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Greco RC-II (2006) 2E
Addendum

Second Evaluation Round

Addendum to the Compliance Report on Finland

Adopted by GRECO
at its 38th Plenary Meeting
(Strasbourg, 9-13 June 2008)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Finland at its 19th Plenary Meeting (28 June-2 July 2004). This report (Greco Eval II Rep (2003) 3E), which contains four recommendations addressed to Finland, was made public on 6 July 2004.
2. Finland submitted the Situation Report required under the GRECO compliance procedure on 27 December 2005. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC-Report) on Finland at its 29th Plenary Meeting (19-23 June 2006). This last report was made public on 23 June 2006. The Compliance Report (Greco RC-II (2006) 2E) concluded that recommendations i, ii and iv had been implemented satisfactorily and that recommendation iii had been partly implemented; GRECO requested additional information on its implementation. The information was provided on 15 January 2008.
3. The purpose of this Addendum to the Second Round Compliance Report is to appraise the implementation of recommendation iii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation iii.

4. *GRECO recommended to introduce clear rules/guidelines for situations where public officials move to the private sector ("pantouflage"), in order to avoid conflicts of interests.*
5. GRECO recalls that in the Compliance Report this recommendation was considered partly implemented as the rules prohibiting the disclosure of secret information that apply to civil servants in Finland, when leaving a particular post in the public administration, did not cover sufficiently the ethical aspects which may appear in situations where public officials – even when not disclosing classified information - move into a similar, linked or competitive private entity, directly or shortly after leaving the public service.
6. The Finnish authorities have now submitted "Guidelines for the Transfer of an Official to the Service of Another Employer", issued by the Ministry of Finance on 16 November 2007 (see Annex). The text includes a general part stating that the guidelines are applicable to all government officials, however, they are primarily intended for those "*engaged in work involving information of a particularly sensitive nature from the point of view of the interests of business or the government. Particular reference is made to circumstances in which the public official is presented with the opportunity of taking advantage of information about competing business acquired during his or her public service*". The second part of the Guidelines, "Relevant Regulations", contains references to pertinent legislation, i.e. the State Civil Servants' Act (750/1994), the Act on the Openness of Government Activities (621/1999), parts of the Penal Code concerning corruption offences, business offences, espionage and offences in office (Chapters 16, 30 and 40) and the unfair Business Practices Act (1061/1978). The third part of the Guidelines deals with "Public Sector Employment Contract", where the Ministry of Finance has established rules and references to the State Civil Servants' Act (Section 44) on how to deal with situations where a public official handling information of a particularly sensitive nature, resigns for another employment where the particular knowledge and expertise held by the public official is not generally available.

7. GRECO takes note of the additional information provided. It is of the opinion that the document submitted provides an informative summary of the current legal situation and that, in addition, it contains some useful guidelines for the employer as well as the employee on how to handle situations where central administration officials, dealing with particularly sensitive matters in the interest of business or the government, resign. In such situations, the guidelines prescribe, *inter alia*, that the resigning employee must immediately (from his/her notice to resign) leave the particular functions and may be subject to some form of “quarantine” during which period the public official may not perform work in the service of another employer. However, the employee has the right to maintain his/her salary during the period of “non-availability”, which may last up to one year under conditions laid down in a contract specifically drawn up for this period. Although the document submitted to a large degree only summarises the legal situation as it was at the time of the adoption of the Evaluation Report, the GET welcomes the fact that the Guidelines, contained in the document, have improved the possibilities for managing conflicts of interest which may arise when a public official with particular functions is about to move from the public to the private sector.
8. GRECO concludes that recommendation iii has been implemented satisfactorily.

III. CONCLUSION

9. In addition to the conclusions contained in the Second Round Compliance Report on Finland and in view of the above, GRECO concludes that recommendation iii has been implemented satisfactorily. The authorities have thus complied with all recommendations of the Second Evaluation Round addressed to Finland. GRECO is pleased that Finland has found a model for dealing with situations of conflicts of interest when public officials move to the private sector, which appears to be a difficult issue in several member States.
10. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Finland.
11. GRECO invites the authorities of Finland to translate the Addendum into the national language and to make this translation public.



Appendix (English only)

MINISTRY OF FINANCE DIRECTIVE 16.11.2007
OFFICE OF THE GOVT AS EMPLOYER GUIDELINES 12/2007

Content matter Transfer of an official to the service of another employer
Regulations on which issue of directive/guidelines is based Government Rules of Procedure, Section 17
Target groups Ministries and government agencies
Period of validity 16.11.2007 – until further notice

GUIDELINES FOR THE TRANSFER OF AN OFFICIAL TO THE SERVICE OF ANOTHER EMPLOYER

1. GENERAL

These guidelines cover the transfer of a government official from public service to the service of another employer, to self-employment, or outside working life. The guidelines are intended primarily for those officials engaged in work involving information of a particularly sensitive nature from the point of view of the interests of business or the government. Particular reference is made to circumstances in which the public official is presented with the opportunity of taking advantage of information about competing businesses acquired during his or her public service. The guidelines, nevertheless, are applicable to all government officials transferring to the service of another employer.

Regulations governing these circumstances have been compiled for the guidelines, which the public official should observe when working under another employer. Government agencies are urged to communicate this information to the group of public officials targeted in the guidelines, namely those engaged in work involving information of a particularly sensitive nature from the point of view of the interests of business or the government.

The guidelines also deal with the application of the relevant public sector employment contract.

2. RELEVANT REGULATIONS

State Civil Servants' Act (750/1994)

With regard to the public official's obligation to observe secrecy, Section 17 of the Civil Servants' Act refers to the Act on the Openness of Government Activities, and other Acts.

