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First Evaluation Round

Evaluation Report on Belgium

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Secrétariat du GRECO
Conseil de l Europe
F-67075 Strasbourg Cedex

www.greco.coe.int
☎ +33 (0)3 88 41 20 00

GRECO Secretariat
Council of Europe
Fax +33 (0)3 88 41 39 55

I) INTRODUCTION

1. Belgium was the fourth country to be evaluated in the first evaluation round of GRECO (Group of States against Corruption). The evaluation was carried out in accordance with Resolution 99(5) establishing GRECO and GRECO's rules of procedure. In accordance with GRECO's Programme of Activities for the year 2000, the first evaluation round is concerned with Guiding Principles in the fight against corruption Nos 3, 6 and 7, which cover the functioning of the bodies and institutions in charge of the fight against corruption: Independence, autonomy and powers of persons or bodies in charge of preventing, prosecuting and adjudicating corruption offences (GP3); Specialisation, means and training of persons or bodies in charge of fighting corruption (GP7) and immunities from investigation, prosecution or adjudication of corruption offences (GP6).

2. The examiners were Nicoleta ILIESCU, Advisor of the Legislation and Research Directorate of the Ministry of Justice of Romania, Juan José LÓPEZ ORTEGA, Judge attached to the Criminal Division of the Audiencia Nacional, Madrid, and Jeff NEUENS, Divisional Commissioner in the Judicial Police Service Department, Luxembourg. The evaluation team, accompanied by a member of GRECO's Secretariat, spent three days in Brussels (10-12 October 2000). Before visiting Belgium, the examiners received detailed replies to the GRECO mutual evaluation questionnaire, together with the relevant legislation.

3. The evaluation team appreciated the Belgian authorities' hospitality and the quality of the cooperation they were able to develop with them, in particular the opportunity which they had to visit all the institutions involved in the fight against corruption. The evaluation team met with representatives of the following State bodies and institutions : Ministries of Justice, of internal Affairs and Foreign Affairs, the Judiciary and Prosecution Services (an investigative judge and a supporting prosecutor "magistrat d'assistance", the Central Anti-Corruption Office, the Chamber of Federal Mediators, the Parliamentary Commission dealing with prosecution requests, the University of Ghent, Transparency International, the newspaper "Financieel Economische Tijd". Subsequently, the examiners submitted written contributions on which this report is based to the Secretariat.

4. Belgium is located in Western Europe and shares frontiers with the following countries: France, Germany, Luxembourg and the Netherlands. Belgium is a parliamentary monarchy with a federal structure consisting of three regions (Brussels, Flanders and Wallonia) and three communities (Dutch, French and German speaking). Its population is 10 million.

II) THE PHENOMENON OF CORRUPTION AND ANTI-CORRUPTION POLICY IN BELGIUM

The phenomenon of corruption

5. Criminality in Belgium is stable and comparable to that of the other countries of the European Union, and especially of its neighbours. However, it is worth pointing out that, over the past two decades, the country has witnessed some criminal cases that have been particularly traumatic in terms of public opinion owing to the violence of the acts committed (shootings in public places) or the vulnerability of the victims (serious cases of paedophilia). Those cases drew attention to serious deficiencies in State institutions, in particular a lack of coordination amongst the police organs, and resulted in wide-ranging reforms of the police and judicial structures which have still not been completed.

6. As regards corruption more specifically, the only available figures are those of the police service responsible for the fight against corruption. That service's statistics show that in late 1998, 296 files

were in the course of investigation, of which 77 had been opened in 1998. It is noteworthy that only 10 of those cases specifically alleged corruption, whereas in the other cases alleged acts of corruption were combined with charges of other economic offences (forgeries and frauds against public services). It must also be noted that, at the end of 1998, major files referred by the European Union authorities came under investigation. Moreover, and without their being directly linked to corruption, a growing number of cases exhibit a markedly transnational character and are hard to solve owing to difficulties of international cooperation in judicial matters, even within the European Union itself.

7. Among the reasons for the existence of corruption in Belgium, the following factors may be identified as playing or having played an important role. First, before the Act of 12 February 1999, there were a number of gaps in the domestic provisions designed to fight corruption, especially as regards the facts and conduct capable of being the subject of a criminal charge. In addition, the existence of a corruption pact had to be proved, which rendered prosecution difficult. Moreover, owing to their size, especially in the field of real estate, major town-planning projects created conditions favourable to the growth of corruption. Lastly, the presence on Belgian territory of international institutions administering considerable sums, especially in the sphere of technical assistance to Member States of the European Union and non-member countries, increases the risks of corruption.

Belgium's anti-corruption policy

8. The Federal Security Plan of 30 May 2000 sets forth Belgium's anti-corruption policy. The part of the Plan entitled the fight against corruption and the creation of a federal Anti-Corruption Office (Annex A, point 8.4) points out in particular the destructive effects of corruption (threat to democracy, upsetting the market economy and loss of confidence in the State on the part of citizens), and arranges anti-corruption policy around two projects. On the one hand, it aims to adopt a global, multi-disciplinary approach to corruption based on prevention and law-enforcement, which forms part of the reform designed to modernise the civil service and reorganise the financial control system. On the other, the plan provides for the creation of a federal Anti-Corruption Office within the federal police force to replace the Central Anti-Corruption Office (O.C.R.C.). This office is to combine a proactive research function with a support function centred on cases of corruption.

9. It should also be noted that Belgium is in the course of implementing a number of far-reaching reforms affecting both the police and the judiciary. Under an Act of 7 December 1998, a far-reaching reform of the police environment has been carried out in stages with the long-term aim of organising an integrated police service with a federal and a local level. The whole of this machinery is intended to enter into force on 1 January 2002. During a transitional period, a Ministerial Directive of 16 March 1999 provides that, in principle, inquiries into corruption are to be conducted by the federal police, that is to say the O.C.R.C. A reform of the judiciary is also under way. This should result in the creation of a federal Prosecutor's Office answering to the Minister of Justice and the College of Principal Crown Prosecutors ("College des Procureurs Généraux"). A bill to this effect has been placed before Parliament.

