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Second Evaluation Round

Compliance Report on Portugal

Adopted by GRECO
at its 39th Plenary Meeting
(Strasbourg, 6-10 October 2008)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Portugal at its 28th meeting (12 May 2006). The report (Greco Eval II Rep (2005) 11E) was made public by GRECO on 24 May 2006, following authorisation from the Portuguese authorities.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the Portuguese authorities submitted their Situation Report (RS-Report) on measures taken to implement the recommendations on 29 November 2007.
3. At its 26th meeting (5-9 December 2005), in accordance with Rule 31.1 of its Rules of Procedure, GRECO asked Albania and Luxembourg to appoint Rapporteurs for the compliance procedure. Mr Edmond Dunga was appointed on behalf of Albania and Mr Jean-Paul Frising on behalf of Luxembourg. The GRECO secretariat has assisted the Rapporteurs in drafting the compliance report. A first partial reading of this report took place at GRECO 38 (9-13 June 2008). Given the amount of apparently new information submitted orally by the Portuguese delegation, it was decided to adjourn the discussion of the draft to GRECO 39. The Portuguese delegation was invited to submit the new information in writing to the Secretariat by 20 June 2008 at the latest. The information was received on 21 June and has been taken into account for the drafting of the present report.
4. The purpose of the report is to assess the measures taken by the Portuguese authorities to comply with the recommendations in the evaluation report.

II. ANALYSIS

5. It is recalled that in its evaluation report, GRECO addressed ten recommendations to Portugal. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended more systematic use be made of asset investigations and that all available resources – legal, technical and human – be used to the full and if necessary strengthened to make financial investigations more effective.*
7. The Portuguese authorities state that for the purpose of combating corruption, the Criminal Police make increasing use of a **Permanent Liaison Group (PLG)**, made up of the Criminal Police, the General Directorate of Taxation and the General Directorate of Customs and Special Consumption Taxes. The main reason for consulting this group is to assemble information on the assets and income of persons suspected of committing corruption and related offences. It is also underlined that Portugal has had some success with the constitution of teams carrying out joint investigations and exchanging information in the framework of the PLG. In 2007, the police and tax authorities co-operated on inquiries concerning civil construction, public works, sports clubs, catering and vehicle sales, among others. Between January and April 2007, these joint activities led to seizures of the proceeds of corruption to a value of € 12 927 073 and USD 711 896. A meeting was held in May 2007 to take stock of the joint teams' activities and various issues were discussed¹.

¹ Training, exchanges of information on financial crime, collaboration with the financial intelligence unit, which is responsible for money laundering, the production of a booklet on corruption, the conduct of current inquiries and so on.

8. The Central Directorate for investigating and combating economic and financial crime was reorganised in September 2006 in response to developments in and the growing complexity of this type of activity. As part of the changes, three central sections were established with 16 officers to investigate corruption and economic and financial crime. The three central sections specialise in particular areas. More recently, under decree 204 the government introduced another reform with the establishment of three special national units, one of which is concerned with corruption (the others specialise in drug trafficking and terrorism).
9. In order to strengthen its investigation resources, the criminal police held a recruitment competition in November 2007 for 150 new officers, a significant number of whom – according to the authorities – will be assigned to corruption inquiries. There have also been three competitions to recruit specialist staff to the finance and accounting office. The Prosecution Service has recruited 50 new prosecutors and the new State Prosecutor stated when he took up his duties that combating corruption would be one of his department's priorities.
10. According to data from the Criminal Police, in 2006, 341 corruption investigations were launched and 370 completed, and 114 cases were referred to the prosecution service for criminal proceedings to be started.
11. GRECO notes with satisfaction the current progress in Portugal towards increasing the resources of the investigation authorities, in terms of both manpower and expertise, and the country's apparently positive experience with joint investigation teams, which it intends to make more use of. According to paragraph 20 of the evaluation report, asset investigations were not carried out systematically in corruption inquiries because of lack of police and prosecution resources, and they were not in any case considered a priority. In this context, the recruitment of new police officers and prosecutors and the recent reorganisation of the police, with more specialist attention being paid to corruption cases, are therefore to be welcomed. The figures supplied on measures to deal with the proceeds of corruption show that the judicial authorities pay attention to these, even though there were still no definitive confiscations reported, as at the time of the on-site visit. Overall, GRECO acknowledges that the Portuguese authorities have made significant efforts, especially in respect of human resources, which was a source of concern during the evaluation visit.
12. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation ii.

13. *GRECO recommended existing provisions on the identification, seizure and confiscation of the proceeds of corruption and trading in influence be reviewed and, if necessary, guidelines be drawn up and additional training organised to facilitate their application.*
14. The Portuguese authorities indicate that they consider existing legal provisions on the identification, seizure and confiscation of the proceeds of crime, including bribery and trading in influence, to be “adequate and sufficient”, and compatible with existing international instruments. They maintain that the current Criminal Code and Code of Criminal Procedure, as well as Act 5/2002 establishing special measures to combat organised, economic and financial crime, offer all the necessary resources. The introduction of criminal liability for legal persons on 15 September 2007 further strengthened the preventive and enforcement aspects of these offences. However, the government has acknowledged that Act 5/2000 needed one further improvement,

namely an extension of the special confiscation arrangements², which was effected in Act 19/2008 of 21 April 2008. Special confiscation is now applicable to the various offences of bribery and trading in influence.

