



Strasbourg, 26 March 2010

**Public**  
**Greco RC-II (2007) 14E**  
**Addendum**

## **Second Evaluation Round**

### **Addendum to the Compliance Report on Greece**

Adopted by GRECO  
at its 46<sup>th</sup> Plenary Meeting  
(Strasbourg, 22-26 March 2010)

## I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Greece at its 26<sup>th</sup> Plenary Meeting (9 December 2005). This Report (Greco Eval II Rep (2005) 6E) addressed 10 recommendations to Greece and was made public on 13 December 2005.
2. Greece submitted the Situation Report required under the GRECO compliance procedure on 5 November 2007. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Greece at its 36<sup>th</sup> Plenary Meeting (15 February 2008). This last report was made public on 5 March 2008. The Compliance Report (Greco RC-II (2007) 14E) concluded that recommendations iv, ix and x have been implemented satisfactorily, and recommendations iii and vii had been dealt with in a satisfactory manner. Recommendations i, ii and v had been partly implemented, and recommendations vi and viii had not been implemented; GRECO requested for the 31 August 2009, additional information on their implementation. This information was eventually provided on 22 December 2009, after several reminders.
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 i, ii, v, vi and viii in the light of the additional information referred to in paragraph 2.

## II. ANALYSIS

### **Recommendations i. and ii.**

4. *GRECO recommended to review the application of the existing provisions on tracing, seizure and confiscation of corruption proceeds and, where appropriate, to provide adequate training, as well as to increase the resources available with a view to strengthening the efficiency of financial investigations.*(recommendation i).
5. *GRECO recommended that the Greek authorities strengthen their anti-money laundering regime with a view to increasing its efficiency and contribution to the fight against corruption, and draw-up guidelines and provide training on the detection of corruption.*(recommendation ii).
6. GRECO recalls that in the above Compliance Report, recommendation i. was considered partly implemented since the Ministry of Justice had initiated a major reform with the drafting of a new Criminal Code and a new Code of Criminal Procedure: drafting committees had been set up (involving judges, prosecutors, academics, practitioners), work had already started, and the provisions on seizure and confiscation would be reviewed in this context. The extension to all corruption offences of the mechanisms available for terrorism financing (under article 12 of Law 3560/2007 on the ratification of the Criminal Law Convention on Corruption<sup>1</sup>) were seen as a short term solution, pending the adoption of new codes. Regarding the other elements of the recommendation which are linked to the above-mentioned review, GRECO found that it remained unclear to what extent training and additional resources had been provided to the relevant bodies (especially police investigators and the SIS/SDOE).

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<sup>1</sup> Article 12 provides that the tracing, seizure and confiscation measures available for terrorist offences – the use of which is facilitated by the law - are also applicable in relation to corruption offences.

