



GRECO

Group of States against Corruption
Groupe d'États contre la corruption



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CONSEIL DE L'EUROPE

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FOURTH EVALUATION ROUND

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

SECOND INTERIM COMPLIANCE REPORT BELGIUM

Adopted by GRECO at its 83rd Plenary Meeting
(Strasbourg, 17-21 June 2019)

FOURTH
EVALUATION
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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. 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 Round Evaluation Report. Four recommendations had been partly implemented. 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.
3. In the [Interim Compliance Report](#), adopted by GRECO at its 79th plenary meeting (23 March 2018), it had been concluded that Belgium had made little progress in implementing the recommendations, with only one of the fifteen recommendations having been implemented satisfactorily and seven having been partly implemented. GRECO therefore reiterated its conclusion that the level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure. In accordance with Article 32 paragraph 2 sub-paragraph (ii.a), GRECO drew the attention of the Head of the Belgian delegation to the failure to comply with the relevant recommendations and the need to take determined action with a view to achieving further progress as soon as possible. In addition, in accordance with Rule 31 para. 8.2, as revised, of its Rules of Procedure, GRECO asked the Head of the Belgian delegation to submit, by 31 March 2019, a report on the action taken to implement the pending recommendations. This report was received on 29 March 2019 and served as a basis for the present Report.
4. This [Second Interim Compliance Report](#) evaluates the progress made in implementing the pending recommendations since the previous Interim Report (recommendations i to x, and xii to xv) and provides an overall appraisal of the level of Belgium's compliance with these recommendations.
5. [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 MAITREPIERRE, Adviser at the Legal Affairs Directorate of the Ministry of Foreign Affairs, on behalf of France and Mr Jean-Marc GUALANDI, Technical adviser at the SICCFIN, Department of Finance and Economy, on behalf of Monaco. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

II. ANALYSIS

Corruption prevention in respect of members of parliament

6. 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 "political renewal" working groups, which

submitted their reports on 18 and 20 July 2017 respectively¹. The working groups' proposals, which had been partly transposed into draft legislation at the time of the previous report of March 2018, have now all been adopted and have entered into force.

Recommendation i.

7. *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.*
8. GRECO recalls that this recommendation was considered not to have been implemented in the previous reports. As regards the first part of the recommendation, nothing had been done to remove the if nothing but 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. Nor had anything been done to ensure public disclosure in respect of gifts, donations and other benefits accepted by MPs. As regards the second part of the recommendation, GRECO had stressed that application of the regulations on donations in respect of foreign natural persons may be inferred from a regulatory provision requiring the nationality of the donor to be mentioned. It had considered that that this did not adequately compensate for the lack of regulations dealing specifically and explicitly with the question of foreign donors, to which attention had already been drawn in the third and fourth round Evaluation Reports.
9. The Belgian authorities are critical of an inaccuracy in the Evaluation Report, which states (in paragraph 28) that "donations from foreign natural persons are not addressed [by the regulations]". They point out that Belgian legislation could not be any clearer on this point. Art. 16ter § 2 of the Law of 4 July 1989 on restrictions and supervision of expenditure on elections to the Chamber of Representatives and the financing and accounting of political parties stipulates: "The statement of all donations made shall mention the surname and first names of the natural person having made the donation, their full address (street, number and municipality for their main place of residence), their nationality, (...)". This is confirmed by 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; it is perfectly clear from these provisions, therefore, that the legislation on donations does apply to both Belgian and foreign donors. If the legislation were not applicable to foreign donors, the indication of "nationality" would be pointless. This interpretation was validated by the "political parties" working group and the Conference of Speakers of the Chamber of Representatives.
10. The authorities added that parliamentarians are aware of this legislation regarding foreign donors as they are under obligation to use the form introduced by the Royal Decree of 10 December 1998 to register donations. This legislation could nevertheless be included in the training courses on integrity to be provided by the Federal Ethics Committee (see recommendation viii).
11. GRECO notes that the Belgian authorities have not reported any new tangible progress and therefore sees no reason to modify the findings previously expressed

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

in its Third and Fourth Evaluation Round reports with regard to the lack of regulation specifically – and not simply *a contrario* – addressing foreign donations (second part of the recommendation). Furthermore, the Belgian authorities have not covered the question of gifts, donations and other benefits (first part of the recommendation).

