

19 March 2019 **GrecoRC1-2(2019)1**

Joint First and Second Evaluation Rounds

Public declaration of non-compliance in respect of Belarus

Rule 32.2(iv)

Adopted by GRECO
at its 82nd Plenary Meeting
(Strasbourg, 18-22 March 2019)

GRECO Secretariat
Council of Europe
www.coe.int/greco

F-67075 Strasbourg Cedex
☎ +33 3 88 41 20 00
Fax +33 3 88 41 39 55

Directorate General I
Human Rights and Rule of Law
Information Society and Action against
Crime Directorate

Background

A chain of events outlined below has led to the **Declaration** adopted today by the Group of States against Corruption (GRECO) **declaring Belarus non-compliant with the anti-corruption standards;** the first ever Declaration of the kind made by GRECO in respect of one of its members.

The Joint First and Second Round Evaluation Report on Belarus was adopted by GRECO at its 56th Plenary Meeting (June 2012). GRECO addressed 24 recommendations to Belarus and invited the authorities to authorise the publication of the Report. Given the absence of such an authorisation, on 3 February 2014 GRECO published a Summary of the Evaluation Report (Greco Eval I/II (2013) 1E), pursuant to Rule 35 paragraph 2[1] of the Rules of Procedure.

In the follow-up procedure, the Joint First and Second Round Compliance Report – assessing the measures taken (based on a Situation Report submitted by Belarus) to comply with the recommendations - was adopted by GRECO at its 64th Plenary Meeting (June 2014). GRECO concluded that only four of the twenty-four recommendations had been implemented satisfactorily (i.e. in respect of training and specialisation of law enforcement personnel, recommendations vi and vii; confiscation, recommendation xiv; accounting standards, recommendation xxiii). At the same time, the remaining recommendations had received no or only partly tangible follow-up. As a result, the very low level of compliance with the recommendations was considered "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations. It also invited the authorities to authorise the publication of the Compliance Report. In the absence of such an authorisation, GRECO made public a summary of the Compliance Report on 27 May 2015 (Greco RC-I/II (2015) 1E).

Within the following "non-compliance procedure", a first *Interim* Compliance Report (based on a Situation Report submitted by Belarus) was adopted by GRECO at its 68th Plenary Meeting (June 2015). GRECO concluded again that the level of compliance was very low and remained "globally unsatisfactory". It also invited the authorities to authorise the publication of the Report. In the absence of such an authorisation, GRECO made a summary of the *Interim* Compliance Report public on 1 September 2016 (GrecoRC1-2(2016)2).

On 25 June 2015, the President of GRECO sent a letter to the Head of Delegation of Belarus to GRECO (with a copy to the President of the Statutory Committee) drawing attention to the non-compliance with the relevant recommendations, and the need to take determined action with a view to achieving progress as soon as possible.

GRECO adopted the Second *Interim* Compliance Report (based on a Situation Report submitted by Belarus) at its 72nd Plenary Meeting (1 July 2016) in which it concluded that the level of compliance with the recommendations remained "globally unsatisfactory". The authorities were invited to authorise the publication of the Report, but in the absence of such an authorisation, GRECO published a summary of the Second *Interim* Compliance Report on 30 November 2017 (GrecoRC1-2(2017)2).

On 13 July 2016, the Secretary General of the Council of Europe sent a letter to the Minister for Foreign Affairs of Belarus drawing attention to the very low level of compliance and asked the authorities to take necessary steps to comply with GRECO's recommendations.

[1] Previously Rule 34, paragraph 2

At its 77th Plenary meeting (18 October 2017), GRECO adopted the Third *Interim* Compliance Report (based on a Situation Report submitted by Belarus), and concluded again that the level of compliance with the recommendations remained "globally unsatisfactory". GRECO reserved its right to request Belarus to receive a high-level mission (Rule 32, paragraph 2(iii)) before the end 2018, with a view to reinforcing the importance of complying with its recommendations. GRECO invited the authorities of Belarus to authorise the publication of the Third Interim Report. No such authorisation has been received to date.

On 24 October 2017, the President of the Statutory Committee of GRECO sent a letter to the Permanent Representative of Belarus to the Council of Europe drawing attention to Belarus' non-compliance with GRECO's recommendations.

At its 78th Plenary Meeting (8 December 2017), GRECO therefore requested pursuant to Rule 32, paragraph 2(iii) that a high-level mission to Belarus were to be organised, if the lack of progress remained.

On 31 July 2018, Belarus submitted a new Situation Report, which showed no substantial progress in the implementation of the pending recommendations. At its 81st Plenary Meeting (7 December 2018), GRECO agreed that if no positive response was received by 10 December 2018 to its request to Belarus to organise a high level mission in January 2019, the last stage of the non-compliance procedure (i.e. Rule 32, paragraph 2 (iv)) would be applied instead. No reply by that date was received from Belarus.