15. The Portuguese authorities have also reported that training programmes for police and judicial authorities on the application of legal provisions on the identification, seizure and confiscation of the proceeds of corruption took place throughout 2007, with others planned for 2008, aimed at increasing the expertise of those concerned³.
16. GRECO takes note of the information provided. Even though the Portuguese authorities seemed to be fairly satisfied with existing arrangements for freezing, seizing and confiscating assets, they have amended Act 5/2002 to make special confiscation applicable to a wider range of corruption offences, including trading in influence (which would in fact respond to one of the shortcomings identified during the evaluation visit). Turning to the second part of the recommendation, GRECO observes that the various training activities reported undoubtedly cover certain aspects of economic and financial crime and corruption, but the link with seizure and confiscation is often very remote. At the very most, one or two individual seminars seemed to have dealt with this theme, which GRECO considers inadequate. It is therefore difficult at present to argue that this recommendation has been fully dealt with.
17. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

18. *GRECO recommended the anti-money laundering arrangements make a greater contribution to combating corruption, particularly by ensuring that bodies involved in combating money laundering, and institutions and professions required to declare suspicious transactions, receive directives and training to assist the identification and reporting of acts of corruption.*
19. The Portuguese authorities state that by the law 25/2008 (which entered into force on 5 June 2008), the parliament extended and strengthened the preventive aspects of the anti-money

² As noted in paragraph 8 of the evaluation report, for the purposes of special confiscation, in apportioning the burden of proof the Act treats the difference between accused persons' actual assets and those corresponding to their lawful income as benefits arising from criminal activities. This presumption applies to assets belonging to or in the possession of accused persons and of which they enjoy the benefits when the case is opened for investigation or at any subsequent time, ones that have been transferred free of charge or for a minimal consideration in the five years preceding the opening of the investigation, and ones received in that five year period, even where it is not possible to establish their purpose.

³ In the area of training for magistrates, the **judicial studies centre** has organised the following training for judges: Economic and financial crime and fiscal crime, with sessions on corruption (6 – 7 December 2007) and judicial organisation and management rules of conduct and ethics (10 – 11 January 2008), a debate on the new Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and another on Act 5/2002 on economic and financial crime.

The **higher criminal police and criminal science institute** ran the following seminars in 2007: identifying and investigating corruption offences from the standpoint of monitoring institutions, with the participation of tax officials (26 – 28 March); preventing and investigating corruption in democratic societies, with the participation of prosecution officials (15 and 16 May); practical case study (15 – 16 November); stock market and property transactions (10 – 12 April); fundamental principles of banking (25 – 29 June); transnational economic and financial crime and electronic commerce (7 – 8 May).

The institute has organised the following seminars in 2008: fundamental principles of banking (7 – 11 January); economic and financial crime: practical case studies (22 – 23 April), fundamental principles of the Portuguese tax system (12 – 14 May); organised crime and corruption (2 – 4 June).

Regarding public officials in general, the **national institute of administration** has organised training in 2008 on disciplinary rules in the public service and corresponding procedural arrangements; civil, disciplinary, criminal and financial liability in the public service; disciplinary law in the public service; and ethics and rules of conduct in the public service.

laundering legislation, Act 11/2004, which lays down the arrangements for financial and non-financial bodies to report suspicious transactions. The amendments transpose Community directives 2005/60/EC and 2006/70/EC into domestic law; they extend the anti-money laundering system to the fight against terrorist financing and, above all, they introduce a requirement for special customer due diligence in respect of the so-called "politically exposed persons" (PEPs) and the obligation to provide the obliged business entities with training in the area of detection of possible money laundering (and terrorist financing) cases. According to the authorities, the supervisory bodies, *Banco de Portugal* and *Instituto de Seguros de Portugal*, are involved in training activities for the sectors concerned and also frequently issue directives on the identification and reporting of various money laundering offences and forms of corruption that are predicate offences of money laundering. Lastly, the authorities point out in their supplementary information that the new law will certainly lead to new training initiatives for staff of the relevant bodies.