12. GRECO concludes that recommendation i remains not implemented.

Recommendation ii.

13. *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.*
14. GRECO recalls that this recommendation was considered partly implemented in the Interim Compliance Report. A consensual bill aimed at creating and publishing a register of lobbyists and introducing a code of conduct for lobbyists had been tabled in the Chamber of Representatives. However, GRECO had pointed out that the recommendation had called for the adoption of measures 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 had therefore called for this register to also include the members of parliament met by lobbyists and for this information to be made public. Lastly, GRECO had noted that the Federal Ethics Committee of the Chamber of Representatives had also called for clarification of relations between public office-holders and third parties in relation to the drafting of legislation, in particular by appending to any legislative initiative a list of those representing interests whose intervention had had an impact on the substance. GRECO had encouraged the Belgian authorities to follow this up.
15. The Belgian authorities now state that the register of lobbyists has been created. It is available on-line on the Chamber's site², as is the Code of conduct for lobbyists. They also point out that Rule 28 of the Rules of procedure of the Chamber of Representatives³ was amended on 19 July 2018: at the beginning of a hearing of third parties within a committee in connection with discussion on draft legislation or a private member's bill, speakers must expressly state whether or not they are or have been involved, in any capacity whatsoever, in the drawing up of the draft legislation on which the hearing is taking place. In addition, they are also supposed to declare any allowances paid to them for participating in the hearing. If they have received remuneration, they must state from whom or from which body.
16. GRECO welcomes the creation of the register of lobbyists and the adoption of rules of conduct for them. The indication of interests of people heard by a committee is also a positive point. However, GRECO reiterates that rules for the parliamentarians themselves when they interact with third parties are yet to be adopted. The transparency of such contact is also an area to be developed.
17. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

18. *GRECO 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*

² http://www.lachambre.be/kvvcr/pdf_sections/lobby/lobbyisten.pdf

³ http://www.lachambre.be/kvvcr/pdf_sections/publications/reglement/reglementFR.pdf

dependent family members (it being understood that this information would not necessarily be made public).

19. GRECO recalls that the present recommendation was considered partly implemented. A few positive changes had been introduced by bills passed by the Chamber of Representatives on 1 March 2018, including the fact that gross public remuneration must now be declared each year and, to a certain extent, with regard to the declaration of remuneration corresponding to the exercise of private activities. However, GRECO had found it regrettable that the exact amount of remuneration received did not have to be declared, only the range within which it fell.
20. The Belgian authorities now explain that, for the declaration of remuneration corresponding to the exercise of private activities, the Chamber drew on the system applied to members of the European Parliament, which it extended and improved through the law of 14 October 2018⁴, which modifies the declaration system as of 1 January 2019:
 - the exact amount received in public remuneration must be declared;
 - for private activities, the income bands are more precise and cover a broader range, and income of less than 6000 € a year must also be declared. The bands are as follows: 1. No remuneration; 2. Between 1 and 5 000 euros gross income per year; 3. Between 5 001 and 10 000 euros gross income per year; 4. Between 10 001 and 50 000 euros gross income per year; 5. Between 50 001 and 100 000 euros gross income per year; 6. More than 100 000 euros gross income per year, the stated amount being rounded up or down to the closest 100K.
21. The authorities add that declarations of assets serve only to prove, in the event of an MP's declarations being consulted by an investigating judge, that no enrichment took place during the term of office. Accordingly, non-publication means that there is no systematic inventorying of assets or declaration of assets and liabilities, but the MPs themselves have every interest in making full declarations and are encouraged to do so by the Court of Audit.
22. GRECO notes that the income bands to be declared for private activities have been refined and complemented. This is welcome, but it reiterates its call that the exact amount of remuneration received in the exercise of private activities be declared. Furthermore, there are no reported measures regarding the other parts of the recommendation, ie a more systematic inventory of assets, a declaration of their value and of 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.
23. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

24. *GRECO recommended 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.*
25. GRECO recalls that recommendation iv had been deemed to have been partly implemented, as the declarations of mandates were now published on the Court of

⁴ Law modifying legislation relating to declarations of mandate and assets as regards transparency of remuneration, extension to public administrators, electronic filing and supervision (published in the *Moniteur belge* on 26 October 2018)

Audit's website. This needed to be supplemented, however, by the publication of the level of remuneration received, which was provided for by the private members' bills adopted by the Chamber of Representatives. GRECO had also approved 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 and had invited the authorities to follow this up. However, GRECO had regretted that the date of submission of yearly mandate declarations had been pushed back compared to the previous system, meaning later publication of information on mandates and remuneration by the Court of Audit. In addition, GRECO had also observed a lack of progress concerning the publication of declarations of assets and urged the authorities to remedy this situation.

