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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

BELGIUM

Adopted by GRECO at its 73rd plenary meeting
(Strasbourg, 17-21 October 2016)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the Belgian authorities to implement the recommendations issued in the Fourth Round Evaluation Report on Belgium which was adopted by GRECO at its 63rd plenary meeting (28 March 2014) and made public on 28 August 2014, following authorisation by Belgium ([Greco Eval IV Rep \(2013\) 8E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the Belgian authorities submitted a Situation Report containing information on measures taken to implement the recommendations. This report was received on 4 May 2016 and served, together with information provided subsequently, as a basis for the Compliance Report.
3. GRECO selected France (in respect of parliamentary assemblies) and Monaco (in respect of judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Agnès MAÎTREPIERRE, Chargée de mission, Directorate of Legal Affairs, Ministry of Foreign Affairs, on behalf of France and Mr Eric SENNA, judge at the Court of Appeal, on behalf of Monaco. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendations (partly or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

5. GRECO addressed 15 recommendations to Belgium in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendations i, ii and vii.

6. *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;*
 - *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;*
 - *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.*

7. The Belgian authorities state that given that recommendation i on gifts and donations falls explicitly within the remit of the “political parties” working group tasked with follow-up to the Third Evaluation Round, the Chamber of Representatives has decided to extend the responsibilities of that working group to include follow-up to all GRECO recommendations in connection with combating the corruption of members of parliament. The competent standing committees will be required to consider the Bills drafted following the working group’s work. The Senate and the parliaments of the federated entities will be taking part in the work of the working group.
8. GRECO notes the information supplied and concludes that recommendations i, ii and vii have not been implemented.

Recommendation iii.

9. *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 dependent family members (it being understood that this information would not necessarily be made public);*
10. With regard to the first part of the recommendation, the Belgian authorities refer to the Special Law of 26 June 2004 supplementing the Special Law of 2 May 1995 on the obligation to submit a list of mandates, offices and professions and a declaration of assets. In application of this legislation, many public office-holders, senior civil servants, heads of ministerial private offices etc. must, at regular intervals and at the same time as submitting the list of their mandates, declare their assets to the Court of Audit. This is not an annual obligation, but depends on factors which may have occurred in the course of the year in question, namely:
 - Those subject to the declaration who carried out one or more mandates or professions prior to 1 January 2015 and whose situation remained unchanged in 2015, are not required to submit any declaration of assets in 2016;
 - Those subject to this obligation, whose situation had changed in 2015 (start, completion or renewal of one or more mandates) are required to submit a single declaration of assets between 1 January and 31 March 2016, even if there were several changes to their situation in 2015;
 - This declaration of assets must describe the situation of the movable and immovable assets of those subject to this obligation, as at 31 December 2015;
 - This means that any declaration of assets sent in 2015 on account of a change in personal situation in the course of 2015 is invalid and a new declaration of assets must be submitted between 1 January and 31 March 2016.
11. The Belgian authorities also point out that the declaration or the submission of a new declaration of assets is never conditional upon matters affecting the composition and value of the assets, but simply on factors affecting the individual’s mandates. Lastly, the authorities state that the list of mandates submitted to the Court of Audit must be such as to enable the Court to examine the extent of power exercised by an individual and to identify any possible conflict of interests.
12. With regard to the second part of the recommendation, the Belgian authorities state that the matter will be looked at by the above-mentioned “political parties” working group.

13. GRECO notes that the information provided makes no reference to any measure taken in response to the first part of the recommendation. No account has yet been taken of the necessary areas of improvement identified in the Evaluation Report (paragraph 45), such as the more systematic inventory of assets, their value, their terms of ownership, whether they are held in Belgium or abroad, liabilities or updated information in the event of a significant variation in wealth. GRECO calls on the Belgian authorities to rectify this situation, given the difficulties in interpreting and applying the texts referred to in the report. Furthermore, no progress has been observed with regard to the second part of the recommendation.

14. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

15. *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.*

16. The Belgian authorities state that the lists of mandates, once verified, were published in the Official Gazette on 14 August 2015.¹ The declarations of assets, however, submitted in a sealed envelope, are – from the time they are received – held in a secure location specifically for this purpose, without being opened. In response to the recommendation, the declarations of mandates and assets are now also published on the Court of Audit’s website². The authorities add that civil society relays this publication³.

17. GRECO is pleased that the declarations of mandates are now to be published on the Court of Audit’s website. It notes that, at the date of adoption of this report, the Court of Audit’s website indicates that the page on “declarations of mandates and assets” is under construction and should be back online, in principle, in December 2016. As to the article referred to above, it also insists on the lack of transparency regarding elected officials’ assets and conflicts of interest. GRECO reiterates the transparency and social accountability objectives which have led parliaments in many other countries to opt for publication of parliamentarians’ declarations of assets, on their own initiative or in response to GRECO recommendations. This is a position consistently upheld by GRECO, which believes that the obligations of transparency placed on elected representatives by virtue of holding public office must exceed those of ordinary citizens.

18. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

19. *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,*

¹ Official Gazette of 14 August 2015, number 2015/18256.

² <https://www.ccrek.be/FR/MandatsPatrimoine.html>

³ See <http://www.cumuleo.be/>, « Le baromètre du cumul des mandats, fonctions et professions », as well as <http://www.lesoir.be/1303686/article/debats/cartes-blanches/2016-08-29/transparence-nourrit-democratie>

or by designating as the need may be another institution equipped with adequate means for these purposes.

20. The Belgian authorities state that the Court of Audit is independent of the bodies which are subject to its verification. It is independent vis-à-vis the parliamentary assemblies, setting out its priorities in the performance of its role and choosing its own areas of verification in accordance with objective selection criteria. The authorities point out moreover, that Article 29 of the Code of Criminal Investigation provides that "any appointed authority, public official or civil servant (...) who in the exercise of his or her functions, obtains knowledge of a crime or offence, shall bring this immediately to the attention of the Crown Prosecutor at the court in whose district the crime or offence is alleged to have been committed or where the accused is likely to be present, and shall forward to the court any information, reports and legal instruments relating thereto."
21. With regard to the Federal Ethics Committee, the Belgian authorities state that it was set up on 13 June 2016. It has already met on several occasions and is currently drafting a code of ethics for certain categories of public agents, managers and administrators.
22. GRECO notes the setting-up of the Federal Ethics Committee, but points out that nothing indicates that it may be empowered to act *ex officio* in individual cases, as required by the first part of the recommendation. No other measure has been taken to give effect to the two parts of the recommendation. GRECO refers to the many limits of the current arrangements, highlighted in the Evaluation Report (paragraphs 56 to 60) and reiterates that it is highly desirable to simplify and strengthen these arrangements. This could prompt a strong commitment by parliament to promote an integrity policy.
23. GRECO concludes that recommendation v has not been implemented.

Recommendation vi.

24. *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.*
25. The Belgian authorities state that declarations of mandates and/or assets containing inaccuracies may incur criminal penalties for forgery and the use of falsified documents in pursuance of Article 194 of the Criminal Code which provides that "any civil servant or public official who, in the exercise of his functions, falsifies a document [...] shall be given a prison sentence of ten to fifteen years." Failure to submit the required declarations shall incur a fine of €100 to €1 000 [to be multiplied by 6 for updated amounts]. Furthermore, the list of individuals who have failed to submit the declarations of mandates and assets required under the law will be published in the Official Gazette. Institutional informants who fail to fulfil their role or do so belatedly shall incur a fine of €100 to €1 000 [to be multiplied by 6 for updated amounts]. The Belgian authorities also state that proceedings for disregard of the rules on asset declarations have increased from one in 2010 to 43 in 2014.
26. GRECO takes notes of the information provided and of the fact that the penalties referred to are the same as those given in the Evaluation Report. No measure would therefore appear to have been taken to implement the recommendation.
27. GRECO concludes that recommendation vi has not been implemented.