20. GRECO notes Portugal's new anti-money laundering legislation, particularly the extension of additional due diligence requirements to so-called politically exposed persons. This is an important step that will enable the anti-money laundering arrangements to make a greater contribution to combating corruption. It is equally important to establish guidelines, typologies of money laundering and training/awareness raising initiatives to offer those responsible for identifying suspicious transactions a better understanding of how money laundering, including money laundering linked to corruption, operates. As stated in the second round evaluation report, "the bodies involved in fighting corruption and the institutions and professions subject to the obligation to report suspicions have not been issued with guidelines or typologies or received any training to help them make the connection between suspicious transactions and possible acts of corruption". So far, Portugal has not reported any practical developments in this area and seems to rely totally on the fact that the bodies subject to reporting requirements are themselves supposed to provide their staff with relevant information and training. GRECO considers that having regard to the needs expressed by these sectors and the fact that the institutions concerned may well be less familiar than the authorities with the different types of corruption, the latter, together with the various supervisory bodies, should adopt a more active approach in this area.
21. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

22. *GRECO recommended more regular analyses be carried out on the risks of corruption and that a more integrated approach be adopted to its ethical aspects, with a view to extending preventive measures to the entire public sector, including local government, and to monitoring their application.*
23. The Portuguese authorities state that the Central Directorate for corruption and economic and financial crime inquiries (DCICCEF) of the Criminal Police produce an annual statistical analysis of investigations into corruption and related offences. The directorate has also drawn up a more comprehensive comparative statistical analysis for the period 2002-2006, and one for 2005-2006 on corruption investigations concerning local authorities. These two studies are currently being updated. A strategic study is currently being drawn up on the general approach to crime control, which among other things will look at ways of preventing bribery and corruption offences. Under the Crime Policy Act, no. 17/2006, the State Prosecutor will be required to produce a biennial report on the implementation of the country's crime policy. Act 19/2008 of 21 April 2008 to

strengthen anti-corruption measures requires this report to include a specific section on corruption, including statistical data, the geographical distribution of corruption cases, how they were dealt with, proposals arising from the preceding analysis and so on.

24. The authorities also report a number of awareness raising activities aimed at public officials and the general public, with an emphasis on ethical aspects and good professional practice. In January 2007, the justice ministry and the police produced an **explanatory guide to bribery and related offences**. The guide is intended to raise awareness of corruption and with the aid of practical examples presents the main and related offences concerned. It also describes the relevant legislation and encourages public officials to report any suspicions of corruption to the authorities. The guide is distributed throughout the public sector, including local authorities. The General Inspectorate of Finances, the tax authorities and the police have also organised a travelling exhibition on the theme **“Fighting corruption: integrity and transparency”**. The exhibition continued until 9 December 2007 in the towns and cities of Lisbon, Oporto, Braga, Faro, Evora, Setubal and Coimbra and was designed to make citizens more aware of the harmful consequences of corruption.
25. Certain measures have been introduced at or concerning the local level: a) the Lisbon city council has set up a committee to encourage good anti-corruption practices, with particular emphasis on such sensitive areas as town planning and public procurement; b) in July 2007 the Local Government Inspectorate established an Internet site to allow citizens to report possible corruption involving municipal departments and undertakings or other bodies answerable to them; c. the inspectorate also issued a circular, no. 1/2007, on 9 January 2007 instructing its inspection teams to report immediately any cases of corruption, established or suspected, to the criminal investigation authorities; d. since local government is particularly exposed to corruption, the criminal police play a growing preventive role by closely monitoring major development projects – especially any contracts entered into – and compliance with municipal strategic development plans⁴. According to the authorities, this has led to more corruption inquiries concerning local government, which have risen from 64 in 2002 to 159 in 2007.
26. GRECO notes the efforts that have been made by the criminal police, and shortly by the prosecuting authorities, to produce more analyses of corruption. It would have appreciated assurances that in addition to cases actually dealt with these will include more information on vulnerable sectors, something that was lacking at the time of the on-the-spot visit. The January 2007 explanatory guide to corruption is a necessary means of drawing the attention of the public sector as a whole to the problem of corruption while the travelling exhibition that terminated in December 2007 was also concerned with the local level. There have also been a number of parallel initiatives to strengthen prevention and monitoring in local government. GRECO hopes that these will lead to other similar measures, for example in other major local authorities and other administrative sectors. Finally, it notes that the closer attention being paid to local affairs seems to be reflected in a larger number of possible corruption cases coming to light. It may be too early to judge the outcome of these cases but the authorities' efforts do at least appear to be having practical results.
27. GRECO concludes that, overall, recommendation iv has been dealt with in a satisfactory manner.

⁴ These plans determine the zones in which building is allowed and those where it is not.

Recommendation v.