10. The Belgian Government's determination to make more means available for combating corruption has led to the adoption of an Act of 10 February 1999 on the suppression of corruption, which amends and supplements the provisions of the Criminal Code and the Code of Criminal Investigation (Annexe B). One of the main aims has been to clarify the basic concepts and to modernise the terminology. This Act incorporated relevant international instruments into national

law and has enabled the receipt of bribes, trading influence[1], corruption of candidates for public office, corruption of foreign civil servants and of officials of international organisations and corruption in the private sector to be made criminal acts. Sanctions have also been reviewed, together with the geographical scope of the legislation, in particular where acts of corruption are committed abroad by a person performing public duties in Belgium. This reform has equipped Belgium with modern, very complete legislation, particularly as regards offences of corruption. The Act also provides that "secret commissions" may no longer be tax-deductible where they are paid in connection with obtaining or retaining public procurement contracts or administrative authorisations (Art. 7 amending Art. 58 of the Income Tax Code 1992).

11. Under Article 505(2) to (4) of the Criminal Code (Annexe C), the laundering of proceeds of corruption is a criminal offence under Belgian law and likewise all financial advantages arising out of any offence. In addition, measures have been taken to forestall the use of the financial system for the laundering of capital, including the identification of customers and the requirement to declare suspect transactions (Act of 11 January 1993).

12. Legislative provisions have also been adopted under which political staff and senior Belgian civil servants have to submit a list of their offices, duties and professions and declare their assets (Act of 2 May 1995). However, instruments laying down rules for the submission, deposit and checking of those declarations have not yet been adopted.

13. An Act of 4 May 1999 introduced criminal liability for legal persons.

14. The Belgian criminal system is based on a mixed system which combines the principles of discretionary and mandatory prosecution. The prosecutor is under a duty to examine the legality of proceedings, that is to say, to assess whether there is a prima facie case for a public prosecution and whether such proceedings would be admissible. He also has discretion to consider whether proceedings would be appropriate under Article 28 quater, para. 1, of the Code of Criminal Investigation (Annxe D). The judicial inquiry is carried out by police forces (district police, judicial police or gendarmerie until 31 December 2000 and after such date, local and federal police) under the direction and supervision of the "Magistrat" (prosecutor or investigating judge). The prosecutor institutes criminal proceedings and the investigating judge investigates the case for the prosecution and that for the defence.

15. In the context of judicial inquiries, the police may use in particular the following investigative instruments: pseudo purchase, infiltration, controlled delivery, observation and anonymous informants. It should be noted that those techniques are not covered by specific legislation but governed by a ministerial circular to Principal Crown Prosecutors ("Procureurs Généraux") dated 24 April 1990, which was updated in 1992.

16. Belgium has signed the civil and criminal conventions on corruption. The procedure for ratifying the criminal law convention is under way, whilst that for ratifying the civil law convention should be started shortly. The OECD Convention was ratified on 27 July 1999.

17. Belgium is party to various international instruments (multilateral and bilateral) aimed at facilitating and organising mutual assistance in criminal matters, including the European convention on mutual assistance in criminal matters. Even where no international convention is applicable, letters rogatory issued by a foreign judicial authority may be executed in Belgium pursuant to Article 873 of

[1] The definition of trading in influence only covers cases where the influence peddler is a public official or a person performing public services.

the Judicial Code, following authorisation by the Minister of Justice. Moreover, pursuant to article 11 of the Judicial Code, judges may send letters rogatory to foreign authorities, requesting that they carry out measures of investigation. Various treaties have also been concluded in order to facilitate and organise cooperation in police matters.

III) INSTITUTIONS INVOLVED IN COMBATING CORRUPTION

Role of the institutions involved in combating corruption

18. Belgium has conferred specific powers on a number of persons and institutions with regard to combating corruption.

(i) Law-enforcement authorities

The Central Anti-Corruption Office (O.C.R.C.)

19. A key role is played by this service of the national police force, which was created within the General Commissariat of the Judicial Police by a Royal Decree of 17 February 1998. It should be noted that the O.C.R.C. was not, strictly speaking, a new body, but rather a transformation of an existing structure, the Superior Control Committee (C.S.C.), whose origins go back to 1910. Consequently, the O.C.R.C. answers functionally to the General Commissariat of the Judicial Police and, as a result, has national competence. The judicial police is placed under the authority of the Minister of Justice and the judicial authorities (Art. 97 of the Act of 7 December 1998 organising an integrated police service).

20. A ministerial directive of 16 March 1999 specifies moreover that inquiries relating to corruption and complex and serious crimes and other offences detracting from the moral or physical interests of the public service are to be entrusted to the federal police unless the "magistrat" (prosecutor or investigating judge) decides otherwise. This means that all serious cases of corruption are dealt with, in principle, by the O.C.R.C., even though other police services also have legal competence in this sphere.

21. The O.C.R.C. is responsible for (a) looking into complex and serious crimes and other offences detracting from the moral or physical interests of the public service (including corruption in the private sector); (b) supporting the brigades of the judicial police in looking into such crimes and offences; (c) looking into and supporting such action in the case of offences committed in connection with public procurement contracts and public subsidies and the issue of authorisations, permits, approvals and acceptances; and (d) managing and exploiting specialised documentation. The O.C.R.C. undertakes these tasks only when asked to do so by the public prosecutor's office and does not act on its own initiative. The theoretical strength of the O.C.R.C. is 95 investigators; its current staff numbers some 80 investigators. The O.C.R.C.'s internal organisation is such that the investigators are spread over 4 sections, namely: public procurement contracts, subsidies, finances and what are termed "special" inquiries (delicate cases).

(ii) The "Magistrature" (prosecutors, investigating judges, judges hearing cases)

22. Within the prosecution service, some "magistrats" (prosecutors) have powers specifically relating to the fight against corruption.