Act on the Openness of Government Activities (621/1999)

Chapter 6 of the above Act includes regulations concerning the grounds for the obligation to observe secrecy and to non-disclosure, and the relationship between them, and on the prohibition of use of secret information. Section 22 of the Act contains basic regulations on the grounds for secrecy of documents, and on the content of the obligation of non-disclosure. Section 23 provides for the grounds for duty of non-disclosure, and non-disclosure and prohibition of use.

The duty to observe secrecy includes prohibiting the showing of a secret official document or the giving of a copy. The duty of non-disclosure chiefly concerns the behaviour of public officials. This refers to prohibiting disclosure of information, whether or not the information is stored. Disclosure refers both to active and passive disclosure of information, such as leaving documents where they can be available to outsiders. Information falling within the sphere of non-disclosure may take the form of official documents or may, for example, be transmitted orally. The duty of non-disclosure is therefore wider in scope than the duty to observe secrecy in the handling of official documents. Prohibition of use is related to the duty of non-disclosure. A person bound by the duty of non-disclosure may not make use of secret information for personal benefit or for the benefit of another. Prohibition of use also covers the making use of information to the detriment of another.

The duration of the duty of non-disclosure is provided for in Section 23 Subsection 1 as follows:

“The provision on non-disclosure shall apply also after the service or the performance of the task on behalf of the authority has ceased.”

The above-mentioned prohibition of use is further defined in the government proposal (HE 30/1998) issued for the Act.

“The subsection states that the duty of non-disclosure shall also continue after the employment relationship, duty discharged in a position of trust, performance of assignment, or action on behalf of an authority, has terminated.”

The duty of non-disclosure, therefore, applies beyond the termination of the employment relationship or task, for as long as the information is held to be secret. Similar conditions on duration have not been laid down with regard to prohibition of use.

Prohibition of use is nonetheless so closely bound to the duty of non-disclosure in the role of material contributing factor that it is logical to consider both as being effective for the same duration.

Corruption and bribes, business offences, business espionage, and offences in office (Chapters 16, 30 and 40 of the Penal Code)

The provisions outlined in chapters 16, 30 and 40 of the Penal Code concerning bribery, business offences, business espionage, and offences in office, also have a bearing on the subject. A public official should become acquainted with the relevant points of the Act before commencement of service under a new employer. Particular attention should be paid to regulations in Chapter 30, Sections 5 and 6 of the Penal Code concerning violation of a business secret and misuse of a business secret, and to those in Chapter 40 Section 5 of the Penal Code concerning breach and negligent breach of official secrecy.

Section 5 (Chapter 40 of the Penal Code)

Breach and negligent breach of official secrecy

If a public official deliberately, while in service or thereafter, unlawfully

1) discloses a document or information which under the Act on the Openness of Government Activities (621/1999) or another Act is to be kept secret or not disclosed, or

2) makes use of the document or information referred to in paragraph (1) to the benefit of himself/herself or of another, or to the loss of another

he/she shall be sentenced, unless a more severe penalty for the act has been laid down elsewhere, for breach of official secrecy to a fine or to imprisonment for at most two years. A public official may also be sentenced to dismissal if the offence demonstrates that he/she is manifestly unfit for his/her duties.

If a public official commits the offence referred to in subsection 1 through negligence, and the act, in view of its harmful and damaging effects and the other relevant circumstances, is not of minor significance, he/she shall be sentenced, unless a more severe penalty for the act is provided elsewhere in the law, for negligent breach of official secrecy to a fine or to imprisonment for at most six months.

A public official may not, therefore, use the information referred to above after termination of employment in public service for personal benefit or for the benefit of another. Prohibition of use of this information is not temporally restricted, but effective permanently.

Unfair Business Practices Act (1061/1978)

Section 4 of this Act provides for the unjustifiable acquisition of a business secret and the misuse of information thus acquired, and for prohibition of its disclosure. Protection of business secrecy is temporally unrestricted. Thus, the duration of protection lasts for as long as the protection of business secrecy carries economic significance.

3. PUBLIC SECTOR EMPLOYMENT CONTRACT

A public official handling information of a particularly sensitive nature from the point of view of the interests of business or the government must, immediately after resigning his or her post, transfer to a type of employment which does not deal with such information.

There may be grounds for agreeing a further special period of non-availability following on from the period of notice. Where possible, preparations for its adoption should be already in place at the start of the employment relationship.

The authority may draw up a contract on the terms of employment together with the public official, in accordance with Section 44 of the State Civil Servants' Act, including agreement on the public official's salary during the period of non-availability. For this equivalent salary the public official shall be bound to a separately agreed period of non-availability following the period of notice, during which time he or she may not perform work in the service of another employer. The maximum period of non-availability shall be one year. The salary for the period of non-availability shall be paid to the public official by the authority, and drawn from the authority's appropriations.

The authority shall consider the merits of individual cases as to whether the drawing up of this type of contract is appropriate.

The drawing up of this type of contract on the part of the public officials referred to in Section 26 of the State Civil Servants' Act falls within the competence of the Government on the basis of Section 44 Subsection 1 of the same Act.

When drawing up such a contract it is appropriate to consider only those public officials engaged in work involving information of a particularly sensitive nature from the point of view of the interests of business or the government. The public official should be in possession of the kind of knowledge and expertise not generally available to businesses operating in the field.

The contract may be drawn up during the process of filling the vacancy or together with the public official already nominated for the position. According to Section 44 Subsection 3 of the State Civil Servants' Act both the public official's termination of his or her employment and the cancellation of the employment relationship are each to be considered as termination of this contract.

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