28. GRECO recommended appropriate rules be introduced, applicable to all public officials, on conflicts of interest and improper migration to the private sector and that mechanisms be established to ensure that they are properly applied and monitored.
29. The Portuguese authorities note that conflicts of interest and improper migration of public officials to the private sector are mainly governed by Act 64/93 of 26 August 1993. This has been amended several times, most recently in March 2007. In particular, it specifies that:
- those carrying political responsibilities and officials performing senior and junior management, co-ordination and oversight functions in central, regional and local government and other public bodies are subject to a system of incompatibilities of functions and they may not perform other paid or unpaid duties, other than research and teaching, and may not belong to the decision-making bodies of profit-making legal persons. The administrative courts may order dismissal for breach of this requirement;
 - businesses in which these same persons, either directly or through their spouse or close family, hold more than 10% of the share capital, may not bid for contracts to supply goods or services to the state or other public undertakings. Persons who in the three years prior to taking up their position have held more than 10% of the share capital of businesses or have been members of their decision-making bodies may not be involved in the adjudication of contracts to supply goods or services for which these businesses have entered bids;
 - the parliament has introduced a **public register of interests** in which members of parliament and members of the government record all the activities that might lead to incompatibilities or disqualifications and activities and transactions that might lead to financial profit or create a conflict of interest. Those holding political office must also lodge with the Constitutional Court, within 60 days of taking up their duties, a declaration stating that they are not subject to any incompatibilities or disqualifications and recording any other professional duties or activities performed. This system of declarations is monitored by the Constitutional Court;
 - with regard to **improper migration**, under section 5 of the legislation, as amended in 1995, “members of bodies exercising sovereign power or political responsibilities” may not hold positions in private firms that have been directly or indirectly under their supervision for at least three years from the termination of their employment if, during their period in post, these firms have been privatised or have received financial assistance of a contractual nature. Breach of this provision may lead to disqualification from public duties for three years. The Portuguese authorities stress that there was no need to provide for restrictions beyond these categories of high ranking officials since the phenomenon of migration to the private sector was not observed in respect of other categories of officials; middle and lower ranking officials usually accomplish their entire career at the service of the State.
30. Another important item of legislation, which the GET noted in the evaluation report, is Act 25/95 to monitor the assets of persons exercising political authority⁵, which establishes a system of assets declaration supervised by the Constitutional Court. Those concerned must lodge with the Court,

⁵ President of the Republic, Speaker of the Assembly, Prime Minister, members of parliament, members of the government, ministers for autonomous regions, mayors, municipal councillors, public administrators, directors general and deputy directors and equivalent posts.

within sixty days of taking up their duties, details of any profits received, assets held and posts occupied within undertakings. Elected members and officials must submit an updated declaration within sixty days of terminating their duties. Those exercising executive duties must renew the declaration each year. In the event of failure to make a declaration, the Constitutional Court asks the person concerned to do so within thirty days, and those who deliberately fail to do so may be dismissed or removed from their office or position⁶.

31. The authorities recall that, as already indicated in the evaluation report, article 44 onwards of the Code of Administrative Procedure provides general rules in terms of prevention of conflicts of interest and incompatibilities. The authorities specify, however, that these rules which apply to all bodies and public officials of the public administration relate only to administrative procedures in a certain number of cases including: a) when they have a personal interest or as the administrator of another's account in the procedure; b) when they have already been involved in the procedure as an expert or a representative or to give an opinion; c) when a relation (spouse, parent etc) has been involved in the procedure as an expert or representative on behalf of anyone else. Furthermore, a public official is obliged to request to be discharged of his responsibilities in any procedure where his/her impartiality is at risk. Any acts or contracts of the administration can be annulled in case of non-compliance with the above dispositions and any cases of incompatibility or conflict of interest can result in disciplinary sanctions.
32. Act 53-F/2006 of 29 December 2006 and Decree 71/2007 of 27 March 2007 specify incompatibilities between "public manager" (persons holding a leading position in a state owned undertaking) functions in local public undertakings and other duties as a locally elected member or employee of a private company. These texts have been complemented by a Council of Ministers Resolution No.49/2007 of 28 March 2008 which implements the "OECD Guidelines on Corporate Governance of State-Owned Enterprises" and foresees in particular (item 22) that members of the social bodies of public enterprises must declare to the General Inspectorate of Finances⁷ any financial shares that they have in the company as well as any significant relationship they might have with suppliers, clients or other financial contacts, which are likely to generate conflicts of interest. In case of a non-justifiable increase in personal wealth, noticed by the IGF, this triggers automatically a criminal investigation and the written declaration can be used as evidence in any potential criminal proceedings. These public managers must also, within 60 days of taking up post, make a statement in the Public Prosecutor's office declaring all potential responsibilities, duties and activities outside the domain of their new employer, the prosecutor may request further explanations and may, if necessary, pass the file on to other competent inspection bodies with a view to possibly imposing sanctions.
33. Another new sector regulation has been introduced by the Decree No. 276/2007 of 31 July, which henceforth forbids staff from the inspection, audit and control services in administration from working in connection with services, organisations or enterprises in which they themselves or close relations are working or have worked (over the last three years), and from holding office or accepting invitations from an establishment under his/her control.
34. Finally, the government intends to submit legislation to parliament to update and improve the current system of incompatibilities and their monitoring regarding persons exercising political authority and senior public officials performing executive or management responsibilities.

⁶ Other than the President, the Speaker and the Prime Minister.

⁷ The IGF monitors over 400 State enterprises and 300 local public enterprises.

