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Addendum

Second Evaluation Round

Addendum to the Compliance Report on the Czech Republic

Adopted by GRECO
at its 47th Plenary Meeting
(Strasbourg, 7-11 June 2010)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on the Czech Republic at its 28th Plenary Meeting (12 May 2006). This report (Greco RC-II (2005) 7E) addressed 12 recommendations to the Czech Republic and was made public on 14 June 2006.
2. The Czech Republic submitted the Situation Report required under the GRECO compliance procedure on 30 November 2007. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on the Czech Republic at its 38th Plenary Meeting (13 June 2008); the report was made public on 27 August 2008. In the Compliance Report (Greco RC-II (2008) 3E) it was concluded that recommendations ii, iii, iv, v and viii had been implemented satisfactorily and recommendation i had been dealt with in a satisfactory manner. Recommendations vi, ix, x and xi had been partly implemented and recommendations vii and xii had not been implemented; GRECO requested additional information on their implementation. This information was provided on 31 December 2009 and updated on 3 May 2010.
3. The purpose of this Addendum to the Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations vi, vii, ix, x, xi and xii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation vi.

4. *GRECO recommended to establish uniform regulations addressing actual and potential conflicts of interest, which should include standards on (i) receiving gifts, (ii) declarations of interests, (iii) engaging in ancillary activities, (iv) situations where civil servants and local/regional officials move to the private sector; these regulations should also provide for appropriate mechanisms which would allow for the enforcement of the aforementioned standards.*
5. GRECO recalls that in the Compliance Report this recommendation was considered only partly implemented for a number of reasons. GRECO welcomed the entry into force of Act No. 159/2006 on Conflicts of Interest which appeared by and large to be adequate in respect of certain rules to prevent conflicts of interest (gifts, declarations of interest and ancillary activities), however, these were limited to high-ranking officials only. Moreover, GRECO noted that the provision on “revolving doors/pantouflage” was narrow. GRECO also took note of the adoption of the Labour Code (Act No. 262/2006) which was applicable to all civil servants and local/regional officials, however, this law included only general provisions on gifts and had no proper regulation concerning declarations of interests or “revolving doors/pantouflage”. Moreover, while recognising that Act No. 159/2006 contained sanctions to enforce its regulations, no mechanism which would allow for the enforcement of the conflict of interest standards was contained in the Labour Code (Act No. 262/2006). GRECO also recalls from the Compliance Report that conflicts of interest in respect of civil servants had been regulated in the Public Service Act (218/2002), but the entry into force of the law had been postponed to January 2009.
6. The Czech authorities now report that the entry into force of the Public Service Act 218/2002 has been further postponed, until 2012. Moreover, they report that as regards the Law on Conflict of Interests (159/2006) only minor amendments concerning some of the categories of managerial

staff, have been implemented. The authorities also report that it had been foreseen to include uniform regulations on conflicts of interest for all public administration employees in a new law on officials in public administration; to this end, the relevant draft Bill (Resolution no. 326 of 23 March 2009) had been prepared. However, as it was considered that there was not enough time to complete the legislative process before parliamentary elections in May 2010, the initiative was repealed by the Government on 25 January 2010 (Declaration No. 80).

7. GRECO takes note of the information provided and can only conclude that no substantial progress has been reported that would allow GRECO to change the conclusion reached in the Compliance Report.
8. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

9. *GRECO recommended to enact and implement laws that require the competitive hiring of civil servants and local/regional officials, at all levels of public administration (recommendation vii).*
10. GRECO recalls that it was concluded in the Compliance Report that recommendation vii had not been implemented as no legislation to require competitive hiring at all levels of public administration had been enacted.
11. The Czech authorities now report that as a result of the fact that the Government has postponed the preparation of new legislation providing uniform regulations of conflicts of interest for all employees in public administration – as referred to under recommendation vi, above – the situation in respect of recommendation vii has not changed since the adoption of the Compliance Report.
12. GRECO concludes that recommendation vii remains not implemented.

Recommendation ix.

13. *GRECO recommended to introduce clear rules requiring civil servants and local/regional officials to report suspicions of corruption and to ensure that civil servants and local/regional officials who report suspicions of corruption in public administration in good faith are adequately protected from retaliation (recommendation ix).*
14. GRECO recalls that recommendation ix was considered partly implemented in the Compliance Report; the authorities had drafted amendments to the Criminal Code aimed at establishing failure to report corruption as an offence, and to obliging tax officers to report corruption offences; furthermore, the drafting of a law on officials in public administration, introducing reporting obligations and whistleblower protection was well underway at the time.
15. The Czech authorities now report that a new Criminal Code has been adopted (no. 40/2009, which gained legal force as of 1 January 2010), including a general obligation to report crime, and that as a result the omission to report active or passive bribery has been criminalised and sanctioned with imprisonment of up to three years (section 368 of the Criminal Code). This obligation to report crime applies to all citizens, according to section 8 of the Code of Criminal Procedure (law no. 141/1961), but it is not applicable to close relatives to the offender, advocates and confessors. Moreover, the Government has postponed the drafting of new legislation

concerning officials in public administration (which was supposed to include, *inter alia*, reporting requirements and protection of whistleblowers) as referred to under recommendation vi, above.