Recommendation viii.

28. *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.*
29. *The Belgian authorities state that there is now a vade-mecum distributed by the Court of Audit to the institutional informants appointed in pursuance of the law, which can be downloaded from the Court of Audit website.*
30. *GRECO notes that once again, the information provided is not new and that the vade-mecum had already been mentioned in the Evaluation Report.*
31. *GRECO concludes that recommendation viii has not been implemented.*

Corruption prevention in respect of judges and prosecutors

32. *By way of introduction, the Belgian authorities point out that the judicial landscape has changed considerably as a result of the law of 21 March 2014 amending the law of 1 December 2013 reforming the judicial map and modifying the Judicial Code in order to enhance the mobility of members of the judiciary. This far-reaching reform was prompted in particular by a wish to make savings and to improve the efficiency of the judicial system.*
33. *Following on from the law of 18 February 2014 introducing self-management in the judicial system, a central court management body was set up by Royal Decree of 13 July 2014, establishing the Courts and Tribunals Board. A Public Prosecutors Board has also been established by analogy. It will provide support for the implementation of crime policy and will have the same attributions as the Courts and Tribunals Board.*
34. *As a result of the on-going reform of the judicial landscape, it is foreseen that the competencies, composition and functioning of the High Council of Justice will be reviewed and possibly reformed, in particular as regards its audit, supervision and monitoring functions.*

Recommendation ix.

35. *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.*
36. *The Belgian authorities refer to the applicable provisions of the laws on the Council of State, co-ordinated on 12 January 1973, and more particularly Articles 29 (challenges to or withdrawal of judges), 70 (appointment procedure and conditions of appointment of members of the Council of State), 74/7 (periodic appraisal of members of the Council, which must be carried out "without prejudice to [their] independence and impartiality") and Articles 107-115 (incompatibilities and disciplinary measures). Furthermore, with regard to the appraisal criteria and indicators of the conduct of members of the Council of State, the Royal Decree of 25 April 2014 setting out the arrangements and criteria for appraising office holders in the Council of State stipulates the following: "Professional ethics: [office holders must] comply with the generally accepted code of professional conduct; fulfil their duties with complete independence and impartiality; show due discretion".*

37. The authorities point out that the Council of State exercises no oversight over the lower administrative courts, and by extension over the courts of the federated entities. However, the Council of State, as the court setting aside administrative decisions, can review, subject to the limits of the appeals on points of law submitted to it, whether the decisions in question of the lower courts, and therefore also those of the federated entities, have complied with the rules of independence, impartiality and integrity which are applicable to all courts. In establishing its divisions, the First President of the Council of State ensures, when assigning cases and, more generally, with regard to the organisation as a whole, that the judges dealing with proceedings *in rem* comply at organisational level with the relevant legal provisions.
38. GRECO reiterates that the recommendation was issued in response to the observation made in the Evaluation Report (paragraph 80) that there was a multiplication of administrative judicial authorities and major disparities in the status, rights and obligations, supervisory procedures and disciplinary rules pertaining to members of these authorities. GRECO also noted a lack of rules to protect integrity, especially with regard to professional conduct, conflicts of interest, gifts and other advantages. The appraisal criterion relating to the professional ethics of members of the Council of State alone, which is very general, cannot be seen as a solution to this lack of rules. No measure has been taken to implement the recommendation and the aforementioned concerns remain.
39. GRECO concludes that recommendation ix has not been implemented.

Recommendation x.