35. GRECO notes the information supplied by the Portuguese authorities, which to a fairly large extent reflects the legal situation at the time of the visit. However, the Portuguese authorities have reported new initiatives in 2006 and 2007 concerning regulations on conflicts of interest (and sometimes job incompatibilities) which may concern managers of public enterprises and in particular, the various administrative staff in charge of inspection, audit and control. GRECO takes into account the progress made. Other measures are said to be under consideration concerning holders of political and public managerial posts and GRECO would encourage the Portuguese authorities to improve their system of incompatibilities and control measures concerning these categories of public officials. Regarding improper migration to the private sector, it would appear that high ranking civil servants and holders of political posts are the only officials (besides members of the security forces, as already mentioned in the evaluation report) involved in this phenomenon, and these are covered by specific provisions. Overall, GRECO considers that the situation has been improved and/or clarified since the on-site visit.
36. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

37. *GRECO recommended existing codes of conduct be expanded to include explicit references to ethical issues and risks of corruption (such as the issue of gifts) for all public officials and prescribe appropriate sanctions for non-compliance with these codes. Training programmes on these topics should be modified to include practical examples of potential conflicts of interest and provided to all public officials (civil servants and others).*
38. According to the Portuguese authorities, in January 2007 the Justice Ministry published the **"Explanatory guide to corruption and related offences – preventing corruption"**, which has already been referred to under recommendation iv. The guide is aimed at all central and local government departments and officials. It describes all the various bribery and corruption-related offences and the forms they may take, with concrete examples, together with the relevant legislation and applicable penalties. It encourage readers to report to the authorities examples of corruption of which they become aware and emphasises that officials must behave ethically in carrying out their public duties, including the obligation not to profit personally from their responsibilities, avoid conflicts between individual and public interests and refuse gifts as consideration for decisions taken in the course of their duties. Although this is not a genuine code of conduct as such, it does encourage officials to behave ethically in all circumstances.
39. The authorities also point to a number of other formal documents: a) the **"public administration ethical charter"**, which includes a body of ethical principles aimed at public officials in general, particularly the duty to act impartially and honestly in dealings with citizens. The justice ministry plans to expand the charter and develop its content to include guidelines on preventing and combating corruption; b. the **"police code of conduct"**, approved as part of the system of self-regulation of law enforcement officers and aimed at staff of the Republican National Guard and the Public Security Police. Article 6 of the code is concerned with integrity, dignity and probity⁸; c)

⁸ Article 6: Integrity, dignity and probity

1. Members of the security forces shall perform their duties with integrity and dignity, and avoid any conduct that could harm the reputation, effectiveness or public service mission of the police.

2. In particular, they shall not undertake any activities incompatible with their status as representatives of authority or that could create conflicts of interest likely to undermine their loyalty and honour or the dignity and reputation of the institution to which they belong.

3. Members of the security forces shall combat and report all forms of improper, arbitrary and discriminatory corruption.

the “**security forces code of conduct**”, aimed at the Criminal Police and which draws inspiration from the European Convention on Human Rights.

40. A **Council for the Prevention of Corruption** was established by Law 54/2008 of 4 September 2008, as an independent agency to the Court of Accounts. Its main task is to contribute to the prevention and detection of various types of offences including those of corruption, economic and financial crime, money laundering, embezzlement of public and other assets, mismanagement in general, abuse of power, insider dealing etc. This Council can be consulted on legal amendments and it is responsible for assessing the implementation of administrative regulations and procedures by the administration and public companies. It shall also assist the latter when it comes to the drafting of ethical standards and organising training activities.
41. Turning to the training of public officials, the “**National Administrative Institute**”, which runs courses for staff of all departments, offers a regular course on “Ethics and social responsibility in the public service”. Similarly, the Judicial Training Centre, which provides, initial, further and continuing training for judges and prosecutors, covers rules of conduct, the ethical dimension of the judicial function and interprofessional relations in its initial training. Initial and continuing police training includes a section on the security forces code of conduct and broader ethical principles inherent in the Constitution and the United Nations Universal Declaration of Human Rights.
42. The Portuguese authorities indicate in their supplementary information, that article 24 of the Disciplinary statute of central, regional and local government staff - Legislative Decree 24/84 of 16 January – provides that a civil servant or public official can be dismissed for having accepted gifts, gratuities or other personal advantages, or for embezzlement of public funds, or having acted in a manner so as to obtain an illegal financial benefit for him/herself or another etc.⁹
43. GRECO notes the information supplied, which confirms the diversity and heterogeneous nature of existing ethical codes, and the fact that they concern ethical issues in general, with little attention being paid to corruption, including how to respond to gifts. These were factors that gave rise to recommendation vi in the Evaluation Report. The proposal of the Justice Ministry to revise the public administration ethical charter and to place more emphasis on preventing corruption, is a positive initiative that must be supported, given the wide variety of existing ethical rules and standards and the difficulty of securing acceptance of certain standards, as the report makes clear¹⁰. It should also settle the issue of gifts. GRECO also welcomes the January 2007 “explanatory guide to corruption and related offences – preventing corruption”. This is a very valuable document, from both an information and awareness-raising standpoint, but although it may encourage ethical conduct it still cannot replace an ethical code or code of conduct as such.
44. GRECO observes that there have been no new developments regarding penalties for breach of rules of conduct while the very general information supplied on training suggests that there have been no significant changes in this area.
45. GRECO concludes that recommendation vi has been partly implemented.

⁹ A list of 7 disciplinary matters dealt with between 1990 and 2003 is provided to illustrate the effectiveness of this provision.