16. GRECO takes note of the information provided. Reporting of crime, including corruption, now appears to be a general obligation under criminal law in the Czech Republic and this has also bearing on public officials. However, following the decision of the Government to postpone the work on drafting new legislation concerning officials in public administration, no specific rules on reporting suspicions of corruption have been established for the public administration, nor for the protection of those who report such suspicions in good faith (“whistleblowers”).
17. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

18. *GRECO recommended to establish rules requiring periodic and continuing anti-corruption, ethics and integrity training for all civil servants and local/regional officials.*
19. GRECO recalls that it concluded in the Compliance Report that this recommendation was partly implemented as, despite the fact that there were anti-corruption ethics and integrity training in place, there were no obligations upon civil servants/officials to attend such courses, not even as regards those performing functions subject to particular risks of corruption.
20. The Czech authorities now report that due to the postponement of the drafting of new legislation concerning officials in public administration (see recommendations vi, vii and ix, above), no measures have been put in place to enhance the training in accordance with the recommendation.
21. GRECO wishes to emphasize that it has constantly held that anti-corruption training is a necessary complement to regulations to prevent corruption and that such training needs to be provided on an ongoing basis in order to ensure effective implementation of regulations in practical terms. The need to offer regular training is therefore emphasized. GRECO regrets that nothing substantial has been reported in relation to this recommendation, which would not necessarily entail any legislative measures.
22. GRECO concludes that recommendation x remains partly implemented.

Recommendation xi.

23. *GRECO recommended to analyse the impact of the current reform of the registration process for commercial legal persons, with particular emphasis on the reliability of the information that is entered in the Commercial Register, and to ensure that the Registry Courts and other relevant authorities are notified, whenever a leading person in a corporation has been banned by a court from engaging in business activities.*
24. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report. GRECO accepted at the time that the first part of the recommendation (to analyse the impact of the reform of the registration process) had been implemented. However, GRECO was not satisfied that the second part of the recommendation had been sufficiently dealt with despite the clarification of the existence of the “Rule for District, Regional and High Court (Instruction of

the Ministry of Justice No. 505/2001-Org. of 3 December 2001)” as there appeared to be a lack of sufficient awareness of this Rule.

25. The Czech authorities maintain their previous position that the Registry Courts are regularly informed about final judgments involving a disqualification sanction, in accordance with section 77, paragraph 1 (e) of the Internal and Office Rule for District, Regional and High Court (Instruction of the Ministry of Justice No. 505/2001-Org. of 3 December 2001). Moreover, the Ministry of Justice has inquired about the extent to which this obligation is complied with in practice and has been informed by the Prague Registry Court that there are no problems in practice; information on disqualification sanctions is received on a regular basis and the Registry is also regularly notified of all final judgments of convicted private entrepreneurs. Finally, since 1 January 2009, new types of disqualification sanctions have been included in statistical data (prohibition of activities in private business – 150 from 1 January 2009 till 3 December and prohibition to exercise function or employment in public administration authority – 31 from 1 January to 3 December 2009).
26. GRECO takes note of the updated information provided, and is satisfied that the Czech authorities have now made clear that the Internal and Office Rule for District, Regional and High Court (Instruction of the Ministry of Justice No. 505/2001-Org) is implemented in practice.
27. GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

Recommendation xii.

28. *GRECO recommended to establish liability of legal persons in accordance with the Criminal Law Convention on Corruption and to provide for effective, proportionate and dissuasive sanctions.*
29. GRECO recalls recommendation xii was not implemented as no form of liability of legal persons had been established in the Czech Republic, despite some attempts to that end.
30. The Czech authorities now report that the issue of introducing corporate liability in the Czech Republic was reiterated by the Government in a meeting in November 2009, in relation to requirements contained in various international treaties. As a result, the Government adopted a resolution (No. 1451) authorising the Minister of Justice to prepare a draft bill on corporate liability for situations where international treaties and other legal instruments require such liability. The Ministry of Justice has prepared a draft law on criminal liability of legal persons, which is currently subject to amendments following its circulation to parties concerned (ministries and other state institutions) for comments. It is planned to submit a bill to Parliament during the second half of 2010 (following the general elections in May 2010).
31. GRECO welcomes that draft legislation is underway to provide for liability of legal persons in accordance with the requirements of the Criminal Law Convention on Corruption (ETS 173). However, it understands that this process will need to be re-activated after the general elections in May 2010.
32. GRECO concludes that recommendation xii remains not implemented.

III. CONCLUSION

33. In addition to the conclusions contained in the Second Round Compliance Report on the Czech Republic and in view of the above, GRECO concludes that recommendation xi has been dealt with in a satisfactory manner. Recommendations vi, ix and x remain partly implemented and recommendations vii and xii remain not implemented.
34. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 12 recommendations issued to the Czech Republic, in total 7 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner. GRECO regrets that the Czech authorities have not been able to achieve more progress since the adoption of the Compliance Report, in particular, concerning recommendations where no legislative changes are necessary, but notes that implementation of some of the pending recommendations appears to be well underway.
35. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of the Czech Republic. The Czech authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations vi, vii, ix, x and xii.
36. Finally, GRECO invites the Czech authorities to translate the Addendum into the national language and to make the translation public.