40. *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.*
41. The Belgian authorities state that enhanced mobility rules for full judges and an obligation to give reasons for using substitute judges were introduced by the law of 1 December 2013, in force since 1 April 2014. These enhanced mobility rules were confirmed in late 2015 by the Constitutional Court. Furthermore, in application of the law of 19 October 2015⁴ judges and members of the court ("magistrats") who retire earlier than the age laid down in the Judicial Code may be authorised by their former head of court to continue to serve as substitutes in accordance with Article 156bis of the Judicial Code. The authorities believe that this should lead to a reduction in the number of appointments of substitute judges and members of the court, appointed from among lawyers and notaries. This law also extended the period during which a judge or member of the court who retires at the age laid down in the Judicial Code whose position is vacant may continue to fulfil his or her duties.
42. Furthermore, the authorities specify the appointment modalities of substitute judges: candidates must hold a PhD or bachelor's degree in law and have worked for at least five years as a lawyer, judge, notary, or have performed legal functions (such as those of auditor, auxiliary judge at the Court of Cassation, the Council of State or the Constitutional Court, legal expert for the prosecution service etc.). They are selected by the High Council of Justice but, contrary to professional judges, they need not have passed an exam. Moreover, the Court of Cassation specified in a decision issued on 10 February 2015 that substitute judges have to exercise their functions under the same impartiality and independence

⁴ Official Gazette of 22 October 2015, number 2015/09530.

requirements as professional judges and that they are subject to the same incompatibility and disciplinary rules. Finally, they are trained by the Judicial Training Institute.

43. GRECO welcomes the possibility of enabling judges and members of the court to continue serving past retirement, which would appear to be a way of reducing the number of lawyers and notaries appointed as substitutes. However, no information has been provided as to whether this anticipated reduction has already been reflected in practice. Moreover, it is the only new measure reported, since the measures introduced by the law of 1 December 2013 were already mentioned in the Evaluation Report and the appointment modalities of substitute judges have not been modified in reply to the recommendation either. This measure alone cannot be seen as an appropriate substitute for reforming the conditions regarding the employment of substitute judges and members of the court as called for in the recommendation, which should focus on appropriate conditions of appointment and employment and on effective supervision and sanctions.
44. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

45. *GRECO recommended that the requisite measures be taken to reinforce and increase the effectiveness of those performing managerial functions at the head of courts and public prosecution services.*
46. The Belgian authorities state that two management bodies were set up in late 2014: the Public Prosecutors Board and the Courts and Tribunals Board, both of which are currently putting in place their support services. These should provide management support to the collegial body and executive boards of each court and public prosecution service. In order to formalise these support services, a royal decree was adopted on 8 June 2016 and recently published in the Official Gazette. It regulates the organisation and functioning modalities of the common support service to the Public Prosecutors Board and the Courts and Tribunals Board. The Justice Minister, in consultation with these two bodies, will draw up the framework in which the judiciary can operate. This will take the form of management contracts. It will then be for the two management bodies to allocate resources between the judicial entities of (a) the prosecution service and (b) the courts and tribunals in accordance with each entity's management plan. These management plans will be drawn up by the executive boards and will contain a description of activities for the coming three years and the resources needed to accomplish them. This will put management of the court, tribunal or prosecution service on a professional footing. The legislation on the financing of the judicial system and its entities is due to be drafted in 2016.
47. With regard to reinforcement of the managerial functions of the heads of courts and public prosecution services, the authorities point out that following the reorganisation of the judicial landscape (law of 1 December 2013), the High Council of Justice has drawn up new standard profiles for managerial positions. These give a description of the functions and a profile of the related competencies,⁵ and were published in the Official Gazette of 10 July 2015 and 6 November 2015 respectively.
48. With regard to the administrative courts, the law of 15 September 2006 reforming the Council of State and establishing the Council for Alien Law Litigation introduced modern management practices, adapting the conditions of service of position holders to contemporary needs in terms of management. Several aspects of these

⁵ Official Gazette of 6 November 2015, numbers 2015/18301-18302-18303-18304-18305.

regulations were amended by the law of 20 January 2014 reforming the jurisdiction, proceedings and organisation of the Council of State:

- Introduction of a system of terms of reference for certain functions;
- Introduction of an appraisal system and competency assessment for position holders;
- Regulations in the event of illness or disability of position holders;
- Reporting obligation for heads of court and the administrative officer.