23. Within the College of Principal Crown Prosecutors (CPG)[2], one of Belgium's five Principal Crown Prosecutors is more specifically responsible for implementing the criminal law policy laid down by the Minister of Justice and the CPG with regard to economic and financial crime and corruption. He is assisted in this task by a "magistrat d'assistance" (supporting prosecutor - a member of the prosecution service attached to one of the Courts of Appeal assisting him) who is empowered to make proposals with a view to securing consistency and effectiveness in the implementation of criminal law policy in this field by the prosecution service and the police services. In addition, the "magistrat d'assistance" chairs a unit that should notably gather prosecutors and judges specialised in the fight against economic and financial crime as well as other institutions such CTIF (the Belgium financial intelligence unit), the Bank Commission and the Ministry of Finance, with a view to harmonise their policies regarding this type of crime. This unit has been set up and should shortly be institutionalised.

24. A "magistrat" (prosecutor) has been nominated by the Minister of Justice at the proposal of the CPG to exercise authority over the O.C.R.C. and supervise it on behalf of the CPG. Apart from playing a general coordinating role in connection with judicial inquiries (in particular by securing coordination between police officers, prosecutors and investigating judges or with the "magistrat national" (national prosecutor) as regards national or international cases), this prosecutor takes care that criminal law policy is implemented and that cases to be dealt with by the O.C.R.C. actually do fall within its jurisdiction.

25. Some investigating judges and judges hearing cases specialise in economic and financial matters, which can be useful in connection with cases of corruption.

(iii) Other institutions

26. The College of Federal Mediators, set up by Act of 22 March 1995, has been in operation for three years. It is entitled to receive complaints from citizens concerning the acts and operation of federal administrations, also in regard to acts constituting corruption. Such complaints are rare: one or two only out of an average of 3500 complaints a year. In the event that the concurring facts suggest that there may have been a criminal offence, the College will forward cases for investigation to the competent prosecutor. The College is independent and presents an annual report to Parliament.

27. The Court of Auditors (section 5 ff. of the Act of 29 October 1846 on Organisation of the Court of Auditors) is mainly responsible for the examination and the settlement of accounts of state services and all bookkeepers for the Treasury. It collects all the information and documents it needs for this purpose. It also determines sums to be recovered from ministerial commitments officers, on expenditure committed in violation of the law or on damage suffered by the Treasury. In the framework of its role of supervision, the Court of Auditors may become aware of certain information that could be related to corruption cases. When it constitutes crime, the court has, as does any other authority, to report this information to the law enforcement authorities in accordance with article 29 of the Code of Criminal Procedure.

28. A number of administrations or departments of the State have audit or supervisory departments which may play a role in detecting cases of corruption. This is the case, for instance, with Committee P (Standing Committee for the Supervision of Police Services), which, although it does not concentrate especially on questions of corruption, takes this problem into account when carrying out its checks (corruption is one of the aspects checked during audits on the basis of a recapitulative list of evidence).

[2] The "Collège des Procureurs Généraux" consists of Belgium's five Principal Crown Prosecutors.

IV) IMMUNITIES IN RESPECT OF CRIMINAL PROCEEDINGS

Diplomatic immunities

29. The immunities granted to Belgian diplomats posted abroad are conferred in accordance with the Vienna Convention. There are no rules or specific, systematic practices on waiving a diplomat's immunity, which has to be assessed on a case-by-case basis, in particular in the light of the country to which the diplomat is posted. The commonest practice is to recall the diplomat. In the event that a Belgian diplomat were suspected of corruption, the case would be forwarded to the prosecution service for a decision as to the action to be taken having regard to the acts committed and, in particular, to the rules of Belgian law on territorial jurisdiction.

30. As regards staff enjoying diplomatic status on account of the duties they perform in international organisations based in Belgium, the acts of investigation must be preceded by the waiver by the organisation concerned of the official's diplomatic immunity and duty of professional confidentiality. It should be noted that this type of immunity generally covers only acts performed in the course of the official's duties. Waiver of immunity has been obtained in the past without particular difficulties.

Other immunities

31. The King, whose person is inviolable, enjoys total immunity from suit and execution under the terms of Article 63 of the Constitution. Such immunity is conferred by analogy on foreign sovereigns.

32. Members of the federal assemblies (Senate and Chamber of Representatives), members of the Councils of the Communities and Regions and Members of the European Parliament of Belgian nationality not only are not liable for opinions expressed in the exercise of their functions but also have parliamentary immunity. This immunity prevents acts of pursuit and arrest to be carried out during the duration of the session without the authorisation of the Chamber, except in the case of *flagrante delicto*. Unlike the acts of investigation which a judge cannot perform unless he has the authorisation of the Chamber, fact-finding measures may be taken without such authorisation. In addition, where the immunity does not apply or has been waived, the procedure goes ahead as it would in the case of any other individual. The complementary rules applicable are described in Annex E.

33. Members of the federal government and of the community and regional governments have no legal liability for opinions expressed in the exercise of their duties, and are judged in accordance with a special procedure which foresees an authorisation from the relevant parliamentary assembly for arrest and detention on remand (unless the person concerned has been "caught in the act") as well as being able to refer the procedure to the indictments chamber. This authorisation can be refused if the assembly believes that the prosecution and the facts are manifestly based, in essence, on political grounds or, if the evidence provided is unlawful, arbitrary or irrelevant. On the other hand, the investigation does not require prior authorisation. The applicable complementary rules are outlined in Annexe F.

34. It is to be noted that judges do not enjoy any special immunity.

V) EVALUATION OF THE ANTI-CORRUPTION INSTITUTIONS AND THE RULES ON IMMUNIITES

General comments

35. The present criminal law framework in relation to the fight against corruption appeared to be very satisfactory. It makes corruption a criminal offence where the corruption takes the form of a large variety of reprehensible conduct, in both the public and private sectors, and covers both natural and legal persons. The sanctions provided for seem appropriate and dissuasive. The laundering of the proceeds of corruption is a criminal offence, as are infringements of accounting rules.

36. There is a police service specialised in the fight against corruption. In addition, an organisation intended to introduce specialisation in this field among the "magistrature" (prosecutors, investigating judges, judges hearing cases) has been set in place. These developments are undeniably positive.

37. Data linked to corruption cases (police data – investigation and forms of corruption, judicial data – prosecution procedures and decisions) do not seem to be collected in a systematic manner and no centralisation is currently ensured. However, the Belgian authorities gave the assurance that this collection of data and their centralisation was foreseen in the draft law reforming the police and would be implemented at the beginning of year 2001.

