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Addendum

First Evaluation Round

Addendum to the Compliance Report on Portugal

Adopted by GRECO
at its 33rd Plenary Meeting
(Strasbourg, 29 May - 1 June 2007)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Portugal at its 14th plenary meeting (11 July 2003). This report (Greco Eval I Rep (2003) 4E), which contains twelve recommendations addressed to Portugal, was made public on 25 July 2003.
2. Portugal submitted the Situation Report required under the GRECO compliance procedure on 21 January 2005. On the basis of this report, and after a plenary debate, GRECO adopted the First Round Compliance Report (RC-Report) on Portugal at its 24th plenary meeting (1 July 2005). This last report was made public on 29 July 2005. The Compliance Report (Greco RC-I (2005) 2E) concluded that recommendations i, ii, iii, iv, vii, viii, ix and x had been implemented satisfactorily; recommendations vi and xi had been dealt with in a satisfactory manner; recommendation v had been partly implemented, and recommendation xii had not been implemented. GRECO requested additional information on the implementation of recommendations v and xii. This information was provided on 11 January 2007.
3. The purpose of this Addendum to the First Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations v and xii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation v.

4. GRECO recommended *reviewing the investigation procedure for serious offences, including corruption offences, and:*
 - *examining the best possible way of remedying the problems associated with the possibility of challenging every individual decision of the investigating judge during the investigation phase by providing, for example, for the exercise of the right to appeal at the end of the investigating phase,*
 - *reconsidering the non-suspensive nature, for purposes of statutory limitations, of appeals filed before the Constitutional Court, in order to avoid procedural abuses aimed at preventing sensitive cases from going to trial.*
5. GRECO points out that the first part of the recommendation led Portugal to take steps which GRECO deemed satisfactory in the Compliance Report. However, Portugal had supplied no information indicating that the second part of the recommendation, concerning the non-suspensive nature of appeals to the Constitutional Court for the purpose of statutory limitation, had been taken into account.
6. The Portuguese authorities have reported that the limitation period in criminal matters is currently very long at ten years (this period applies to offences of passive bribery for the purpose of any unlawful act, including where perpetrated by political office-holders, which encompass cases of embezzlement, "corrupt economic participation in a transaction" or trading in influence) - the limitation period is five years only where corruption or trading in influence is linked to implementation of a *lawful* act.

7. Moreover, depending on the circumstances of the proceedings, calculation of the limitation period may sometimes be suspended and in other cases it may be interrupted, in which event it begins to run again from the start.¹
8. The Portuguese authorities have also pointed out that, if the limitation period in criminal proceedings (regard being had to the various interruptions possible) is compared with the average time taken by the Constitutional Court to decide an appeal (only four to five months in cases concerning rules of criminal law or criminal procedure, and five to six months in general),² it can be seen that introducing a suspension of the limitation period in the event of an appeal would not change things to any significant extent.
9. GRECO takes note of the information provided. It recalls that the Evaluation Report stated "*Some of the people the GET met pointed out that despite the number of cases recorded, relatively few came to trial. It was indicated that over the past few years numerous actions had been brought against ministers, trade unionists, mayors, contractors, etc. Many of the cases had to be dropped because of the time bar. One of the problems with white-collar crime is that some lawyers exploit the current system which provides opportunities for challenging every individual decision of the investigating judge during the investigation phase, as well as the filing of appeals before the Constitutional Court (without interrupting the running of statutory limitation).*"
10. In this context the details and additional information provided by Portugal are very useful and show that the possibilities of appealing to the Constitutional Court at various stages in judicial proceedings concerning corruption offences do not pose a major problem from the standpoint of the limitation period. Regarding the first part of the recommendation, Portugal had already provided information deemed satisfactory by GRECO in the Compliance Report. It was above all in addition to this first group of problems (use of the possibility of challenging each individual decision during the investigation phase rather than appealing at the end of the stage in proceedings concerned or at the trial stage) that the question of appeals to the Constitutional Court arose. This last question would therefore seem to have lost some of its pertinence.
11. GRECO accordingly concludes that, although there have been no specific developments concerning the second part of recommendation v, it can be considered to have been dealt with in a satisfactory manner.

Recommendation xii.

12. *GRECO recommended adopting guidelines on the lifting of immunities.*
13. GRECO points out that it concluded in the Compliance Report that there had been no new measures to establish guidelines concerning the exercise of parliament's discretionary power to decide the lifting of immunity in the case of offences punishable by up to three years' imprisonment, a category which includes many corruption offences.
14. The Portuguese authorities have stated that it is difficult to imagine what might be done in addition to the measures already implemented. They have pointed out that the Statutory Rules for Members of Parliament already lay down clear rules for dealing with cases involving evidence of

¹ Under Article 121.3 of the Criminal Code, the time-limit is then reached after expiry of a period corresponding to one and a half times the initial limitation period; for example, where the limitation period is ten years, the time-limit will obligatorily be reached after 15 years (even if there have been one or more interruptions).

² Based on statistics for 2004 and 2005

the commission of offences liable to a maximum penalty of more than three years' imprisonment. They maintain that this covers all offences of corruption for the purpose of an unlawful act.³ The Portuguese authorities have stressed that the Assembly's discretion regarding the lifting of immunity is accordingly confined to non-intentional offences, those not punishable with a prison sentence and those carrying a prison sentence of less than three years. Moreover, with regard to these offences, the Statutory Rules for Members of Parliament provide that the limitation period is interrupted on submission of the judicial authorisation request; the interruption continues in the event that the Assembly decides not to lift immunity.

15. GRECO had already pointed out in the Evaluation Report that the question of issuing guidelines on the exercise of this discretionary power mainly arose with regard to offences punishable with a maximum of three years' imprisonment, not least passive corruption offences for the purpose of a lawful act committed by political office-holders. Moreover, in the Portuguese authorities' arguments, the term corruption is strictly construed, and trading in influence and various other offences not specifically designated as such also carry sentences of less than three years. GRECO considers that the question of the advisability of drawing up guidelines on lifting of immunity remains relevant in the cases and for the offences concerning which the Assembly is asked to take a decision. There have been no new developments in this sphere so far.
16. GRECO concludes that recommendation xii has not been implemented.

III. CONCLUSION

17. In view of the above, GRECO concludes that recommendation v as a whole has been dealt with satisfactorily. Recommendation xii remains unimplemented. It therefore asks Portugal to continue its efforts to introduce guidelines on the lifting of parliamentary immunity so that such immunity does not constitute an obstacle to the prosecution of corruption - or corruption related - offences.
18. The adoption of this Addendum to the Compliance Report concludes the First Evaluation Round compliance procedure concerning Portugal.
19. Finally, GRECO invites the Portuguese authorities to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.

³ The relevant rules cover: the fact that the Assembly of the Republic's permission need not be sought in order to detain or imprison a member of parliament (Rule 11-1); the fact that it is mandatory to authorise the questioning of a member of parliament as a defendant (Rule 11-2); the fact that it is compulsory to suspend a member of parliament finally charged with an offence for the purpose of his or her participation in the proceedings (Rule 11-3 and 4).