49. The applicable regulations set out very strict rules on appointment, the exercise of mandates, the procedure for appraising position holders and the content of the activity report to be submitted by the head of court. This report must include statistics on new cases and resolved cases, a presentation of the implementation of the head of court's management plan, information on management of the Council of State and its infrastructure, and a presentation of all the measures liable to have a budgetary impact. This report is forwarded to the Minister of the Interior, the Speakers of the legislative assemblies, the General Assembly of the Council of State and members of the Judicial Support Department ("Auditorat").
50. GRECO welcomes the information provided regarding the newly created management bodies, the standard profiles for managerial positions and the management measures adopted for the Council of State – the latter, however, predated the adoption of the Evaluation Report. The standard profiles for the managerial positions appear to take appropriate account of management functions. However, it would not seem that this emphasis placed on management functions has led to any corresponding reclassification. The question of the motivating nature of remuneration raised in the Evaluation Report would therefore appear to remain relevant. GRECO further notes that in the absence of periodic appraisal of the heads of courts, it is not easy to determine whether managers are fulfilling their managerial duties appropriately. Lastly, GRECO observes that the Public Prosecutors Board and the Courts and Tribunals Board are not yet operational.
51. GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii.

52. *GRECO recommended to carry out in due course an assessment of the arrangements for assigning cases between judges.*
53. The Belgian authorities state, with regard to the ordinary courts, that the law of 19 October 2015 provided that in the courts of first instance, a single judge would be the standard practice, except for certain criminal cases which are to be dealt with by a panel of three judges. Where required by the complexity or interest of the case or by specific and objective circumstances, the President of the court may make an exception to the particular regulations of the court and, on a case-by-case basis, assign cases to a panel of three judges. The same criteria apply with regard to the possibility for the first President of the Court of Appeal to assign, on a case-by-case basis, responsibility for cases to a panel of three appeal judges. These objective criteria were introduced into the law in response to an opinion of the Council of State with the aim of avoiding any difficulty in future in respect of the requirements of transparency, objectivity and foreseeability.
54. With regard to the administrative courts, it is the President of the Council of State who is responsible for the administrative litigation division and therefore for the functioning of the chambers of that division. The Council of State's annual activity

report⁶ comprises statistics and an analysis of the functioning of the administrative litigation division in question. It also provides an overview of the application of the admissibility procedure for appeals on points of law and of the implementation of the management plan. A similar analysis is made with regard to the administrative litigation division of the Judicial Support Department. It is clear from the foregoing that the competent heads of court do indeed carry out an assessment, in good time and at least once a year, of the arrangements for assigning cases between judges. No information is provided regarding the other administrative judicial authorities.

55. GRECO takes note of the information provided. Regarding the ordinary courts, no steps have been taken to assess, as recommended, the arrangements for assigning cases between judges. GRECO reiterates that this recommendation sought to gauge the extent of the role played by the new court and tribunal executive boards in the assigning of cases. Regarding the administrative courts, the annual activity report of the Council of State does indeed contain detailed statistics and information on the functioning of administrative litigation, but no information is provided regarding the other administrative judicial authorities.
56. GRECO concludes that recommendation xii has not been implemented.

Recommendation xiii.

57. *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.*
58. The Belgian authorities state that, in June 2012, the High Council of Justice and the Judicial Advisory Council jointly adopted a Handbook for judges and prosecutors – Principles, values and qualities, in accordance with the recommendation of the Consultative Council of European Judges (CCJE). They also point out that Article 404 of the Belgian Judicial Code provides that “Those who fail to comply with the duties of their office or who, through their conduct, violate the dignity associated with that office may be subject to the disciplinary sanctions set out in this chapter. The disciplinary sanctions [...] may also be imposed on those who neglect the duties of their office and thereby impair the proper functioning of the justice system and undermine confidence in it.”
59. With regard to the applicability of the Handbook to non-professional judges (and ensuring that it is made available to them), the introduction to the Handbook states that “notwithstanding the rules specific to their particular function, these guidelines are also intended for trainee judges, commercial court judges and lay judges in the labour courts.”
60. With regard to the administrative courts, the legal provisions relating to incompatibilities and disciplinary measures are set out in Articles 107 to 115 of the co-ordinated laws on the Council of State. These rules apply to both the Council and the Judicial Support Department. The authorities state that even though the Council of State does not have a similar handbook, members of the Council and the Judicial Support Department are appraised in accordance with specific assessment criteria and professional conduct indicators: they must have the requisite personality traits for the function, the service they provide must comply in quality terms with what can be expected of the Council of State/Judicial Support Department and professional ethics, and they must keep up to date with knowledge relevant to the issues dealt with.