38. In contrast, successes are less apparent with regard to the detection of cases of corruption, owing in particular to the lack of staff in the "magistrature" and in police forces and the fact that a proactive approach has not been seen as a priority. This point is developed in the paragraphs appraising the operation of the institutions responsible for the fight against corruption.

39. Furthermore, it seems that so far preventive aspects have not been a priority, in particular as regards making the public aware of the phenomenon of corruption, including corruption in the various branches of the State services. Moreover, although legislative provisions (special Acts of 2 May 1995) require members of the federal government and members of the regional governments and of the several parliamentary assemblies to submit a list of their offices and functions and to make a declaration of their assets at the start and end of their term of office, rules on the presentation, deposit and supervision of those declarations have not yet been determined. It would be desirable to remedy this situation as quickly as possible since, as things stand, the 1995 provisions have no effect. There is no code of conduct for civil servants. However, the law provides rules of professional ethics which are included in disciplinary regulations.

40. As regards the funding of political parties, it appears that checks are carried out at present by a parliamentary committee, which examines the declarations made by the parties. Moreover, an external audit procedure exits and is carried out by an external auditor ("*réviseur d'entreprise*") in accordance with article 23 of the law on the financing of political parties of 1989. The detection of problems of corruption in this area can be facilitated by such external audits, provided that there is good coordination between the bodies carrying out the audits and the specialised service of the judicial police and/or the competent prosecution services.

41. The examiners remarked that it would be useful if the procedures for the submission, deposit and supervision of the declarations of the assets of elected persons and of responsible members of government be put in place as soon as possible. They also remarked that it would be useful for a code of conduct to be drawn up for public servants, including rules designed to prevent corruption.

42. The examiners recommend that the Belgian authorities ensure that effective cooperation between external auditors and the specialised service of the judicial police and/or the competent prosecutors' offices exist.

Institutions fighting against corruption

A) Law-enforcement authorities

43. It has to be observed that, in relation to its size, Belgium has a considerable law-enforcement arsenal for fighting corruption, as regards the means used and its organisation. Consequently, the examiners' overall impression is positive.

(i) Independence and autonomy

44. Where the police services conduct inquiries, they work under the supervision of a "magistrat" (prosecutor, investigating judge), which constitutes a safeguard against the ability of the executive to act wrongly in order to limit or change the nature of the inquiries. There does not seem to be any particular problem in this area.

(ii) Staffing

45. Although the actual strength of the O.C.R.C. is quite considerable, the investigators met consider that it is insufficient to carry out all the tasks demanded. Analysis of the service's statistics shows that this is due, above all, to the complexity of the cases handled. However, the persons met were unable to give a view about the real needs in terms of staffing.

46. The main consequences stemming from this problem are as follows:

- Proactive work is neglected, that is to say none or only very little active research is done into corruption phenomena, which is particularly detrimental given that complaints relating to corruption are relatively rare and, as a result, a number of offences are liable not to be detected. Moreover, the O.C.R.C. lost its powers of administrative supervision, which were essentially preventive and proactive. This task is now carried out by the service responsible for public tenders within the Ministry of public office.

- It was mentioned that, despite the central role played by the O.C.R.C., some "magistrats" (prosecutors, investigating judges) prefer to entrust "their" inquiries to the police services with which they are used to work. The fact that the O.C.R.C. is overloaded provides the judicial authorities with justification for proceeding in this manner and, in consequence, the determination to centralise corruption cases may be thwarted.

Moreover, it is to be noted that the Belgium authorities believe that a better organisation and management of the O.C.R.C. would allow the carrying out of the assigned tasks with the present staffing and that the centralised approach should only concern serious and complex cases, notably if the O.C.R.C is informed of all corruption cases when an investigation is started as this would allow for a strategic analysis to be carried out.

(iii) Means

47. The specific legal weapons available to Belgium in the context of the fight against corruption are not criticised. Yet efforts should be made with regard to a number of instruments for carrying out the judicial procedures.

48. The most frequently raised problems were as follows:

- It is at present impossible to intercept communications in corruption cases. It should be mentioned, however, that a bill is under way with a view to remedying this state of affairs.
- Value based seizure is not provided for under Belgian law.
- There are no witness-protection programmes.
- There is a lack of provisions encouraging criminals to cooperate with the legal system (advantages granted to repenters who confess in exchange for close cooperation with the judicial authorities).

49. In addition, it should be noted that certain means of inquiry (pseudo purchase, infiltration, controlled delivery, observation, the use of informants, etc) are not covered by specific legislation. They are, however, subject to the following general principles: fairness of investigation, prohibition of provocation and the principles of proportionality and subsidiarity. Moreover, the fact that the prosecutor has discretion in assessing the expediency of proceedings makes for a degree of flexibility, in particular in the case of infiltrations and controlled deliveries.

50. Access to information could be improved. This is true of a number of data-bases available at the level of the Belgian State to which access in limited as far as the police services are concerned for legal reasons and also of commercial data-bases, where access is a budgetary matter (e.g. Dun & Bradstreet, Internet access). Another aspect has to do with the difficulties encountered in having access to information relating to public procurement contracts between the administrations concerned outside a judicial inquiry. Furthermore, there are gaps in the specialised documentation: some newspapers and journals are not available.

51. As regards the equipment available to the O.C.R.C., an improvement has been observed since the service has been attached to the judicial police (i.e. since 1998). However, additional efforts could still be made in this area.

(iv) Training

52. The present situation is satisfactory in so far as before the O.C.R.C. was attached to the judicial police it was possible to have recruit investigators specifically in the light of actual needs. However, this advantage no longer exists at present. Since the O.C.R.C. has been attached to the judicial police, recruitment of its staff is aligned on the general recruitment policy of the judicial police and this does not afford the same flexibility. Unless this question is dealt with the course of the ongoing reform of the police services, the present good standard of training is likely to be degraded. At present, the only weak point as regards training mentioned by the persons met is the lack of financial analysts within the O.C.R.C.