Summary of GRECO findings on Belarus (2012-2019)

As reflected in the Summary of the Evaluation Report of 2012, GRECO *inter alia* pointed out that it is difficult to establish the real scale of corruption in Belarus and the exact form it takes, but it noted that corruption is considered to be systemic in this country. Some information suggests that corruption is particularly alarming higher up in the hierarchy and state-run enterprises. The authorities have stated that the fight against corruption is a priority for them. A number of specific anti-corruption legislation, presidential decrees and state programmes have been adopted, but they are not systematically evaluated. Far-reaching presidential powers are criticised for not complying with principles of pluralist democracy, the rule of law and the protection of human rights, which are fundamental for GRECO as a Council of Europe body. Of central importance are the extensive powers accrued by the President not only in respect of the executive branch at central and local levels, but also in respect of legislative competences as well as over the judiciary, combined with a strong law enforcement perspective and immunity and procedural privileges. Anti-corruption programmes need to be geared towards preventive measures to allow for transparency in public administration and a truly independent media. Against this background, GRECO addressed twenty-four recommendations to Belarus in June 2012 (see Appendix).

GRECO notes that Belarus - more than 6 years after the adoption of the Evaluation Report - has only implemented satisfactorily four of the twenty-four recommendations (recommendations vi, vii, xiv and xxiii). Recommendations i, ii, x, xix, xx, xxi and xxiv remain partly implemented, and recommendations iii, iv, v, viii, ix, xi, xii, xiii, xv, xvi, xvii, xviii and xxii remain not implemented. The very low level of compliance with GRECO's recommendations has been considered "globally unsatisfactory" throughout the compliance (and "non-compliance") procedure and no progress has been achieved since the adoption of the first Compliance Report in 2015, despite the means applied under Rule 32 paragraph 2. (i) – (iii) of GRECO's Rules of Procedure, as referred to above.

GRECO expresses strong concern in respect of the continuous non-compliance with GRECO's recommendations by the authorities of Belarus. As a member of GRECO, Belarus is not only bound by the Statute of GRECO and by its Rules of Procedure to undergo peer review evaluation and compliance procedures, but is, above all, required to contribute to the aim of GRECO, i.e. to improve the capacity of its members to fight corruption (Article 1, GRECO Statute) and to implement its recommendations. Continuous non-compliance with the rules and practice of GRECO casts a shadow over the commitment of the Belarusian authorities to preventing and combating corruption, and to co-operating with GRECO overall.

The large majority of the recommendations GRECO issued to Belarus in the Evaluation report relate to fundamental anti-corruption requirements, such as strengthening the independence of the judiciary, and of the prosecution office, as well as increasing the operational autonomy of the law enforcement; limiting immunity protection; strengthening the regime for access to public information; establishing research and a strategy against corruption and ensuring involvement of civil society in the fight against corruption.

Apart from being major elements ensuring an effective fight against corruption, these recommendations also represent the core principles of GRECO, the Council of Europe at large, and prerequisites for establishing a healthy investment and business climate in any democratic country.

Conclusions

In view of the situation outlined, and pursuant to Rule 32, paragraph 2 (iv) of its Rules of Procedure, GRECO notes that the compliance procedure did not lead to a sufficient level of compliance, declares that Belarus is not compliant with the anti-corruption standards monitored by GRECO during the Joint First and Second Evaluation Rounds and terminates this procedure. GRECO invites all its member states to disseminate this Declaration within their administration and financial institutions, and to take it into account in their contacts with Belarus.

GRECO also notes with critical concern that Belarus has not authorised the publication of any of the reports adopted by GRECO within the Joint First and Second Rounds Evaluation reports in respect of Belarus, which is contrary to the well-established practice followed by other GRECO members and detrimental to any efforts to expose and fight corruption within the country. It therefore - again - urges the authorities to authorise publication of all these reports.

Belarus is also invited to report further progress in respect of recommendations not complied with, should the situation substantially change.

APPENDIX

to the Declaration of non-compliance - Belarus

GRECO addressed the following recommendations to Belarus:

i. **to ensure that comprehensive studies, including research independent of the state, are carried out in order to gain a more profound insight into the phenomenon, extent and risks of corruption in the various sectors and at the different levels of public administration, in the private sector and among ordinary citizens in order to provide a solid basis from which to target the problems in an appropriate and tailored manner** (paragraph 51);

ii. **that the coordination structure for the fight against corruption be provided with a broader and permanent representation of the non-governmental sector (including through independent non-governmental organisations, academics, media etc)** (paragraph 56);

iii. **establishing an evidence-based comprehensive strategy and plan of action for the fight against corruption which, in addition to law enforcement measures, has a strong emphasis on corruption prevention, in particular the need to improve the transparency of public administration, freedom of expression and the development of an independent media. The strategy and plan need to cover all parts of the public sector and must be accompanied by realistic time frames for implementation and impact assessment; they should also take into account the results of the previous anti-corruption programmes** (paragraph 60);