26. The Belgian authorities have provided the following details regarding the date for submitting mandate declarations: it has been decided that the publication of remuneration must state the exact annual gross mentioned on the tax slips of the "employers". It would be logical in this case to take into consideration when the tax slips are available in order to fix the final deadline for mandate declarations. These slips can only be regarded as being available with any certainty as of 30 June of each year, which is the deadline for submitting tax declarations. The legislator did not wish to modify the time-limits for challenges and appeals, meaning that the key dates for the procedure would fall in the middle of the summer vacation, making the work of the Court of Audit unmanageable. It was decided, therefore, to put back the deadline until after the summer vacation, to 1 October.
27. They also mention that, when the declarations of mandates are next published on the Court of Audit's website, which is scheduled on 15 February 2020 (reference year 2018), the biographical pages of the members of parliament appearing on the Chamber's website will include a link to their published declaration.
28. The authorities further point out that the "political renewal" working group has considered the possibility of publishing the declaration of assets but took the view that the declaration of assets must be effected with due respect for the private life of those concerned, as guaranteed by Article 8 of the ECHR and Article 22 of the Constitution, and held, therefore, that the content of the declaration of assets should not be made public.
29. GRECO welcomes that the biographical pages of the members of parliament appearing on the Chamber's website are to include a link to their mandate declaration when published by the Court of Audit. Some information regarding remunerations will also be published, although GRECO regrets that only income bands will be published, as indicated above. GRECO takes note of the details provided regarding the deadline for submitting mandate declarations, even if it still regrets that this postponed deadline will lead to later publication of the mandate declarations. GRECO also regrets that there is no progress to report with regard to the publication of declarations of assets. It has repeatedly stressed in its reports that requirements of privacy must not be an obstacle to publishing information on the interests, income and assets of elected representatives, who are public figures submitting to universal suffrage. Transparency of these aspects is therefore in the interests of adequate voter information.
30. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

31. 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.
32. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report. It had approved 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 criminal and administrative proceedings and to introduce electronic submission of the list of mandates to facilitate verification (second part of the recommendation). However, it had stressed that the recommendation called for considerably broader reinforcement of the control mechanism, notably 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. Likewise, declarations of assets and compliance by elected representatives with codes of professional ethics were still not subject to any supervision.
33. The Belgian authorities explain that, in connection with the drawing up of the laws of 14 October 2018, the Court of Audit has taken initiatives aimed at developing and launching an application called "Regimand" for the electronic submission of lists of mandates, functions and professions of high-ranking public administrators and senior officials. This application has been operational since 2019 and makes it possible to declare both functions subject to verification and functions not subject to verification, as well as remuneration relating to the individuals subject to verification. The monitoring carried out by the Court of Audit is chiefly intended to check whether declarations were submitted by the deadlines and are exhaustive, in view of the broadened scope *ratione personae* of legislation on mandates, of its legal competence and of the possibilities it has of consulting various external databases.
34. This monitoring mainly takes the form of:
- Consulting the data bases to which the Court of Audit has access, like the national registry, public information data banks and Trends Top (which contains current information on Belgian companies);
 - Direct or indirect contacts (mails, telephone assistance, chatbox within the Regimand application) with the persons and the "*informateurs*" of the institutions subject to verification, with a view to rectifying obvious errors or oversights in the declarations;
 - Assistance requests on legal problems related to the declaration duties and their scope.
35. To enable the Court of Audit to cope with its extended mission, the staffing of its registry has been reinforced by recruiting three additional controllers and two auditors and by stepping up cooperation with its IT department. Another principal auditor will be recruited in the short term to manage administrative sanctions.
36. The authorities further point out that, according to the law of 14 October 2018, the Court of Audit is empowered, as of 1 January 2019, to impose financial sanctions on office-holders who have not properly declared their mandates and the related remuneration or have not submitted their declaration of assets. It has already

contacted the prosecution service on several occasions (with a view to the possible application of a criminal sanction to offending mandate-holders), as well as the Federal Public Finance Department (for the recovery and collection of administrative fines). This consultation will make it possible to conclude better agreements between the departments and could pave the way for duly sanctioning office-holders who do not fulfil their obligations.