53. The examiners recommend the Belgian authorities to:

1. Ensure that steps are taken with regard to the recruitment of O.C.R.C. personnel so as to permit (once again) persons having training or a specialisation useful to the service to be recruited, whilst making sure that staff mobility within the judicial police is not detrimental to the sound operation of the service.

2. Bring the O.C.R.C. up to its statutory strength and carry out, as part of the current restructuring of the police and taking into account the efficiency that can be gained through a better organisation and management of staff, an appraisal of the medium-term needs of the service in terms of

personnel, in order in particular to enable it fully to discharge its task of detecting acts of corruption. Moreover, also concerning the detection of acts of corruption, it would be desirable to ensure that the O.C.R.C. and the service in charge of supervising public tenders as well as other police forces starting investigation of corruption matters exchange information effectively.

3. Make the necessary investment so as to enable access to be had to essential private sources of information and consider the rapid implementation of legal provisions related to the police enabling access to internal databases.

4. Make the necessary legislative changes so as to permit the use of procedural means which are lacking at present (telephone-tapping in corruption cases and machinery for value based seizure).

5. Carry out an in-depth study into whether it is necessary to have specific legislation to govern inquiry techniques, such as pseudo purchase, infiltration, controlled delivery, observation and the use of informants and collaborators.

6. Adopt measures to enable witness protection to be developed.

B) The public prosecutor's office

(i) Independence and autonomy

54. The public prosecutor's independence and autonomy are secured by the principle that Crown Prosecutors are free to assess whether proceedings are expedient under Article 28 quarter, para. 1, of the Code of Criminal Investigation. Crown Prosecutors may not receive instructions with a view to stopping proceedings which have been started.

55. Moreover, the discretion to assess the expediency of proceeding is subject to certain limits which mitigate it and prevent it from being used arbitrarily. In the first place, the Principal Crown Prosecutors and the Ministry of Justice may give Crown Prosecutors positive instructions to initiate proceedings. Secondly, the criminal policy directives drawn up by the Principal Crown Prosecutors and the Minister of Justice are binding on all members of the public prosecution service. Thirdly, the injured party himself may cause the prosecution to go ahead by joining himself as a civil party. Lastly, a decision to discontinue proceedings without any action taken must be reasoned and communicated to the injured party; it remains a provisional decision until such time as the criminal proceedings have been extinguished.

56. These mechanisms seem to guarantee the independence of the public prosecution service and to provide sufficient safeguards against arbitrariness.

(ii) Staffing, training and specialisation

57. The examiners were informed that the public prosecution service is understaffed by one-quarter and that some cases are not dealt with owing to lack of personnel. The examiners trust that the contemplated creation of a federal public prosecutor's office will provide an opportunity to increase staffing and that, in any event, the posts left vacant by "magistrats" (prosecutors) moving to this new public prosecutor's office will be filled. The staffing levels of the public prosecution service are set out in Annex G.

58. The recruitment of "magistrats" (by competition) and the training given both during the compulsory training period and on the job (continuing training) seem satisfactory.

59. It is highly commendable that one of Belgium's Principal Crown Prosecutors, assisted by a "magistrat d'assistance" (supporting prosecutor), is more specifically responsible for aspects of criminal policy as regards economic crime, financial crime and corruption. Likewise the appointment of an officer of the public prosecutor's office to the O.C.R.C. is also regarded as very positive. Indeed, this enables the public prosecutor's office to have a specific understanding of corruption cases through this officer.

C) Investigating judges and judges hearing cases

(i) Independence and autonomy

60. The investigating judges, in common with the judges hearing the cases, have complete independence, in particular *vis-à-vis* the executive and the public prosecution service. This independence is guaranteed in particular by the fact that they are irremovable. The Higher Council of the Judiciary considers complaints about "magistrats" (the investigation is carried out by a "magistrat" at the level of the Court of Appeal).

(ii) Staffing, training and specialisation

61. It seems that, in common with the prosecutors, there are insufficient investigating judges to deal with the cases allocated to them in a satisfactory manner. The idea of setting up a school for the "magistrature" was raised on several occasions. The examiners support this idea, which would make for more uniformity and, among other things, could enable future "magistrats" (prosecutors, investigating judges, judges hearing cases) to receive specific training about cases of economic crime, including corruption cases.

62. Their training is given in the same way as that of prosecutors and seems satisfactory.

63. In the major judicial districts (e.g. Brussels or Antwerp), there is a degree of specialisation: corruption cases are handled by investigating judges and benches specialising in cases of economic and financial crime. However, this specialisation seems to be rather empirical and the examiners consider that it would be desirable if investigating judges and benches handling corruption cases could be given specific training, which would result in a higher degree of specialisation.

64. The examiners were informed that, when investigating particularly complex cases, recourse to some experts raises a problem, particularly as regards financial analyses. The sums granted for such expert opinions are too small (BEF 750 per hour) to enable the services of the best experts to be obtained.

65. Because of their complexity, corruption cases need time and hence the availability of staff. The examiners therefore recommend studying possibilities of increasing the number of "magistrats" (prosecutors) in the prosecution service and the number of investigating judges. The examiners are aware, however, that the problem of understaffing is not peculiar to corruption cases, but they insist on the need to provide the judiciary with the human resources required to deal with the complex economic and financial cases in which acts of corruption are often to be found.

66. The examiners also recommend raising the level of specialisation in corruption cases of some investigating judges and judges hearing cases. They further recommend that training on the handling of cases of economic crime, including corruption cases, be increased.

D) Other institutions

67. The creation of the College of Federal Mediators is likely to improve the detection of cases of corruption, and the examiners welcome this development. However, at present, that body does not seem to have been publicised sufficiently among the public at large so as to enable it to perform this task adequately.

68. Furthermore, it emerged from meetings between the examiners and the O.C.R.C. that when the Court of Auditors brings reprehensible matters to light, the conclusions that could be drawn and may be interesting for the fight against corruption are not invariably drawn and the judicial authorities are not informed in a systematic way. It is to be noted that Article 29 of the Code of Criminal Investigation, which provides that public servants are under a duty to disclose to the Crown Prosecutor any crimes or offences of which they become apprised in the exercise of their duties, apply to the Court of Auditors.

