no apparent parallels between the two legal acts. Saliiently, the provisions on the financing of elections are more thorough and elaborate than those which regulate general party funding.

109. Although, at present, 15 political parties with diverse ideologies are registered, they only play a marginal role in the country's political/electoral process. This is explained by an environment where the electoral system allows only individuals to stand for election, where the principle of autonomy of a political party is not enshrined in law, where party finances may not be used to sustain party structures and where the definition of a political party does not articulate its right to participate in elections and referendums for the purpose of representing citizen's interests in bodies of the state power and local government. Today, political parties are not represented in the government and only minimally in parliament and in the bodies of local self-government. Moreover, most parties only nominate a handful of candidates to contest the elections and do not engage visibly in election campaigns. This raises doubts about their *raison d'être* and suggests that parties do not exercise their essential democratic function either in law or in practice. In their stead, as became obvious during the visit, the country's political model and electoral process rely on pro-government state-subsidised public associations, trade unions and "work collectives" of state enterprises.

110. Bearing in mind that parties allegedly do not enjoy much public support and do not receive any state funding, the evidence collected on site showed that parties do not dispose of any financial resources in practice: membership subscriptions are not customary, donations are not received and

even small-scale commercial activities are not conducted. Therefore, parties' financial statements are said to remain mostly blank as no income is generated and no expenses incurred in practice. In this light, it would seem reasonable to consider that in Belarus, where a significant proportion of the economy is either owned or controlled by the state, financial support by the state to political parties would be indispensable. Although Article 1 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaign which encourages member States of the Council of Europe to provide reasonable state support, including financial, based on objective, fair and reasonable criteria, to political parties, is not subject to monitoring in the present report and not binding on Belarus, the authorities are strongly encouraged to consider granting state aid to the country's parties. Without such grants, parties can be expected to remain mostly "dormant" – the assessment of the state of play at the time of the visit – or compelled to have recourse to illegal sources of financing to sustain even minimal structures which is not feasible under the present rules and is a situation which imperatively needs to be tackled. Furthermore, allegations of improper use of free of charge (sponsorship) aid and contradictory information regarding donations' scope and the compulsory nature (or not) of membership dues underscore the need for parties to keep proper books and accounts, following a uniform format and accompanied by adequate primary documents which properly reflect all sources of income and expenditure. Moreover, party accounts or a summary are to be disclosed in a way which provides for easy and timely access by the public (even if they purportedly remain mostly blank), which is not the case at present. In respect of those parties which have set up subordinate youth, women's and religious organisations, seeking ways to consolidate their books and accounts to include the accounts of entities related directly or indirectly to them or otherwise under their control is essential. Finally, a systemic – as opposed to ad hoc on suspicion – and necessarily independent monitoring of general party funding needs to be introduced. GRECO must underscore that the limited practical role political parties play in Belarus relativizes somewhat the pertinence of the recommendations issued in the present report. Even their full implementation will not in itself ensure that parties, by that token, become significant actors in political life in the country unless their role and functions are thoroughly recast, in line with usual democratic standards.

111. Turning to election campaign financing, the introduction in 2010 of electoral funds is overall a welcome development, in particular since it is underpinned by the requirement to register all donations and donors and to transmit the information on the size of the fund, all sources of income and all expenditure to the relevant election commission prior and subsequent to an election, using designated financial forms. Yet, the effectiveness of electoral funds is esteemed to be partial due to their optional nature. Therefore, for the sake of legal certainty and heightened transparency, it would be essential to place all election contestants under an obligation to establish a fund and to report on related receipts and expenditure. Moreover, the disclosure by the election commissions only of information on total receipts and expenses from a fund has to be reconsidered and more meaningful details, including on private donations above a certain threshold and the identity of donors, are to be published. Above all, the alleged vigorous third party engagement in election campaigning not paid from an electoral fund is a source of major concern as, in Belarus, third party campaigning more often than not embodies a form of covert state interference in election campaigns. The majority of third party actors are said to be subsidised or owned by the state (i.e. pro-government state subsidised public associations, so-called "republican state-public associations", trade unions, "work collectives" of state enterprises), whereas political parties are not. Where such third party actors partake in election campaigning and associate themselves with specific contestants, the official claims of equality of candidates appear hollow. Consequently, it is primordial that the rules on third party campaigning are reviewed, that the financing of such campaigning is made transparent and accounted for by those who benefit from it, and subject to supervision and that the improper use of any form of public/administrative resources in election campaigns is explicitly prohibited. The three flaws inherent in oversight, i.e. failure to exercise supervision, the lack of independence/impartiality and insufficient transparency, need to be remedied.