7. Turning to recommendation ii, which was considered partly implemented, GRECO had taken note in the Compliance Report, of several improvements which had already taken place following amendments to the anti-money laundering law (Law 2331/1995). In particular, the list of entities subjected to the anti-money laundering legislation had been extended (comprising a wide range of financial institutions and non-financial businesses and professions such as auditors and lawyers). Furthermore, the FIU was given the power – in case of urgency – to suspend financial transactions or prevent transactions involving immovable property (art. 5 of Law 2331/1995 as amended). However, the information did not allow to gain a clear picture of the improvements that had taken place as regards the staffing of the FIU (especially the analysts), what exact kind of awareness-raising/guidance/training arrangements had been made concerning the detection of corruption-related money laundering and to address the issue of under-reporting entities (other than those that were not listed in the law 2331/1995 at the time of the on site visit); the lack of information in particular as regards suspicious transactions reported in connection with corruption, did not allow to illustrate any changes in practice.
8. The Greek authorities now indicate, in respect of recommendations i. and ii., that a new law, Law 3691/2008 on the prevention and suppression of money laundering, entered into force on 5 August 2008, replacing the earlier legislation mentioned in the Evaluation Report and the Compliance Report (Law 2331/1995 on the “Prevention and suppression of money laundering”, amended last in December 2006). On the basis of the provisions of this law (article 3), all corruption offences are, reportedly, predicate offences to money laundering. The President of the Financial Intelligence Unit (the National Authority for combating the legalisation of assets from criminal activities) and the examining magistrates have the power to carry out investigations and to apply freezing measures in respect of accounts, securities or financial products, and the content of safety boxes in connection with the investigation of an offence of money laundering, but also in connection with the investigation of certain predicate offences, including all corruption offences. The Greek authorities claim that freezing takes place in an extremely versatile, expeditious and effective way, without any previous notice-summons to the person against whom the measures are applied (according to articles 46 and 48). Finally, the law explicitly provides for the organisation of meetings, conferences and seminars, and for the preparation of research plans and the constitution of working groups aiming to better inform the various persons involved in the above proceedings (article 8 paragraph 2 d’ and e’). To cover the costs of these activities, the Ministry of Finance has provided additional funding.
9. Concerning recommendation i., GRECO takes note of the new information provided. No further developments are reported on the review of legal provisions on confiscation and temporary measures (in the context of the drafting of a new criminal Code and Criminal Procedure Code) as announced in the Compliance Report; GRECO assumed that this would have included a review also of the application in practice of these measures, which is the objective of recommendation i. However, the newly provided information does not contain any indication that this is planned. Instead, the Greek authorities refer to the adoption in 2008 of a new anti-money laundering legislation (Law 3691/2008) which provides for a mechanism of seizure and confiscation that is applicable also in relation to (proceeds of) corruption offences. Bearing in mind the underlying issues that had led to this recommendation<sup>2</sup>, the information provided by the Greek authorities is

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<sup>2</sup> The Evaluation Report (paragraphs 17 to 23) had underlined an apparent lack of consistency of provisions on confiscation and temporary measures, which can be found in the Criminal Code, the Criminal Procedure Code, the anti-money laundering legislation, the various laws aimed at implementing the international treaties on corruption and it was unclear whether all types of proceeds and instruments of corruption could be subject to adequate seizure and confiscation measures. There was little or no information about the functioning of temporary measures and confiscation, the frequency of their use, the type and amount of assets involved, the strengths and weaknesses of confiscation and temporary measures in practice, including the management of assets subject to temporary measures etc. Some specialist agencies responsible for the investigation of

not indicative of meaningful changes or improvements, and the positive statements concerning the functioning of the relevant mechanisms are not supported by concrete evidence. In fact, new interrogations are raised<sup>3</sup>. Besides, no information is provided as regards additional resources and training on financial investigations for state authorities responsible for the investigation of corruption and the early initiation of seizure and confiscation measures. GRECO thus concludes that there have been no new initiatives on these matters.

10. Turning to recommendation ii, GRECO notes that the improvements introduced by the new anti-money legislation (Law 3691/2008) are not always clear-cut compared to the previous amendments to law 2331/1995 – which were already examined in the Compliance Report; for instance, before August 2008, the President of the FIU could already initiate the freezing of assets and the Greek authorities had already claimed that all corruption offences are predicate offences. It would appear that trading in influence is not, in fact, a predicate offence to money laundering<sup>4</sup>. There are still no new developments concerning the increase of the FIU's staff (especially analysts). GRECO welcomes the arrangements made to support awareness-raising/guidance/training initiatives, but no concrete steps seem to have been taken as yet concerning the detection of corruption-related money laundering and to address the issue of under-reporting entities. Finally, there is no information on the functioning of the anti-money laundering mechanism (especially when it comes to the detection of proceeds of corruption), that would show improvements in practice. GRECO cannot conclude that this recommendation has been fully implemented yet.

11. GRECO concludes that recommendations i and ii remain partly implemented.

#### **Recommendation v.**

12. *GRECO recommended to regulate more strictly conflicts of interest (including the improper migration to the private sector), incompatibilities and accessory activities in respect of all public officials and to establish proper monitoring of the application of the rules in this area.*
13. GRECO recalls that in the Compliance Report, it had welcomed the adoption of the new Civil Service Code which, reportedly, contained a number of new provisions that cover more strictly incompatibilities and accessory activities of civil servants. It was also reported that this new Civil Service Code applied in practice to the entire public sector. The lack of translation of the relevant provisions and/or more detailed information, however, made it difficult to fully assess the pertinence of the changes introduced. Besides, GRECO considered that Greece appeared to have in place some isolated measures to deal with the phenomenon of revolving doors but here

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corruption offences (Hellenic police and the SDOE/YPEE – the body responsible under the umbrella of the Ministry of Finance for the prosecution of economic crime and corruption – appeared to have no or only limited experience with such measures and the latter were not readily accessible to them because the powers required are regulated in different pieces of legislation). The Greek authorities themselves had stressed the need to review the application of the provisions on seizure and confiscation.