69. Reference was also made to difficulties in cooperation with the tax authorities owing to the provisions of the Taxpayers' Charter, which prevents close collaboration between the tax authorities and the judicial police. Apparently, in order to obtain and utilise the information held by the tax authorities, the tax investigators and inspectors have to testify as witnesses. There are similar difficulties in obtaining information from the telecommunication companies.

70. The examiners recommend that the desirability of a campaign to make the public aware of the existence of the College of Mediators be examined.

71. Since the question of interdepartmental cooperation is a key factor for succeeding in having an effective anti-corruption policy, the examiners recommend that the interagency unit should be institutionalised and used to put forward solutions for improving the exchange of information on corruption. Measures (if necessary of a legislative nature) should also be taken to facilitate cooperation between (a) the law-enforcement and judicial authorities and (b) the tax authorities and the telecommunication companies (a national register containing information about the different means of communication available to a given natural or legal person which could be consulted at the request of the investigating judge). In addition, it would be desirable to study the need for reinforced cooperation between the Court of Auditors and the O.C.R.C. as well as the prosecutors in charge of the fight against corruption in order to ensure that they receive, in a systematic way, information which might be useful in detecting cases of corruption, even if they do not constitute criminal offences.

Immunities from prosecution

72. The system of immunities in Belgium and the mechanisms for obtaining waiver of immunity, whether diplomatic, parliamentary or appertaining to members of executive bodies, do not seem to impede disproportionately the conduct of inquiries, prosecutions and the sentencing of the persons concerned.

VI) CONCLUSIONS

73. Belgium has made substantial efforts to equip itself with the means to combat corruption. The federal security plan provides for an anti-corruption policy which constitutes a sound framework for action. The relevant criminal legislation has recently been amended and a body of the judicial police specialised in combating corruption has been set up. In addition, "magistrats" (prosecutors) have been appointed to assist with the sound operation of the judicial police and to implement anti-corruption measures effectively. However, special attention should now be paid to preventive aspects and to the detection of corruption cases, in particular by giving the specialised police service the means to carry out the proactive research contemplated by the security plan. Cooperation should be improved as quickly as possible between a number of institutions, in particular the police and judicial authorities, on the one hand, and the tax authorities and the Court of Auditors, on the other. The examiners trust that the recommendations and suggestions set out in this report will help the Belgian authorities to perfect their anti-corruption system, which the examiners consider to be generally commendable.

74. In view of the above, the GRECO addresses the following recommendations to Belgium:

i. to ensure, in the context of the financing of political parties, that effective cooperation between external auditors and the specialised service of the judicial police and/or the competent prosecutors' offices exist;

ii. to ensure that steps are taken with regard to the recruitment of O.C.R.C. personnel so as to permit persons having training or a specialisation useful to the service to be recruited, whilst making sure that staff mobility within the judicial police is not detrimental to the sound operation of the service;

iii. bringing the O.C.R.C. up to its statutory strength and carrying out, as part of the current restructuring of the police and taking into account the efficiency that can be gained through a better organisation and management of staff, an appraisal of the medium-term needs of the service in terms of personnel, in order in particular to enable it fully to discharge its task of detecting acts of corruption. Moreover, also concerning the detection of acts of corruption, it would be desirable to ensure that the O.C.R.C. and the service in charge of supervising public tenders as well as other police forces when starting investigation of corruption matters exchange information effectively;

iv. making the necessary investment so as to enable access to be had to essential private sources of information and considering the rapid implementation of legal provisions related to the police enabling access to internal databases;

v. making the necessary legislative changes so as to permit the use of procedural means which are lacking at present (telephone-tapping in corruption cases and machinery for value based seizure);

vi. carrying out an in-depth study into whether it is necessary to have specific legislation to govern inquiry techniques, such as pseudo purchase, infiltration, controlled delivery, observation and the use of informants and collaborators;

vii. adopting measures to enable witness protection to be developed;

viii. studying possibilities of increasing the number of "magistrats" (prosecutors) in the prosecution service and the number of investigating judges;

ix. raising the level of specialisation in corruption cases of some investigating judges and judges hearing cases;

x. increasing training given to investigating judges and judges hearing cases on the handling of cases of economic crime, including corruption cases,

xi. that the desirability of a campaign to make the public aware of the existence of the College of Mediators be examined;

xii. that the interagency unit should be institutionalised and used to put forward solutions for improving the exchange of information on corruption;

xiii. that measures (if necessary of a legislative nature) should be taken to facilitate cooperation between (a) the law-enforcement and judicial authorities and (b) the tax authorities. Moreover, that access to information held by telecommunication companies be facilitated through a centralised access system;

xiv. studying the need for reinforced cooperation between the Court of Auditors and the O.C.R.C. as well as the prosecutors in charge of the fight against corruption in order to ensure that they receive, in a systematic way, information which might be useful in detecting cases of corruption, even if they do not constitute criminal offences;

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* *

75. Moreover, the GRECO invites the authorities of Belgium to take into account the observations made by the experts in the analytical part of this report.

76. In conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Belgium to present a report on the implementation of the above-mentioned recommendations before 31 December 2001.

Annexe A

Federal Security Plan of 30 May 2000 (point 8.4)

"8.4 THE FIGHT AGAINST CORRUPTION AND THE ESTABLISHMENT OF A FEDERAL ANTI-CORRUPTION OFFICE

1. **Analysis**

Corruption, in its various forms, undermines the citizen's confidence in the apparatus of the State and seriously jeopardises the economic fabric of society.

2. **Objective**

Corruption is not only a particularly harmful form of white-collar crime or 'surface' crime which adversely affects the democratic basis of the State and upsets the mechanisms of our market economy, but also a means frequently used by criminal organisations to infiltrate the legal world and gain access to real power. The action plan against corruption must give back the citizen a 'feeling of subjective security' by guaranteeing administrative integrity at all levels of the State apparatus. It is equally essential to prevent the harmful effects of corrupt conduct which leads to the disintegration of the economy and of the State governed by law.