¹⁰ The Criminal police had elaborated a police ethical recommendations guide, applicable to all public officials; this guide had a mixed reception, particularly in view of the uncertainties surrounding its precise nature and legitimacy.

Recommendation vii.

46. *GRECO recommended appropriate protection be offered to whistleblowers and that methods of dealing with allegations of corruption within the public service be re-examined, to ensure that appropriate procedures are followed as rapidly as possible.*
47. The Portuguese authorities state that in addition to existing methods used to protect witnesses in criminal proceedings¹¹, such as teleconferences coupled with measures to disguise their appearance and/or voice, fictional addresses and police protection for themselves and their families, section 8 of Act 19/2008 of 21 April on new measures to combat corruption introduced the following protection for whistleblowers: 1. those concerned must not suffer negative consequences, including unwanted transfer to another department, for reporting offences of which they have become aware in the course of or because of their official duties; 2. in the absence of evidence to the contrary, applying disciplinary sanctions to those concerned during the year following the corruption report shall be deemed unjustified; 3. those concerned shall be entitled to (a) anonymity, until the person suspected of corruption has been formally charged, and (b) if they so wish, transfer to another department without the right of refusal by the hierarchy, once the person suspected of corruption has been formally charged.
48. The authorities also note that under existing procedures, cases of corruption in the public service must be reported to the prosecution service for criminal investigation¹²; public officials are obliged to report any offences that come to their notice in the course of their duties¹³ (the report is to be made to the judicial authorities or supervisor who then informs the former); where corruption has been identified, it is possible to conduct internal disciplinary proceedings in parallel with any criminal proceedings; officials concerned are suspended from their duties until the final decision of the court; final convictions that carry the ancillary penalty of dismissal are transmitted to the official's administrative department of origin, which automatically terminates any disciplinary proceedings that have not already been completed. These procedures should be strengthened by Act 51/2007 of 31 August 2007, which lays down the priorities, including trading in influence and various corruption offences, and guidelines for crime policy in the period 2007-2009. This was subsequently followed by a general directive of the State Prosecutor, no. 1/2008 of 18 February 2008, specifying that investigations of bribery and corruption offences must be given "special priority". According to the Portuguese authorities, this will naturally also apply to reports submitted by whistleblowers.
49. GRECO notes the information supplied and the progress made towards protecting whistleblowers in the public service. The approaches adopted might well form the basis for similar measures in the private sector. With regard to the second part of the recommendation, the authorities have decided to pay particular attention to the treatment of corruption cases, especially from the judicial standpoint. GRECO also notes that the previously cited "explanatory guide to corruption and related offences – preventing corruption" (see recommendation vi) advises departments to make sure that officials are fully aware of their obligation to report suspicions of corruption. These various measures are consistent with the recommendation and even though it is to be hoped that Act 51/2007 will lead to more attention being paid to the administrative and internal disciplinary handling of corruption cases, GRECO is generally satisfied with the improvements made.

¹¹ Act 93/99 of 14 July.

¹² Disciplinary regulations of officials and other employees of central, regional and local government – article 8 of Legislative Decree 24/84.

¹³ Article 242-1 b of the Code of Criminal Procedure

50. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

51. *GRECO recommended a) the existing system of professional disqualifications be made better known; b) closer supervision be exercised over private law legal persons – including “irregular” companies – and their managers during and after their registration, particularly concerning their prior judicial records, and c) that priority be given to enacting and implementing the draft legislation to reform the commercial register.*
52. The Portuguese authorities repeat the information in the Evaluation Report concerning article 100 of the Criminal Code, which provides for disqualification from practising for individuals convicted of “serious abuse” of their profession, business or industry or gross breach of the duties associated with it. Details of such convictions are transmitted by the courts to the Commercial Register or the relevant professional body with self-regulatory powers. To raise awareness of this provision (first part of the recommendation), the Directorate General for judicial administration has published an explanatory memorandum on article 100 on its Internet site.
53. Turning to the second part of the recommendation, on closer supervision of private law legal persons, the Portuguese authorities refer to the recent introduction¹⁴ of criminal liability for legal persons, the establishment of a criminal register for legal persons, the system of penalties applicable, such as fines and winding up, and the possibility of replacing fines not in excess of 600 day-fines with judicial supervision (for more detail, see under recommendation ix). The authorities state that the ancillary penalties of disqualification from exercising an activity and the closure of an establishment must be published in a media outlet and posted in the premises where the convicted person works. The courts must also inform the criminal register of legal persons of any convictions involving private companies¹⁵ and the latter will formally register this information. Providing additional information, the Portuguese authorities also stress that, for a certain number of vulnerable sectors, the law provides for prior verification of the trustworthiness of those concerned, by requiring the presentation – in practice – of an extract from the criminal register before being allowed to participate in public procurement/calls for tenders.
54. With regard to the third part of the recommendation, the government has established a “Commercial Register Information System” that involves the total computerisation of the register. This should simplify the procedures for registering and accessing information, through the introduction of various measures, such as a) the establishment in July 2005¹⁶ of an on-line system - “*Empresa na Hora*” - for the immediate constitution of commercial and civil companies; b) since July 2005¹⁷ the obligation to publish, either on the Internet (via the *Direcção Geral dos Registos e Notariado*) or in the commercial registers, all the formal documentation relating to the registration of companies and other legal persons; c) the abolition, in March 2006¹⁸, of public documents in connection with the constitution of a company, changes to the company's articles of association, increases in the share capital and so on; d) the introduction, in March 2006, of a system for the immediate winding up and dissolution of commercial companies in a single document lodged with the commercial register. In their supplementary information, the Portuguese authorities stress that these new procedures allow for a more rapid exchange of