<sup>3</sup> The seizure and freezing measures under Law 3691/2008, as described, seem to deal only with proceeds in the form of real estate and assets kept within the financial system.

<sup>4</sup> Following a request for clarification to the Greek authorities as to the way predicate offences are defined in the Law 3691, it appears that these offenses include i.a. certain bribery offences and all offences “punishable by deprivation of liberty for a minimum of more than six months and having generated any type of economic benefit”; consequently, trading in influence is not covered since the minimum punishment for this type of crime is three month’ imprisonment both under Law 3560 / 2007 on the Ratification and implementation of the Criminal Law Convention on Corruption (as regards Trading in influence aiming at foreign and international officials as well as private sector employees) and Law 5227/1931 on intermediation (as regards trading in influence aiming at domestic public officials). During the discussion of the present report in plenary, the Greek authorities stressed that legislation was being prepared by the Government in order to fill this gap.

again, it was difficult to reach any clear conclusion. Finally, it remained unclear to what extent controls over compliance with the measures to prevent conflicts of interest, incompatibilities and accessory activities had been tightened up. As a result, this recommendation was considered partly implemented.

14. The Greek authorities now merely report that the provisions of the new Civil Service Code and the general provisions of the Code of Criminal Procedure (articles 16 and 23) require members of the judicial bodies to refrain from dealing with a case where personal, family, professional, business and other similar relationships are likely to lead to a conflict of interests. Moreover, article 7 paragraph 7 of Law 3691/2008 for the prevention and suppression of money laundering expressly provides that the persons working for the financial intelligence unit refrain from dealing with a case when the above-mentioned circumstances arise.
15. GRECO is pleased to learn that members of the judicial bodies and financial intelligence unit are now required to refrain from dealing with a case or procedure in such circumstances where a conflict of interests might arise and the legislation contemplates a variety of situations where this could happen. However, there is still no evidence that similar rules also apply to the civil service and public officials as a whole, and not only to members of the judiciary and the financial intelligence unit. It appears that the situation has not really changed nor been clarified since the adoption of the Compliance Report. Several interrogations also remain as regards the existence of adequate rules on improper migration to the private sector, incompatibilities and accessory activities in respect of all public officials, as well as mechanisms to ensure the enforcement of these rules (see also paragraph 16 above).
16. GRECO concludes that recommendation v remains partly implemented.

#### **Recommendation vi.**

17. *GRECO recommended to establish appropriate protection for whistleblowers and to take all other measures deemed necessary to facilitate the reporting of corruption.*
18. GRECO recalls that in the Compliance Report, the Greek authorities referred to the criminal law measures already in place to ensure the protection of witnesses involved in criminal proceedings (the provisions were extended in 2007 to be applicable also to corruption cases, not just certain forms of organised crime). They also referred to the participation of trade unions in all major career-related decisions as a means to ensure some kind of safeguard against disguised retaliation measures from the employer. GRECO considered that in the context of Greece, these were no satisfactory alternatives to a proper whistleblower protection mechanism. Furthermore, since no initiative had been taken to facilitate the reporting of corruption, it was concluded that this recommendation had not been implemented.
19. The Greek authorities report, at present, that article 30 of Law 3691/2008 for the prevention and suppression of money laundering provides for the introduction of protection mechanisms applicable to employees and persons working for the financial and business entities required to report suspicions of money laundering to the financial intelligence unit. Implementing provisions (in the form of a joint decision of the Ministers of Finance and of Justice) still need to be adopted. Besides, article 32 of the same law exempts reporting entities and their personnel from any form of liability when they comply with the reporting and disclosure requirements of Law 3691/2008.