Cases of corruption can rarely be regarded as isolated cases, and therefore an effective means of fighting that form of crime lies in an integrated anti-corruption policy. Each link in the chain of security is essential. In a democratic system, however, it is necessary to maintain a healthy balance between the requirements of an effective fight against corruption and respect for rights and freedoms.

<u>Project 80</u>: An integrated and multi-disciplinary approach to corruption based on prevention and repression

This approach must be placed, in particular, against the background of the Copernic Report *Modernisation of the Public Administration* and more especially at the level of the reorganisation of the stage of financial control. The audit process must allow attention to be given to the prevention of corruption. Similarly, the function of a bridge towards justice must be examined from that aspect. The project will be carried out by the Ministry for the Public Service and the Modernisation of the Administration, the Minister for the Budget and the Minister of Justice.

In order to prevent corruption, the Federal Government will adopt the following measures; it will:

take care to ensure a favourable political climate where the willingness to pay attention to the control of the and the approach to corruption are formulated clearly and consistently;

develop an effective and transparent public service which will make the administration responsible and subject it to external controls. That implies, in particular, the transparency of the decision-making process within the authority and a clearer definition of the precise responsibilities of the officials responsible for taking decisions. The proposals for the modernisation of the federal administration made by the Minister for the Public Service and the Modernisation of the Administration bear witness to that philosophy;

eliminate the excessive number of laws and regulations so that the citizen and the authorities responsible for control will have a clear and transparent set of rules at their disposal;

develop a firm and reliable control apparatus that enables abuse to be detected and dealt with in the appropriate manner;

gather and centralise information on corruption, in particular by means of centralisation and an improved allocation of criminal files and making it compulsory to report any incidents of corruption to the Central Anti-Corruption Office so that the phenomenon can be analysed;

set up a scientific study into the control of integrity and the approach to corruption in support of the policy.

The following preventive strategies will be introduced in the various departments, which will be required to:

pay attention to integrity and corruption when selecting and training agents, by employing specific selection criteria or inquiring into the backgrounds of agents where the posts in question are sensitive;

optimise the organisational structure by means of an inventory of services sensitive to corruption, carry out preventive audits (or have them carried out), establish, where necessary, a system of rotation, strengthen social control by 'pride and peer control' and 'teamwork' and create a mediation service aimed at the citizen;

optimise the organisational culture by adopting a new and more open approach to the problems of integrity and corruption, external and internal information and conferring responsibility. This is essential so that everyone feels responsible for all the matters that fall within his clearly defined sphere of competence and, to that end, can be held responsible by the organisation. Senior officials must pursue a clear policy as regards the conduct expected and thus show an example;

draw up codes of conduct. These codes must clearly define the standards which honest conduct must observe and explain the relevant legal requirements. Furthermore, it is essential that these codes are also communicated and demonstrated to those to whom they are to apply.

As regards the repression of corruption, in the context of the reform of the police, a working group is currently drawing up proposals concerning the organisation and duties of the Federal Anti-Corruption Office. Those proposals will subsequently be evaluated by the Federal Government.

Project 81: Federal Anti-Corruption Office

The purely repressive approach to corruption will take shape, as it must, within the framework of the criminal policy of the judicial authorities, according to the criminal policy choices exercised by the Minister of Justice. In this sphere, an important instrumental role is reserved for a revitalised and modernised Central Office for the Repression of Corruption which will be incorporated in the Federal Police. This office will therefore have to abandon the purely reactive approach currently being taken to the phenomenon of corruption and, in accordance with Articles 95 and 102 of the Law of 7 December 1998 organising an integrated police service at two levels, assimilate an integrated approach, a programmatic function and a proactive research function.

In that regard, a strategic analysis of the use of special police techniques for offences of corruption is definitely necessary, since it is likely to lead to an exponential increase in the prospects of detecting such offences and to an improved 'clear-up rate'. Indeed, the specific characteristics of the offence mean that an extremely delicate balance must be maintained between the requirements of the effective repression of corruption and respect for civil rights and inalienable freedoms.

Furthermore, this Office is required to perform its role of providing operational support to the decentralised judicial units and to establish the best possible operational documentation. In that regard, it should also maintain a capacity for tactical inquiries for particularly sensitive investigations at more than just local level.

It is clear, therefore, that this purely repressive and policing unit which will be integrated into the Federal Police must fall back on its 'core business', namely the fight against corruption, which will call for a reassessment of the powers and qualifications of its personnel. Among the numerous cases currently being dealt with, there is too much concentration on subsidy-related fraud and on offences associated with public contracts, which only rarely lead to prosecution and which are classified for criminal purposes as 'offering and soliciting or accepting bribes'. In order to rally the forces on the phenomenon of corruption, it is necessary to relinquish the tasks inherent in the other programmes and entrust them to the Central Office for Combatting Organised Economic and Financial Crime. That will have a secondary positive effect, since a duplication of powers will largely be avoided."

Annexe B

Law of 10 February 1999 on the Supression of Corruption
(French only available)

(Paper originals only)

Annexe C

Article 505 paragraphs 2 to 4 of the Criminal Code
(French only available)

505. [Seront punis d'un emprisonnement de quinze jours à cinq ans et d'une amende de vingt-six francs à cent mille francs ou d'une de ces peines seulement :

1° ceux qui auront recelé, en tout ou en partie, les choses enlevées, détournées ou obtenues à l'aide d'un crime ou d'un délit ;

2° ceux qui auront acheté, reçu en échange ou à titre gratuit, possédé, gardé ou géré des choses visées à l'article 42, 3°, alors qu'ils en connaissaient ou devaient en connaître l'origine ;

3° ceux qui auront converti ou transféré des choses visées à l'article 42, 3°, dans le but de dissimuler ou de déguiser leur origine illicite ou d'aider toute personne qui est impliquée dans la réalisation de l'infraction d'où proviennent ces choses, à échapper aux conséquences juridiques de ses actes ;

4° ceux qui auront dissimulé ou déguisé la nature, l'origine, l'emplacement, la disposition, le mouvement ou la propriété des choses visées à l'article 42, 3°, alors qu'ils en connaissaient ou devaient en connaître l'origine.