¹⁴ Act 59/2007 of 4 September 2007

¹⁵ Since the Act of 4 September 2007, the register has received 17 reports of convictions.

¹⁶ Legislative-Decree 111/2005 of 8 July 2005

¹⁷ Portaria 590-A/2005, of 14 July 2005

¹⁸ Legislative-Decree 76/2006 of 29 March 2006

information (between the relevant commercial register, the tax authorities, the social security administration and the work inspectorate) on partners, representatives, administrators and components of the new company which, in turn, increases the efficiency of checks aimed at avoiding the registration of companies without legal personality and/or of those which are unable to start business within the deadline foreseen. With regard to the modernisation of the commercial register and the centralisation and computerisation of various types of information on companies and their directors in the National Register of Legal Persons, the Portuguese authorities say that they prefer to await the introduction of the criminal register of legal persons (in September 2007) before undertaking such a reform.

55. GRECO notes the information provided. Concerning the first part of the recommendation, the publication on the Internet of an explanatory memorandum on article 100 is a positive development and GRECO hopes that this will be sufficient to increase knowledge and awareness of this provision. Concerning the second part of the recommendation, GRECO reminds the content of paragraph 71 of the Second Round Evaluation Report, which states that "no checks are carried out on the criminal and commercial law records of partners, shareholders and managers of enterprises registered with the national register¹⁹. Nor are any such checks carried out subsequently during the lifetime of these legal persons". GRECO welcomes the fact that judicial decisions are communicated to the criminal register, but this does not as such signify closer supervision of legal persons themselves, and in any event there remains the issue of the supervision of individuals – for the reasons referred to above and because of the status of information in the civil status register²⁰. It would appear that the checks based on information from the criminal register are only carried out selectively²¹ and not more systematically when legal persons are established/registered. GRECO cannot therefore conclude that real progress has been achieved. Indeed, the regulations governing the creation of companies appear to have been greatly liberalised, as shown by the system for establishing companies on line in less than an hour, which makes it difficult to carry out any detailed prior checks. Finally, the modernisation of the commercial register only extends to the formalities for the registration and creation of new companies. GRECO reminds the Portuguese authorities that they gave it to understand in the Evaluation Report that an important reform of the system to centralise information, and the supervisory process, was planned²². This centralisation has been deferred and it will be necessary to see how the reform is eventually carried out.

56. GRECO concludes that recommendation viii has been partly implemented.

¹⁹ According to the Portuguese authorities, such information is not requested in these situations as it concerns sensitive data whose collection and processing is governed by legislation. It would therefore be necessary to give a legal basis to such processing, in accordance with data protection principles. The civil status register does include information on disqualifications from managing commercial enterprises, as a result of bankruptcy or liquidation, but it is not yet computerised and the information is therefore difficult to access.

²⁰ As noted in footnote 34 of the second round evaluation report, "according to the Portuguese authorities, such information is not requested in these situations as it concerns sensitive data whose collection and processing is governed by legislation. It would therefore be necessary to give a legal basis to such processing, in accordance with data protection principles. The civil status register does include information on disqualifications from managing commercial enterprises, as a result of bankruptcy or liquidation, but it is not yet computerised and the information is therefore difficult to access".

²¹ For a series of 36 commercial activities, exercising one of these and participating in public tenders shall be refused if the criminal record reveals that the person concerned was sanctioned by such a prohibition.

²² According to the Portuguese authorities, "draft legislation is being prepared to permit the collection and centralised computerised storage in the national register of all relevant information on businesses. This would offer a better nation-wide overview of the situation regarding these undertakings and their managers. More proactive checks could also be carried out on the so-called "irregular" companies registered in the National Register of Legal Persons and for the purpose of combating letter-box companies that might act as screens to conceal corruption offences. The GET has been informed that a new law, presently under preparation, will reinforce the monitoring of companies, including the so-called "irregular" companies." Paragraph 71 of the evaluation report.

Recommendation ix.