20. The Greek authorities also recall, as they already did in the Compliance Report, the general provisions of the Code of Criminal Procedure (according to which all civil servants have the duty to report any criminal offence they come across during the exercise of their duties), and under article 361 of the Penal Code (according to which a declaration or offer of information is not considered as a wrongful act when it is made in the performance of a legal duty).
21. GRECO takes note of the information provided. The protection mechanisms provided under Law 3691/2008 are very specific: they are meant to support the implementation of the duty to report and disclose suspicions under the money laundering prevention mechanism (to the financial intelligence unit); this duty is placed upon financial economic entities, a limited number of businesses and professions and their supervisory bodies. These mechanisms – which still require full implementation through secondary legislation – cannot be seen as a satisfactory alternative for the absence of protection for those who report corruption-related acts in both the private and the public sector. GRECO regrets that since the adoption of the Compliance Report, no discernible progress has been made regarding whistleblower protection in the context of the fight against corruption; it wishes to stress once again the importance of this recommendation, especially in respect of public officials<sup>5</sup>.
22. GRECO concludes that recommendation vi has not been implemented.

**Recommendation viii.**

23. *GRECO recommended to establish an appropriate system of professional limitations for persons found guilty of criminal offences.*
24. GRECO recalls that the Greek authorities considered that in the absence of further EU provisions on professional disqualifications, the country preferred to take preventive measures in the area of relationships between the public and the business sector, rather than to introduce general disqualification measures in the business sector. GRECO had taken note with interest of the introduction of measures to exclude from public tenders persons found guilty of having committed certain serious offences, including bribery. But referring back to the Evaluation Report (paragraph 74), *during the on-site visit, the [Greco Evaluation Team] was told that it is possible for a natural and/or a legal person to establish a company or to take part in it even in those cases where the person concerned has been found liable for a crime, including corruption, trading in influence, accounting offences or money laundering, except for particular companies such as corporations participating in public contract biddings, banks and other fiduciary enterprises, or companies operating in the fuel market.* GRECO concluded that this recommendation had not been implemented.
25. The Greek authorities refer again to the information provided in the Evaluation and the Compliance Reports, concerning the existence of restrictions as to the participation in public tenders or transactions. They add that professional disqualifications, such as those recommended by GRECO, cannot – under current rules – apply in connection with the incorporation of a company as such an incorporation is effected on the basis of a notarised act or a private act. In the latter case, any restrictions would represent a threat to contractual freedom.

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<sup>5</sup> According to the Evaluation Report, “In practice, only a very limited number of alleged corruption cases have been reported (mainly anonymously) by public officials. Some of the GET’s interlocutors explained that this situation is due to the difficulty to obtain proof, to the alleged absence of dissuasive sanctions for corruption (...) and to the fear of retaliatory measures, in particular, in the absence of effective protection of whistleblowers.”

26. GRECO cannot accept this explanation and regrets that no concrete measures have been taken to address this recommendation.
27. GRECO concludes that recommendation viii remains non-implemented.

#### **IV. CONCLUSION**

28. In addition to the conclusions contained in the Second Round Compliance Report on Greece and in view of the above, GRECO concludes that recommendations i, ii and v remain partly implemented and recommendations vi and viii have not been implemented.
29. This report shows that no meaningful action has been taken by the Greek authorities since the adoption of the Compliance Report; half of the recommendations remain not or partly implemented. GRECO very much regrets this lack of action taken. There is no progress on such important matters as reviewing the application of the existing provisions on tracing, seizure and confiscation of corruption proceeds, measures aimed at increasing the efficiency and contribution of the anti-money laundering regime to the fight against corruption, arrangements concerning conflicts of interest and incompatibilities, whistleblower protection and professional disqualifications for persons found guilty of criminal offences.
30. Above all, no concrete projects or proposals seem to be under way that could contribute to improve this situation in the near future and it looks as if the process of implementation of improvements has stopped. GRECO urges the Greek authorities to take meaningful action with a view to addressing the outstanding recommendations. Therefore, in accordance with Rule 31 paragraph 9.1 of its Rules of Procedures, it asks Greece to submit additional information on the implementation of recommendations i, ii, v, vi and viii by 30 September 2010.
31. Finally, GRECO invites the Greek authorities to authorise, as soon as possible, the publication of the present Addendum, to translate it into the national language and to make the translation public.