Les infractions visées au 3° et 4° du présent article existent même si leur auteur est, le cas échéant, également auteur, coauteur ou complice de l'infraction d'où proviennent les choses visées à l'article 42, 3°.

Les choses visées aux 1°, 2°, 3° et 4° du présent article constituent l'objet des infractions couvertes par ces dispositions, au sens de l'article 42, 1°, et seront confisquées, même si la propriété n'en appartient pas au condamné, sans que cette confiscation puisse cependant porter préjudice aux droits des tiers sur les biens susceptibles de faire l'objet de la confiscation.

La tentative des délits visés aux 2°, 3° et 4° du présent article sera punie d'un emprisonnement de huit jours à trois ans et d'une amende de vingt-six francs à cinquante mille francs ou d'une de ces peines seulement.

Les personnes punies en vertu des présentes dispositions pourront, de plus, être condamnées à l'interdiction, conformément à l'article 33.]

Annexe D

Article 28 quater, of the Code of Criminal Investigation
(French only available)

Compte tenu des directives de politique criminelle définies en vertu de l'article 143ter du Code judiciaire, le procureur du Roi juge de l'opportunité des poursuites. Il indique le motif des décisions de classement sans suite qu'il prend en la matière.

Il exerce l'action publique suivant les modalités prévues par la loi.

Le devoir et le droit d'information du procureur du Roi subsistent après l'intentement de l'action publique. Ce devoir et ce droit d'information cessent toutefois pour les faits dont le juge d'instruction est saisi, dans la mesure où l'information porterait sciemment atteinte à ses prérogatives, sans préjudice de la réquisition prévue à l'article 28septies, alinéa premier, et dans la mesure où le juge d'instruction saisi de l'affaire ne décide pas de poursuivre lui-même l'ensemble de l'enquête.

Annexe E

Parliamentary Immunity

Members of Parliament enjoy not only immunity in respect of opinions expressed in the performance of their duties but also parliamentary immunity. This applies to members of the Federal Assemblies (Senate and Chamber of Representatives) and also to members of the Community and Regional Councils. It also applies to Members of the European Parliament of Belgian nationality.

This parliamentary immunity is said to be relative. Under the Constitution (Articles 58, 59 and 120), Members of Parliament enjoy guarantees in relation to prosecution and arrest in the interest of preserving the free exercise of their mandate and guaranteeing the independence of the legislative assemblies vis-à-vis the other Powers and also the proper functioning of the representative institutions.

- principle

Article 59 of the Constitution provides that no Member may be prosecuted during the parliamentary session without the authorisation of the Chamber in which he sits.

This guarantee does not apply where the person concerned is "caught in the act". The concept of being caught in the act covers any offence (felony, misdemeanour or minor offence) which is actually being committed or has just been committed.

- duration of immunity

Parliamentary immunity applies immediately the Member of Parliament is elected, even before he has taken the oath, provided that the session has commenced.

Outside the parliamentary session, a Member of one of the parliamentary assemblies may be prosecuted without condition or restriction, just like any other citizen.

- procedure for requesting that immunity be lifted

– Authorisation to lift immunity is sought from the President of the assembly concerned by the State Attorney attached to the Court of Appeal in whose jurisdiction the proceedings will be instituted. The application must state the reasons on which it is based and be accompanied by supporting documents.

– The application must have the following characteristics:

1. it must be serious

The facts in issue must be of such a kind as to found a criminal conviction. In addition, the materiality of the facts alleged in the application must be established to a sufficient degree to justify the measure sought.

2. it must be sincere and not be dictated by political considerations

3. The Assembly must also consider whether the facts which are alleged to justify the request for authorisation to lift immunity are of a *sufficient degree of gravity to justify disrupting* the normal course of its work.

– The Assembly may give partial approval limited to certain facts.

– Where the Assembly has given its approval, the matter will proceed as it would in the case of any other citizen.

Annexe F

Immunity of Members of Government

Members of the Federal, Community and Regional Governments are not legally responsible for opinions expressed in the performance of their duties (Articles 101 and 124 of the Constitution). This immunity may be lifted.

A special arrangement for prosecution applies to them:

- persons and offences concerned

Under Articles 103 and 125 of the Constitution, Federal Ministers, Members of the Regional and Community Governments and State Secretaries are tried exclusively by the Court of Appeal for offences which they have committed in the course of their duties. The same applies to offences committed by Ministers which are unconnected with their duties where they are tried while in office. Similar protection is introduced by Articles 124 and 125 of the Constitution for Members of the Governments of the Communities and the Regions.

Two Laws of 25 June 1998 govern the criminal liability of Ministers and Members of the Governments of the Communities and the Regions, and lay down the procedure to be followed.

- procedure

Only the State Attorney attached to the Court of Appeal with jurisdiction in the matter may initiate a prosecution against a Member of the Government (Articles 103(4) and 125(4) of the Constitution).

The inquiry is carried out under the direction and authority of the State Attorney. Where there is a judicial investigation, the role of the investigating judge is assumed by a judge of the Court of Appeal.

Unless the person concerned has been "caught in the act", a Minister or a Member of the Government can only be arrested and placed in detention with the approval of the Chamber or the Council to which the Member is responsible.

Where the judge of the Court of Appeal acting as investigating judge considers that his investigation is complete, he communicates the procedure and his report to the State Attorney. Before he can request that the procedure be referred to the indictments chamber, the State Attorney is required to seek the prior approval of the competent Parliamentary Assembly.

The Assembly concerned sits in camera to consider the request for approval, in accordance with the provisions of its rules of procedure.

The State Attorney sends a statement of the evidence and the offences which may have been committed and, where appropriate, the charge drawn up by the Court of Appeal judge acting as investigating judge.

Without determining the merits of the case, the Assembly, after hearing the various parties if it so wishes, ascertains whether the request is serious. It may refuse to grant its approval where it transpires that:

– the prosecution and the facts are manifestly based, in essence, on political grounds;

– the evidence provided is unlawful, arbitrary or irrelevant.

Annexe G

Number of “magistrats” by type of court