57. *GRECO recommended an appropriate system of liability be introduced for legal persons involved in the offences of active corruption, trading in influence and money laundering; that effective, proportionate and dissuasive sanctions be introduced, in accordance with the Criminal Law Convention on Corruption; that appropriate training be organised to ensure the effective enforcement of this liability and the application of sanctions; and that consideration be given to establishing a criminal records system for legal persons on whom penalties have been imposed for criminal offences.*
58. The Portuguese authorities state that although the criminal liability of legal persons in cases of corruption was not completely lacking before²³, Act 59/2007, which came into force on 15 September 2007, gave it more general legal force. Under article 11 of the Criminal Code, as amended, legal persons and similar bodies, other than the state, public legal persons and public law international organisations, may be held responsible for the commissioning of certain offences, including bribery, trading in influence and money laundering. This liability arises when an offence is committed on behalf of and in the interest of the body concerned by one or more individuals occupying a leading position or by individuals answerable to persons occupying a leading position because of lack of supervision or oversight by the latter²⁴.
59. Articles 90 A and B of the Criminal Code specify primary penalties, in the form of fines based on a day-fines system²⁵ or winding up, and ancillary penalties, such as court injunctions, closure of the establishment and disqualification. Where a fine is less than 600 day-fines the court may replace the sentence with judicial supervision, whereby it orders the supervision of a legal person's activities by a court-appointed representative, who reports on that body's activity every six months, or whenever he or she considers necessary. The judicial supervision order is revoked and the fine reinstated if, after the conviction, the legal person commits a further punishable offence or if it appears that the objectives of the judicial supervision have not been achieved. In addition, the ancillary penalties of disqualification from exercising an activity and the closure of an establishment must be published in a media outlet and posted in the premises where the convicted person works.
60. The Portuguese authorities state that the Justice Ministry plans to include the criminal liability of legal persons as a theme in the courses run by the Judicial Training Centre and Criminal Police Institute and to make the participants aware of the need to apply the new provisions in their everyday practice.
61. As noted under recommendation viii, the legislation approving the new Criminal Code²⁶ has also established a criminal register for legal persons and similar bodies (Section 8), entitled "Criminal Register for Collective Entities". The data recorded in the register include the identity of convicted legal persons, the court that handed down the judgment, the content of the judgment and the legal provisions applied. A major revision of the arrangements for identifying convicted legal persons is awaited.

²³ Legislative-Decree 28/84 of 20 January on the criminalisation of activities incompatible with the national economy and Act 50 /2007 of 31 August on criminal liability for unsporting behaviour.

²⁴ Criminal Code, article 11 – 2 a) and b)

²⁵ The fines therefore range from € 6 000 to 9.6 million for corruption and trading in influence, and from € 24 000 to 14.4 million for money laundering.

²⁶ Act 59/2007 of 4 September 2007

62. GRECO notes that Portugal has taken steps to introduce a more broad-ranging system of criminal liability for legal persons and to ensure that the relevant offences – bribery, trading in influence and money laundering – of the Criminal Code also apply to legal persons. On paper, the penalties that can be imposed appear to be generally adequate, though it is still difficult to assess their effectiveness, given the recentness of these reforms. A "criminal record" for legal persons has also been established. However, there is still no training for those concerned, though this is currently under discussion. Despite this minor shortcoming, which the authorities say they are ready to rectify, GRECO considers that overall Portugal has introduced some significant changes in response to this recommendation.
63. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

Recommendation x.

64. *GRECO recommended training for tax officials on the detection of corruption offences be introduced.*
65. The Portuguese authorities state that where tax evasion is linked to corruption, it is already existing practice for the tax authorities to refer any corruption offences identified to the criminal police, so that criminal inquiries can be launched. To assist the detection of such offences, the tax authorities issue regular instructions to their inspectors containing all relevant information. For example, in December 2006, inspectors were all supplied with the OECD Bribery Awareness Handbook for Tax Examiners. As regards training, in the supplementary information provided the Portuguese authorities indicate that of the 11 500 officials working for the tax authorities, 3 967 received training in 2006 and 9 159 in 2007. To implement this recommendation, the tax authorities included various themes, especially uncovering corruption during checks of the tax-payers' activity, and financial and accounting documentation.
66. GRECO notes the information supplied. The significant efforts made by the tax administration in order to familiarise its officials with the uncovering of corruption within the framework of their inspection activities will heighten the contribution made by the tax authorities to the fight against corruption.
67. GRECO concludes that recommendation x has been implemented in a satisfactory manner.

III. CONCLUSIONS

68. **In view of the above, GRECO concludes that Portugal has implemented satisfactorily or dealt with in a satisfactory manner just over half of the recommendations in the Second Round Evaluation Report.** Recommendations vii and x have been implemented satisfactorily. Recommendations i, iv, v and ix have been dealt with in a satisfactory manner. Recommendations ii, iii, vi and viii have been partly implemented.
69. Significant progress has been achieved in such areas as the use of asset investigations with a view to implementing temporary and confiscation measures, corporate criminal liability, whistleblower protection and training of tax inspectors on uncovering corruption. GRECO also notes progress in the implementation of the other recommendations in the Second Round Evaluation Report. It hopes that the Portuguese authorities will do all that is necessary to bring the various initiatives already under way or announced to a successful conclusion.

70. GRECO invites the head of the Portuguese delegation to supply additional information on the implementation of recommendations ii, iii, vi and viii by 30 April 2010.
71. Finally, GRECO invites the Portuguese authorities to authorise publication of this report as soon as possible, translate it into the national language and make this translation public.