⁶ http://www.raadvanstate.be/?page=about_annualreports&lang=fr&q=rappport+annuel

61. GRECO points out first of all that the recommendation specifically related to judges and prosecutors in the ordinary courts as the lack of any rules of professional conduct for the administrative courts was dealt with under recommendation ix. With regard to these judges and prosecutors, GRECO observes that all the information provided above was already to be found in the Evaluation Report. The latter called for further measures to be taken in connection with the 2012 Handbook for judges and prosecutors, namely that it be disseminated among non-professional judges in the labour and commercial courts and made available to substitute judges; 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; and enhanced status and scope of the Handbook, for example in the form of a personal undertaking by addressees to comply with it. None of these measures has been taken and the finding in the Evaluation Report that there is room for improvement in the guidance on professional ethics contained in the Handbook remains valid.

62. GRECO concludes that recommendation xiii has not been implemented.

Recommendation xiv.

63. *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.*

64. The Belgian authorities point out that the recommendation was made based on two findings in paragraph 124 of the Evaluation Report, namely:

- that the High Council of Justice (hereafter the HCJ) does not produce any general reports on the functioning of the justice system. Such reports should be produced periodically and in those reports, the HCJ should analyse, amongst other things, the workload of the courts and the prosecution service, the number of cases per judge or prosecutor and their operating methods;
- that statements had been made alleging dubious fee billing practices for services provided on behalf of the courts. Audits and investigations into this matter should therefore be carried out. Also, given the inherent risks in this area, those audits and investigations should be more frequent.

65. With regard to the first point, the authorities state that in the absence of reliable fundamental information from the justice system, the HCJ is unable to produce a general evaluation report. The CEPEJ (Report on "European Judicial Systems – Edition 2014 (2012 data): efficiency and quality of justice") and the European Commission (the 2015 EU Justice Scoreboard) are faced with the same problem. At present there is no usable workload measurement, at the level of either the courts or the prosecution service. There are few documents describing the processes. It is for this reason that the HCJ is obliged, in conducting its audits and investigations, to make do with the available data to enable it to form an opinion.

66. The authorities state that in the context of the introduction of self-management in the judicial system, supervision of the introduction of internal monitoring of the performance of duties is the responsibility of the Courts and Tribunals Board and the Public Prosecutors Board. Improved monitoring, ultimately, of data entry in the databases should result, to a large extent, in addressing the above difficulties.

67. As the information on functioning has to be collected and analysed by the Board, the audits and investigations often take a considerable length of time, with the result that in any given year it is possible to carry out only a limited number of these. A recent evaluation which may, nonetheless, be regarded as a general

evaluation was the audit carried out in 2013 of all courts of first instance. The specific aim of this across-the-board audit was to assess the implementation of the management plans of the heads of these courts. The HCJ found that there was no internal monitoring system which would help ensure achievement of the objectives set (such as, for example, delivering judgments in time, reducing the backlog, etc.).

68. Further to the law reforming the judicial landscape (law of 1 December reforming the judicial map (referred to above) and modifying the Judicial Code to enhance the mobility of members of the judiciary) and the law on self-management in the judicial system (law of 18 February 2014), the HCJ would like to propose the following changes to the judicial system, and subsequently, to the Ministry of Justice:

- The information forwarded each year by the courts and prosecution services to the principal stakeholders (Minister, parliament, HCJ) must give a clear idea of throughput and the resources implemented to that end, including the productivity of judges and prosecutors. Of course annual throughput must also be tied in with objectives and it must be clarified how these are to be achieved;
- The HCJ would like each Board to draft and publish an umbrella report on the functioning of the past year (and therefore not for each court and prosecution service to send an annual report to the stakeholders referred to above);
- In addition, the HCJ would like the two Boards, each year, to produce a report specifically on progress with their internal monitoring system. On the basis of this information on (i) progress with internal monitoring, and (ii) the services delivered, in addition to the information obtained for example from two across-the-board thematic audits, the HCJ would be in a position to make a general assessment of the functioning of the courts and prosecution services. The HCJ informed the Boards of its intentions by letter dated 2 June 2015.