37. GRECO welcomes the introduction of an electronic application for mandate declarations, the reinforcement of the staffing of the Court of Audit registry and the stepping up of contact between the Court and the prosecution service with a view to applying sanctions. It remains to be seen whether this increased contact results in the application of sanctions in practice. However, the object of the supervision, which is subject to laws adopted in 1995 and 2005, remains the same as the one described in the Evaluation Report. As highlighted in this report, it does not make it possible to detect, for instance, important asset variations caused by illicit enrichment sources. The second part of the recommendation therefore remains partly implemented. Lastly, it notes that no progress has been reported as regards the first part of the recommendation, which remains non-implemented.
38. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

39. *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.*
40. Following the introduction of more gradual sanctions imposed by the Court of Audit in the event of non-compliance with the rules on declarations of mandates, GRECO had considered this recommendation as being partly implemented in the previous report. GRECO had pointed out, however, that full implementation of the recommendation would require the introduction and application of sanctions for other breaches, such as unauthorised multiple office-holding and failure to comply with other rules relating to the integrity of members of parliament and also public information on this subject.
41. The Belgian authorities report that there are laws stipulating that being sworn in as a member of parliament terminates a mandate that is incompatible with that office and other laws which terminate parliamentary office if another incompatible mandate is accepted. As a last resort, it falls to Parliament to terminate the office of a member who refuses to relinquish an incompatible mandate. They add that the "political renewal" working group examined the powers of the Federal Ethics Committee and took the view that it should not be given sanctioning powers.
42. GRECO notes that the information supplied has already been taken into account in its previous reports. It regrets that there are still no sanctions applicable for the main breaches of the ethical rules governing parliamentarians.
43. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

44. *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.

45. GRECO recalls that this recommendation had been deemed not to have been implemented in the Interim Compliance Report.
46. The Belgian authorities point out that GRECO's evaluation report had mentioned that "The Senate criteria appear to be far more consistent with the general position of GRECO and Guiding Principle 6 for the Fight against Corruption" (paragraph 69). The "political parties" working group has proposed that the prosecutions committee incorporate GRECO's recommendations in its criteria for waiving parliamentary immunity and, to that end, draw on the criteria applied by the Senate in this area. On 26 September 2017, the Conference of Speakers addressed a recommendation along these lines to the Prosecutions Committee. The authorities stress that the Conference of Speakers of the Chamber of Representatives comprises the Speaker and Vice-Speaker of the Chamber, former speakers who are still members and the head and a member of each political group. As the Conference decides by consensus and both the majority and the opposition are represented in it, its decisions are never annulled during the next legislature and therefore constitute commitments by the Chamber as an institution. Lastly, the authorities add that at the beginning of the next legislature, the secretariat of the Prosecutions Committee will recall the recommendation of the "political parties", as approved by the Conference of Speakers, to the committee.
47. GRECO takes note of the further details provided by the Belgian authorities concerning the role and status of the Conference of Speakers of the Chamber of Representatives and in particular the fact that its decisions express commitments on the part of the Chamber as an institution. On the basis of that information, GRECO considers that the concerns having prompted the recommendation have been adequately taken into account.
48. GRECO concludes that recommendation vii has been dealt with in a satisfactory manner.

Recommendation viii.

49. *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.*
50. GRECO reiterates that this recommendation had been deemed not to have been implemented in the Interim Compliance Report.
51. The Belgian authorities now report that the Conference of Speakers of the Chamber has entrusted the Federal Ethics Committee with the running of regular training courses for all parliamentarians on integrity issues. The next training sessions will coincide with the beginning of the next legislature following the parliamentary elections of 26 May 2019. They will last half a day and will focus on the code of ethics, international rules and concrete cases.
52. GRECO welcomes the forthcoming organisation of training for the members of the legislature starting on 20 June 2019 regarding integrity issues, which appears to be along the lines of the recommendation. Pending the holding of these trainings at the level of both houses of parliament, GRECO concludes that recommendation viii has been partly implemented.