Last but not least, more appropriate (graduated) sanctions are to be introduced for infringements of election financing rules and the sanctioning mechanism is to be further streamlined.

112. In view of the above, GRECO addresses the following recommendations to Belarus:

- i. clarifying the legal situation with respect to works and services (other than voluntary work from non-professionals) as well as loans, including when these are provided below market value or, in the case of loans, are fully or partly written off (paragraph 88);
- ii. ensuring that i) political parties keep proper books and accounts, following a uniform format and accompanied by adequate primary documents which properly reflect all sources of income, including membership dues and free of charge (sponsorship) aid, and expenses; and ii) party accounts or a summary are disclosed in a way which provides for easy and timely access by the public (on the official web site of a party or a relevant oversight body) (paragraph 89);
- iii. seeking ways to consolidate the books and accounts of political parties to include the accounts of entities related directly or indirectly to a political party or otherwise under its control (paragraph 91);
- iv. i) introducing a legal requirement for all election candidates (and, where appropriate, nominees) to set up an electoral fund; and ii) ensuring that more meaningful information from the accounts of election campaigns, including on private donations above a certain threshold and those donors, is published in a way which provides for easy and timely access by the public, preferably on the web site of a responsible election commission (paragraph 95);
- v. that i) third party involvement in election campaigns is made transparent and accounted for by those who benefit from it and subject to proper supervision; and ii) measures are taken to prevent and respond to the misuse of public/administrative resources in election campaigns (in particular, by prohibiting campaigning by publicly-owned and subsidised entities, articulating the principle of neutrality of the public administration/civil service and of the representatives/members/employees of publicly-owned and subsidised entities and properly enforcing the provisions of the Electoral Code on abuse of public office) (paragraph 98);
- vi. ensuring i) systematic and independent monitoring of general party funding, in line with Article 14 of Recommendation Rec(2003)4; and ii) coordinating effectively the supervision of general party funding with that of election campaign financing (paragraph 100);
- vii. i) ensuring substantial and pro-active supervision of election campaign finances, in particular as concerns illegal in-kind donations in the form of work and services, third party campaigning, misuse of public/administrative resources and abuse of public office, and to that end supplying the relevant oversight bodies with the mandate, authority, resources and expertise to supervise such finances, investigate alleged infringements and, as appropriate, to impose sanctions; ii) reinforcing considerably the independence, impartiality and transparency of

election commissions, specifically by prohibiting all forms of political interference in their decision making, ensuring as far as possible non-partisan membership of the Central Election Commission specifically by limiting the number of public officials/civil servants appointed or elected to it, establishing clear, objective and transparent criteria for the selection of the members of lower commissions and fixing separate membership quotas for political parties and representatives/members/employees of state-owned or subsidised entities, ensuring inclusive party representation, providing for disclosure of and easy access to information on the substance of complaints alleging financial irregularities and the outcome of their review (paragraph 105);

- viii. that i) appropriate (graduated) sanctions of varying degrees are introduced for violation of rules on election campaign financing, in conformity with Article 16 of the Recommendation; and ii) discretionary sanctioning powers vested in election commissions are withdrawn and appropriate independent bodies are authorised to issue protocols of administrative offences entailing infringements of election funding rules (paragraph 107).

113. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Belarus to present a report on the implementation of the above-mentioned recommendations by 30 April 2018.

114. Finally, GRECO invites the authorities of Belarus to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.