iv. **to ensure independent, comprehensive and objective monitoring, separate from law enforcement agencies, of the implementation and of the impact of anti-corruption programmes. Civil society should be in a position to provide input and to make its views known on the outcome of such monitoring** (paragraph 61);

v. **that the operational independence of the various law enforcement agencies and their investigative staff be strengthened and combined with the accountability that comes with appropriate checks and balances under the principle of the rule of law** (paragraph 122);

vi. **that law enforcement staff specialised in corruption prevention and detection are provided with uniform training at regular intervals with regard to the typology of corruption and the prevention and detection of corruption offences** (paragraph 123);

vii. **ensuring that i) an appropriate level of specialisation to handle corruption investigations be maintained and/or developed, as necessary, within the newly created Investigation Committee and ii) that its staff benefits from continuous in-service training concerning the particular features of corruption offences and their investigation, including their international dimension** (paragraph 124);

viii. **to strengthen the independence of the Office of the Prosecutor General and of all other prosecutors from undue and improper influence (from**

any level), and by so doing, ensure that this body is governed by the appropriate checks and balances embodied in the principle of the rule of law (paragraph 127);

ix. **to strengthen the judicial independence of the Constitutional Court, especially as regards the appointment and dismissal of judges, fully in line with the principles of the separation of powers and the rule of law** (paragraph 131);

x. **to establish an independent collegial mechanism (such as a High Judicial Council) entrusted with the selection of candidates for the position of judge and thus, to limit, to the extent possible, the involvement of the President in the appointment of judges to courts as well as in the formation of organs of the judiciary, such as the presidiums of the Supreme Court and of the Supreme Economic Court** (paragraph 132);

xi. **to take measures to strengthen the independence of the judiciary notably by i) providing for legislative guarantees for the non-removability of judges and ii) revising the procedure for termination in office (whether at the end of any single initial and/or other temporary employment period), dismissal from office and initiating disciplinary actions against judges** (paragraph 133);

xii. **i) to limit presidential immunity to the term of office of the President and ii) to establish specific, objective and transparent criteria to be applied by Parliament when deciding on requests for the lifting of immunities and to ensure that decisions concerning immunity are free from political considerations and based only on the merits of the request submitted** (paragraph 142);

xiii. **i) to abolish the presidential powers to give consent to or veto the initiation of criminal cases, including cases of corruption, in respect of public officials whose posts appear in the Personnel Register of the President; and ii) to substantially reduce the number of officials subject to specific procedures limiting their investigation/prosecution for corruption offences to the minimum required in a democratic society** (paragraph 144);

xiv. **to consider the introduction of *in rem* confiscation, accompanied by pertinent safeguards under the principle of the rule of law** (paragraph 170);

xv. **to adopt measures aimed at the deconcentration of powers and influence within the executive branch of public administration and reinforcing the public accountability of the various administrative bodies in Belarus** (paragraph 219);

xvi. **i) to establish a structure, distinct from the law enforcement authorities, with an appropriate level of independence and with broad independent civil society representation, to co-ordinate the implementation of various anti-corruption programmes within the public administration and ii) to set up a mechanism for an on-going assessment of the implementation of sectoral anti-corruption programmes and plans of action within the public administration** (paragraph 220);

xvii. **to establish a mechanism entrusted both with the independent monitoring and promotion of the proper implementation of the legislation on access to public information** (paragraph 221);

xviii. **to establish an Ombudsman institution, truly independent from the executive branch, with a mandate to deal with complaints from the wider public concerning maladministration within State authorities** (paragraph 222);

xix. **to clarify and harmonise the rules on what constitutes acceptable gifts to public officials** (paragraph 224);

xx. **i) to introduce an obligation and clear rules/guidelines for employees and officials of public administration to report instances of corruption or suspicions thereof, which they come across in their duty; ii) to establish adequate protection of employees and officials of public administration who report situations of suspected corruption in good faith ("whistleblowers") and iii) to promote awareness of these measures widely amongst public officials** (paragraph 225);

xxi. **i) to establish a model code of conduct/ethics, including positive guidance for employees and officials of public administration on their daily practices vis-à-vis the wider public and ii) to ensure related in-service training on the implementation of such soft law instruments, in particular in relation to the prevention of corruption** (paragraph 226);

xxii. **i) to strengthen the controlling functions of the registering authorities with regard to pertinent information on legal persons in the registration process in order to eliminate the possibilities of establishing fake or "one day" companies and ii) to enhance the role and the accessibility of the unified registry of legal persons in the identification of the real founders and purposes of the registered or liquidated legal persons** (paragraph 264);

xxiii. **to adopt modern accounting legislation in compliance with international accounting standards and to provide for the uniform implementation of such standards in respect of legal persons** (paragraph 265);

xxiv. **to adopt appropriate legislation to establish liability of legal persons for corruption offences and to provide effective, proportionate and dissuasive sanctions in these cases - including monetary sanctions - in compliance with the requirements of the Criminal Law Convention on Corruption (ETS 173)** (paragraph 266).