Corruption prevention in respect of judges and prosecutors

53. As an introductory remark, the Belgian authorities report that the draft law amending the Judicial Code with a view to improving the functioning of the judiciary and the High Council of Justice mentioned in the previous report – the so-called “GRECO law” – was passed by the Chamber of Representatives on 14 March 2019 and signed by the King on 23 March 2019. Some of the law's provisions⁵ (Articles 28, 36 to 39 and 43) became effective immediately, and the others will enter into force on 1 January 2020.

Recommendation ix.

54. *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.*
55. GRECO recalls that this recommendation was considered not implemented in the previous reports.
56. The Belgian authorities have explained that a letter was sent to the different Prime Ministers of the federated entities⁶ in order to inform the federated entities and make them aware of the issue raised in the recommendation. After receiving that letter, the Flemish Region informed the federal authorities of all the measures taken or ongoing in keeping with the recommendation.⁷ In particular, section 7 of 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 dealt with the status and appointment of serving administrative judges, the appraisal procedure and certain disciplinary measures. Furthermore, the Flemish government is examining the expediency of applying Article 63 of that decree⁸ in order to extend the scope of the Code of 20 December 2013 enshrining rules on ethics and conduct to all regional administrations and administrative courts.
57. GRECO takes note of the letter sent by the federal authorities to the Prime Ministers of the federated entities and the reply from the Flemish Region regarding the measures taken in keeping with the recommendation. It notes that the decree of 4 April 2014 appears to respond to some of the concerns raised in the recommendation, particularly as regards independence, supervision and the disciplinary rules applicable to the judges in question. However, the decree does not contain any rules of conduct, and GRECO therefore encourages the Flemish government to ensure that such rules are applicable to all the region's administrative court judges.
58. GRECO further notes that there is no information reported regarding the courts of the other federated entities, or indeed the federal administrative courts. It recalls that it had noted in the Compliance Report (paragraph 38), as regards the Council of State, a lack of rules to protect integrity, especially with regard to professional conduct, conflicts of interest, gifts and other advantages. Accordingly, it had called for the introduction of appropriate safeguards as regards these judges and, as an indispensable prerequisite, an inventory of the courts concerned, at least at federal

⁵ <http://www.lachambre.be/FLWB/PDF/54/3523/54K3523005.pdf>

⁶ Letter to Mr Geert Bourgeois, Prime Minister of the Flemish Government; Mr Willy BORSUS, Prime Minister of the Walloon Region; Mr Rudi VERVOORT, Prime Minister of the Brussels-Capital Region; Mr Rudy DEMOTTE, Prime Minister of the Wallonia-Brussels Federation; Mr Oliver PAASCH, Prime Minister of the German-speaking Community.

⁷ http://www.etaamb.be/fr/decret-du-04-avril-2014_n2014035564.html

⁸ Art. 63: "Without prejudice to application of the provisions of the present Decree on the status of administrative judges, the Flemish Government shall determine the other aspects of the status of administrative judges, including at least their ethical rights and duties and leave. The Flemish Government shall establish the code of ethics at the proposal of the general assembly".

level⁹. Clearly, that inventory has not been drawn up and little follow-up has been given to the recommendation.

59. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

60. *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.*

61. GRECO recalls that this recommendation had been deemed not to have been implemented in the Interim Compliance Report. GRECO had considered that the measures contained in the draft amendment to the Judicial Code could fill certain gaps identified in the Evaluation Report. However, the draft legislation had not yet been brought before parliament. In addition, the preliminary draft made no provision for a system of supervision and effective sanctioning of substitute judges.

62. The Belgian authorities state that the Law of 23 March 2019 amending the Judicial Code with a view to improving the functioning of the judiciary and the High Council of Justice introduces the following measures intended as a response to GRECO's recommendations:

- abolition of the possibility of replacing members of the prosecution service with substitute judges;
- obligation for candidate substitute judges to pass a recruitment examination;
- compulsory training for substitute judges, including a module on ethics;
- abolition of the possibility of acting as a substitute judge and as counsel in the same hearing.

63. The authorities further report that compulsory training for commercial court judges is covered by a law containing various provisions for computerising justice and modernising the status of commercial court judges (Art. 70), which was adopted by the Chamber of Representatives on 25 April 2019.