69. It is worthwhile pointing out that consultations have been held with both the Courts and Tribunals Board and the Public Prosecutors Board. It was suggested to them that a new comprehensive report be drafted for all courts and for all prosecution services. The report should comprise the following:

- A. Figures (with comments):
 1. Inflow ⇒ increase or decrease
 2. Outflow ⇒ trend in cases dealt with (output)
 3. Output measured in terms of time and cost, and trend observed
 4. Output in terms of agreements concluded (management contract)
 5. Trend in pending cases
 6. Trend in the output/inflow ratio
 7. Processing times
 8. Staff (indicating assignment by subject matter) and absences
 9. Staffing trends (male/female, age)
 10. Productivity (output factors, for example expressed in terms of work or cost)
 11. Trend over the years by type of entity and totals.

To ensure data reliability, it will be necessary to monitor the logging of data.

- B. Other information:

Changes in terms of the organisation and management of the courts and prosecution services:

Schedule (with main objectives);

Improved quality (specialisation, training, culture, leadership, etc.);

Description of projects (amongst other things, reorganisations) designed to achieve the objectives set.

70. With regard to GRECO's second finding, the HCJ will consider whether the risks associated with fee setting have been/are sufficiently covered. In the courts and prosecution services, the risks inherent in work processes related to the setting and processing of fees for services delivered on behalf of the justice system, must be eliminated or significantly reduced. Pursuant to the law of 18 February 2014 on the introduction of self-management, the judicial system is required to focus all the necessary attention on internal monitoring.
71. Lastly, with regard to the frequency of audits and investigations,⁷ six audits and three investigations have been carried out since the adoption of the GRECO report, bringing the total to 17 audits and 9 investigations since the Council was set up.
72. With regard to the lack of general periodic report concerning the functioning of the judicial system, GRECO notes with interest the information provided and the measures proposed by the HCJ to rectify the situation. These measures must nonetheless be put into practice. Concerning the audits and investigations, GRECO is satisfied with recent developments and urges the Belgian authorities to pursue their efforts in this regard. It notes the HCJ's intention to consider whether the risks related to fee setting are or have been sufficiently covered and awaits additional information on this matter in the next report.
73. GRECO concludes that recommendation xiv has been partly implemented.

Recommendation xv.

74. *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.*
75. The Belgian authorities state that each year the judicial disciplinary bodies draft an activity report, respecting the anonymity of the persons concerned. The report is forwarded to the HCJ, the Chamber of Representatives and the Senate. The decisions of the disciplinary bodies are forwarded to the Justice Minister as soon as they are delivered.
76. With regard to the administrative courts, Article 115 of the laws on the Council of State provides that "any member of the Council of State who has violated the dignity of his or her functions or failed to fulfil the duties of his or her office may, as appropriate, be removed or suspended from his or her duties by decision in general assembly of the Court of Cassation on application of the public prosecutor at that Court.". Moreover, Article 615 of the Judicial Code states that "in addition to the jurisdiction assigned to it under Articles 409, 410 and 486 and by Article 103 of the Constitution, the Court of Cassation shall hear in general assembly proceedings for the dismissal or suspension of a member of the Council of State."