64. That said, some components of the recommendation have not been followed up by an adaptation of the Judicial Code. Given that the functions of a substitute judge or council member are non-permanent by definition, as the substitute's functions may be terminated by the disciplinary tribunal and some substitutes sit too seldom for a meaningful appraisal to be made, the introduction of appraisals for substitute judges or council members appeared difficult to implement. The authorities stress, however, that the fact that there is no appraisal procedure within the meaning of Articles 259*decies* and following of the Judicial Code does not mean that substitutes' working methods are not examined.

65. Where effective sanctions are concerned, the Belgian authorities emphasise that supervision and sanction mechanisms already exist in practice and in particular that:

- the internal supervision mechanisms apply to substitutes.
- the hearings they conduct are subject to oversight by the prosecution service, in the same way as those of serving judges;
- like serving judges, they may have complaints lodged against them with the High Council of Justice;

⁹ See the Evaluation Report, footnote 30, for the list of administrative courts at federal level.

- an audit or specific investigation of their actions may be carried out by the High Council of Justice;
- they are governed by the same rules, procedures and disciplinary sanctions as serving judges (Art. 412 §1, penultimate sub-paragraph, of the Judicial Code).

66. GRECO is satisfied that many of the measures of which it gave a positive assessment in the previous Compliance Report feature in the Law of 23 March 2019 amending the Judicial Code. These measures respond to a number of the concerns expressed in the Evaluation Report, particularly as regards recruitment, training and confusion over the roles of substitute judges, members of the prosecution service and lawyers. GRECO also takes note of the details provided on the system of supervision and sanctions applicable to substitute judges. However, as the relevant articles of the Judicial Code do not enter into force until 1 January 2020, GRECO cannot yet conclude that the recommendation has been fully implemented.
67. GRECO concludes that recommendation x has been partly implemented.

Recommendation xii.

68. *GRECO recommended to carry out in due course an assessment of the arrangements for assigning cases between judges.*
69. GRECO recalls that this recommendation had been deemed not to have been implemented in the previous reports, given that there had been no assessment of the arrangements for assigning cases between judges in the courts.
70. The Belgian authorities maintain the stance expressed in the previous reports that, firstly, the system for assigning cases is not left to the discretion of the head of the court, as the specific regulations of each court or tribunal lay down which matters are assigned to each chamber of the court or tribunal and the service order referred to in Article 316 of the Judicial Code determines the composition of those chambers.
71. Secondly, the High Council of Justice may undertake such an assessment via an audit or a specific investigation. It has already partly done so, as mentioned in the Interim Compliance Report, through its audit of human resources management within first instance courts¹⁰ but also, since then, via its specific investigation of the application of the new rules on assigning cases to single-judge chambers¹¹. The High Council of Justice is also looking at this problem in the context of the prosecution service, through an audit of the Namur prosecutor's office for example.
72. The High Council of Justice intends to generalise to the courts of first instance the exercise already conducted with the courts of appeal. However, it intends to incorporate in its new approach the lessons highlighted by the investigation conducted within the courts of appeal. Following the appointment (confirmation) to the mandates of the first presidents of the courts of appeal, mainly in April 2019, the High Council of Justice reiterated to the heads of corps resulting from this recent procedure, the call for consultation referred to above, asking to be informed of initiatives taken in this direction. It recalled, on this occasion, the interest of a harmonisation of case allocation practices.
73. The authorities therefore consider that a new assessment of the kind desired by GRECO would be of very limited benefit given the human and budgetary investment it would require. They add that the current legislative arsenal is sufficient to avoid

¹⁰ http://www.csj.be/sites/default/files/press_publications/audit-gestionpersonnel-tpi_fr-resume.pdf

¹¹ http://www.csj.be/sites/default/files/press_publications/enquete_particuliere_sur_lapplication_des_nouvelles_regles_en_matiere_d_0.pdf

any arbitrary decisions (Articles 88 to 95 of the Judicial Code, annual reports etc.) and also flexible enough to overcome difficulties linked to the failure to fulfil legal frameworks and the backlog it causes in some chambers. If one chamber is congested, the president or first president may assign certain cases to another chamber to avoid excessive waiting by litigants.

74. Finally, the authorities refer to Consultative Council of European Judges (CCJE) opinion no. 21 of 9 November 2018 on "Preventing corruption among judges", which states that: "*In some Council of Europe member States where corruption has not been an issue (...), court presidents have quite broad discretion in allocating the incoming cases to judges. They will strive as a general rule to guarantee a fair allocation of the workload, all by taking into account the factors for case allocation as mentioned in the foregoing paragraph (namely rotation by cycles, local court districts, specialisations etc). This "softer" approach to case allocation is perfectly legitimate as long as the chosen system ensures in practice the fair and time-efficient administration of justice, and thus enhances public confidence in the integrity of the judiciary*" (paragraph 43). The CCJE opinion also calls for "robust rules (...) on recusal and self-recusal of judges in the event of an apparent or even only potential bias in a given case". They point out that, in this respect, Belgium has detailed legislation on recusal procedures (Articles 828 and following of the Judicial Code).
75. GRECO believes that the specific investigation by the High Council of Justice into the application of the new rules assigning cases to single-judge chambers constitutes partial implementation of the recommendation where appeal courts are concerned. It welcomes the High Council of Justice's intention to draw the consequences of this exercise for first instance courts. GRECO notes that this investigation has highlighted diverging interpretations of the rules and differing practices in the assignment of cases within appeal courts. In its conclusions as regards these divergences, the High Council of Justice stresses that a degree of harmonisation of case assignment processes may be advisable from the viewpoints of equality of litigants and the need for courts to be seen as impartial when assigning cases. GRECO urges the High Council of Justice to act on its stated wish for greater harmonisation, for example by making recommendations for heads of court. The letters sent to the heads of courts may be a first step in this direction and GRECO calls upon the High Council of Justice to pursue its efforts towards greater harmonisation.
76. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiii.

77. *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.*
78. GRECO recalls that this recommendation was considered not implemented in the previous compliance reports. In the Interim Compliance Report GRECO had hoped that the on-going draft reform of the Judicial Code would at last result in harmonisation of the ethical rules applicable to all judges and prosecutors, in accordance with the recommendation.
79. The Belgian authorities now report that the Law of 23 March 2019 amending the Judicial Code with a view to improving the functioning of the judiciary and the High Council of Justice legally enshrines general ethical principles governing all categories of members of the judiciary, including substitute and non-professional judges/prosecutors. These principles are drawn up by the High Council of Justice following an opinion from the Judicial Advisory Council.

80. In the wake of the Interim Compliance Report, the High Council of Justice has also taken the initiative of issuing every new judge or prosecutor appointed with a copy of the Handbook on ethics¹² and incorporating ethics in the programmes for the examination for admission to the judiciary.
81. 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.
82. GRECO welcomes the systematic issuing of the Handbook on ethics by the High Council of Justice and the clarification provided by the Law of 23 March 2019 that the ethics principles established by the High Council of Justice are applicable to all members of the judiciary, whether they are career judges and prosecutors or not. All the measures necessary for the implementation of this recommendation have now been taken. However, as the relevant articles of the Judicial Code do not enter into force until 1 January 2020, GRECO cannot yet, in keeping with its established practice, conclude that the recommendation has been fully implemented.
83. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xiv.

84. *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.*
85. GRECO recalls that this recommendation was considered partly implemented in previous compliance reports. A process of strengthening the competences and activities of the High Council of Justice in the area of audits and specific investigations was under way. GRECO had welcomed this process and hoped that it would lead to the drawing up of periodical general reports on the functioning of the courts and the prosecution service.
86. The Belgian authorities point out that, following on from the Law of 18 February 2014 introducing self-management in the judicial system (Art. 30), monitoring the development of internal supervision is the responsibility of the respective Boards and not the High Council of Justice. The Boards have a legal obligation to draw up an activity report each year.
87. In implementation of its pluriannual plan adopted on 7 February 2017, the High Council of Justice has set up a joint working group with the two Boards which is currently setting about optimising the activity reports to be drawn up by each judicial entity so that, ultimately, those involved in the justice system and citizens are correctly informed. The aim of this work is, among others, to update the standard form for the activity reports in light of the changes brought by the law of 23 March 2019. This work is foreseen to be completed by December 2019.

¹² http://www.csj.be/sites/default/files/press_publications/o0023f.pdf. This systematic issuing of the handbook supplements the issuing by the High Council of Justice in October 2017 of principles of positive ethics, which are reiterated in this handbook aimed at all career and substitute judges as well as lay judges.