⁷ http://www.csj.be/search/apachesolr_search?filters=type%3Apublication

77. GRECO notes that the information provided does not indicate that any specific measures have been taken to give effect to the recommendation. The Evaluation Report (paragraph 131) highlights the difficulty of keeping and making available to the interested parties adequate and reliable data on the various disciplinary measures imposed, including minor ones. The annual activity reports of the judicial disciplinary bodies consulted by the rapporteurs only remedy these shortcomings in a very partial manner. The activity report of the francophone disciplinary body for the period 1 September 2014 - 31 August 2015 contains statistics on disciplinary proceedings and a summary of decisions mentioning the facts of the case and the sanction pronounced. These positive elements are, unfortunately, not to be found in the other reports examined, in which the few pieces of information regarding cases do not directly link the facts of the case and the sanction; this precludes the reader from extracting precedents in the case-law of the relevant bodies. The activity report of the francophone disciplinary body furthermore mentions that it has no registry, which raises difficulties regarding access of interested persons to its decisions, as well as the keeping and archiving of decisions. Another issue is that the disciplinary bodies' activity reports are communicated among others to the HCJ and to the Minister of Justice, but it is a pity that they are not published. Much clearly remains to be done to facilitate access to disciplinary decisions by judges and prosecutors and even more by the public.
78. With regard to the administrative courts, GRECO takes note of the information provided and of the fact that it refers solely to the Council of State. It points out that it was in the context of recommendation ix that the question of the disciplinary responsibility of members of those courts should be addressed and that it referred not only to members of the Council of State but also the many authorities responsible for deciding disputes between individuals and public bodies or between two public bodies.
79. GRECO concludes that recommendation xv has been partly implemented.

III. CONCLUSIONS

80. **In the light of the foregoing, GRECO concludes that Belgium has not satisfactorily implemented or dealt satisfactorily with any of the fifteen recommendations contained in the Fourth Round Evaluation Report.** Four recommendations have been partly implemented and eleven have not been implemented.
81. More specifically, recommendations iv, xi, xiv and xv have been partly implemented and recommendations i, ii, iii, v, vi, vii, viii, ix, x, xii and xiii have not been implemented.
82. Where members of parliament are concerned, the only initiatives taken were to foresee the publication on the Court of Audit's website of the declarations of mandates – however, the site is under construction at the date of adoption of this report and to extend the remit of the Chamber of Representatives "political parties" working group, already tasked with follow-up to the Third Round Evaluation Report, to include follow-up to certain of the recommendations in the Fourth Round Evaluation Report. These recommendations do not appear to have been examined yet by the working group. GRECO expresses its regret that no measure has been taken to implement the recommendations, particularly with regard to improving the arrangements regarding the declaration of assets, monitoring compliance with the rules of integrity by the parliamentary chambers and the training of members of parliament in matters of integrity.

83. As regards judges and prosecutors, GRECO welcomes the establishment of the Courts and Tribunals Board and the Public Prosecutors Board, the standard profiles for managerial positions and the measures proposed by the High Council of Justice to remedy the lack of periodic general reports on the functioning of the courts and the prosecution service. The activity report of the francophone disciplinary body contains some statistics and further information on disciplinary proceedings which is another positive element. Nonetheless, more substantive work is required on various aspects, including the rules and guarantees applicable to judges in the administrative courts, over and above the Council of State, the conditions under which use is made of substitute judges, evaluating the arrangements for assigning cases between judges, standardisation of the rules of professional conduct and more detailed information on disciplinary proceedings concerning judges and prosecutors, including by means of a specific publication on case-law in this area.
84. In the light of the foregoing, GRECO considers that the measures taken by the Belgian authorities to implement the recommendations set out in the Fourth Round Evaluation Report are very limited. It concludes that the currently very low level of compliance with the recommendations is "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3, of its Rules of Procedure. Accordingly, GRECO decides to apply Rule 32 in respect of members not in compliance with the recommendations contained in the mutual evaluation report and calls on the head of the Belgian delegation to submit as soon as possible a report on progress in implementing the outstanding recommendations (i.e. all the recommendations) at the latest by 31 October 2017.
85. GRECO invites the authorities of Belgium to authorise, at their earliest convenience, the publication of this report, to translate the report into the other national languages and to make it publicly available.