88. The authorities have also reported the following new information: the High Council of Justice has recently undertaken an analysis of the activity reports of the appeal courts¹³ with a view to inventorying the measures taken to improve their functioning, eliminate backlogs and guarantee compliance with the time-limit for deliberations. This analysis is set out in a report adopted on 29 November 2018.
89. As far as the expansion of its audit and investigation activities is concerned, the High Council of Justice has filled 4 of the 5 vacancies for auditors, and a new call for candidates is being prepared. Finally, the Law of 23 March 2019 contains various provisions (Arts. 20, 21 and 23) geared to strengthening and improving the audit and investigation activities of the High Council of Justice.
90. GRECO takes note of the new information reported, notably the setting up of a working group to optimise the activity reports of the judicial entities. It will be interested to learn of the outcome of that work in the context of a subsequent report. GRECO also welcomes the strengthening of the competences of the High Council of Justice in the area of investigations and audits brought about by the Law of 23 March 2019.
91. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xv.

92. *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.*
93. GRECO recalls that this recommendation was considered partly implemented in previous reports. In the Interim Compliance Report GRECO had noted that the adoption of a standard form for the drawing up of the disciplinary bodies' annual reports, including the sanctions handed down, could represent progress, provided that the behaviour in question is also specified. GRECO had welcomed the future publication by the High Council of Justice of a consolidated report on disciplinary measures taken by the judicial entities. However, these measures still needed to be put into effect through the adoption of the draft amendment to the Judicial Code.
94. The Belgian authorities now state that the Law of 23 March 2019 does indeed provide 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, which must be shown in their respective annual activity reports. The consolidated report of the High Council of Justice will be made public.
95. With regard to the publication of disciplinary sanctions, it should be noted that discipline in the judiciary was the subject of a case-law analysis published in the courts journal on 3 November 2018 and accessible on the website of the High Council of Justice¹⁴.
96. GRECO takes note of the measures provided for in the Law of 23 March 2019, which confirms the information of which it made a positive assessment in its previous report. It reiterates its wish to check the extent of detail of the information and data

¹³ http://www.csj.be/sites/default/files/press_publications/20181129_caer_rapport_chapitres_8_et_9_rapports_de_fonctionnement_def_fr.pdf

¹⁴ http://www.csj.be/sites/default/files/related-documents/journal-des-tribunaux_la_discipline_judiciaire_examen_de_jurisprudence_2014-2018.pdf

on disciplinary matters that will be conserved, and in particular whether the conduct penalised will be specified alongside the sanctions imposed.

97. GRECO concludes that recommendation xv remains partly implemented.

III. CONCLUSIONS

98. **In view of the above, GRECO concludes that Belgium has made some progress in implementing the recommendations found to be not implemented or partly implemented in the Fourth Round Interim Compliance Report. In total, two of the fifteen recommendations contained in the Fourth Round Evaluation Report have been implemented or dealt with in a satisfactory manner.** Of the remaining recommendations, twelve have now been partly implemented and one remains not implemented.

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

100. Regarding the prevention of corruption in respect of members of parliament, GRECO welcomes the launch of an application for the electronic submission of lists of mandates, the reinforcement of Court of Audit registry staff and the strengthening of interaction between that court and the prosecution authorities with a view to applying sanctions. The forthcoming organisation of training courses for the members of the future legislature on integrity issues is also a positive point. On the other hand, the regulations on donations from foreigners and other gifts and donations require further improvement, as does the transparency of contact between parliamentarians and third parties. Rules providing guidance for parliamentarians regarding such contact must be adopted, as well as sanctions for the main breaches of the ethical rules governing parliamentarians. Improvements to the system of declarations are also expected, together with the publication of declarations of parliamentarians' assets.

101. Where judges and prosecutors are concerned, the passing of the Law of 23 March 2019 amending the Judicial Code has enabled some progress to be made, notably in the recruitment and training of substitute judges, the expansion of the audit and investigation activities of the High Council of Justice and the circulation of rules of professional conduct that are uniform for all members of the judiciary, whether they are career judges and prosecutors or not. Other projects are under way with regard to the conservation of data on disciplinary matters in respect of judges and prosecutors and the optimisation of the activity reports of the judicial entities. Finally, it remains to be ensured that administrative tribunal judges at federal level are subject to ethical rules, supervision and adequate sanctions.

102. In view of the above, GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

103. In application of paragraph 8.2 of Article 31 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 vi, viii to x and xii to xv) by 30 June 2020 at the latest.

104. 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.