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Joint First and Second Evaluation Round

Addendum
to the Compliance Report on the Russian Federation

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I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on the Russian Federation at its 40th Plenary Meeting (5 December 2008). This report (Greco Eval I/II Rep (2008) 2E) addressed 26 recommendations to the Russian Federation and was made public on 30 April 2009.

2. The Russian Federation submitted the Situation Report required under the GRECO compliance procedure on 30 June 2010. On the basis of this report, and after a plenary debate, GRECO adopted the Joint First and Second Round Compliance Report (RC Report) on the Russian Federation at its 49th Plenary Meeting (3 December 2010). This last report was made public on 3 January 2011. The Compliance Report (Greco RC-I/II (2010) 2E) concluded that recommendations i, ii, vi, x, xii, xv and xxv had been implemented satisfactorily and recommendations viii and xxvi had been dealt with in a satisfactory manner. Recommendations iii, v, vii, ix, xi, xiii, xiv, xvi, xvii, xviii and xix-xxiii had been partly implemented and recommendations iv and xxiv had not been implemented; GRECO requested additional information on their implementation. This information was provided on 29 June and 21 November 2012.

3. The purpose of this Addendum to the Joint First and 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 iii, iv, v, vii, ix, xi, xiii, xiv, xvi, xvii, xviii, xix-xxiii and xxiv in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation iii.

4. *GRECO recommended to develop systems for monitoring in a comprehensive, objective and on-going manner the practical impact on the various sectors concerned of the anti-corruption measures introduced, including the evolution of the levels of corruption in these sectors over time. It should be ensured that civil society is in a position to provide input to, and to make its views known on the outcome of such monitoring.*

5. GRECO recalls that, in the Compliance Report, it concluded that the recommendation had been partly implemented. GRECO reiterated its position, expressed in paragraph 59 of the Evaluation Report, that a meaningful evaluation of the real impact of various anti-corruption measures necessitated the development of different tools and that measures implemented could not be assessed until they had taken full effect. It was therefore appreciated that the Presidential Council for Counteracting Corruption and its Presidium have established various organisational frameworks for monitoring the implementation of anti-corruption measures and their possible impact. It was noted in particular that certain state institutions had been involved in this process together with one non-governmental organisation "All Russian social fund *Public Opinion*". Also, the input from a Working Group on the co-operation with civil society representatives under the Presidential Council was foreseen in the form of outcomes from future sociological research. GRECO stressed in this context that the evaluation of measures taken by the state organs would benefit from being as independent as possible from the state in order to be carried out in an unprejudiced way as well as to be trusted by society at large. GRECO further welcomed the putting in place of a comprehensive system for monitoring the application of laws and encouraged the authorities to continue making such monitoring as open and sensitive as possible towards

input from civil society. It was noted that such involvement may take different forms and must not necessarily imply full participation in government structures.

6. The authorities of the Russian Federation, firstly, report that in 2010 and 2011 the Government had commissioned sociological research to the Ministry of Economic Development. This research was carried out by an independent expert organisation the "Public Opinion" All-Russian Public Foundation specifically contracted by the Ministry. The first sociological study focusing on "everyday corruption" was conducted in 2010. The study's goal was to evaluate the existing level and structures of corruption and the efficiency of the anti-corruption measures taken as perceived by various layers of society in the country's different regions. The opinion polls were conducted in 70 subjects of the Federation in respect of a total of 17 500 respondents (or 250 individuals per subject). The survey's findings helped develop specific characteristics as well as generalised indices of "everyday corruption" per Federation subject, federal district and the country at large. The interaction between the level, structure and specific features of corruption in the various spheres of social relations and governmental regulation were scrutinised with special attention being given to the attitudes of the population towards corruption, the degree of awareness of anti-corruption policies and the perception of efficiency thereof. The results of the study were submitted to the Government, the Presidential Administration and were examined by the Presidium of the Council for Counteracting Corruption. The research findings were also made available to the general public at a press conference held by the Deputy Minister of Economic Development on 14 June 2011.

7. In 2011, a second sociological study was carried out with a focus on "business corruption". Within its framework, opinion polls were held in 77 subjects of the Federation with participation of more than 2 000 entrepreneurs. As part of the study, 84 in-depth interviews were held in a total of 14 cities with representatives of business associations, relevant supervisory authorities, law enforcement bodies and experts in the anti-corruption field, including journalists. Reportedly, a significant amount of information on the scale, structure and specific features of "business corruption" as well as on the efficiency of anti-corruption measures has been collected and analysed thanks to the survey. These are currently being examined by the Government and the Administration of the President of the Russian Federation. The authorities further submit that, pursuant to a decision by the Presidium of the Council for Counteracting Corruption, sociological studies will from now on be conducted on a regular basis. Such an exercise, amongst others, is included in the 2012-2013 National Anti-Corruption Plan.

8. Secondly, measures have been taken to develop systems for open (public) monitoring of the practical results of anti-corruption measures with the participation of civil society. On 20 May 2011, a Presidential Decree "On monitoring the application of law in the Russian Federation" (No. 657) was adopted entrusting such monitoring to federal executive authorities and public authorities of subjects of the Russian Federation. The monitoring is to be conducted on the basis of annual plans approved by the Government as well as on an *ad hoc* basis, and its results are to be sent to the Ministry of Justice as a designated authority answerable to the President. A wide range of state bodies and organs, including, *inter alia*, the Commissioner for Human Rights, the Prosecutor General, the higher courts and the Accounts Chamber, have been mandated to contribute to the preparation of annual draft monitoring plans and to report on their implementation to the Ministry of Justice. On 19 August 2011, the methodology and the plans for monitoring the application of law in the years 2011 and 2012 were formally approved by the Government. In pursuit thereof, respective normative legal acts have been developed and adopted by the subjects of the Russian Federation. The authorities specifically emphasise that the aforementioned monitoring plans provide opportunities for participation by the civil society, in

particular, lawyers, advocates, notaries, academics, human rights specialists, non-governmental organisations and the media.

9. Thirdly, on 15 February 2012, the Ministry of Justice was commissioned by the Presidium of the Council for Counteracting Corruption to finalise the draft "Concept of co-operation between public authorities, local self-government bodies and civil society institutions in the field of counteracting corruption for the period until 2014". The goals of the Concept are four-fold: 1) to create conditions and prerequisites for the efficient co-operation of public authorities, local self-government bodies and civil society institutions in the field of combatting corruption; 2) to set up a system of broad public control over public authorities, their compliance with and the protection of citizens' constitutional rights and freedoms; 3) to overcome distrust between civil society and public authorities; and 4) to create a zero tolerance climate towards corruption in society.

10. Fourthly, on 4 October 2011, the Presidium of the Council for Counteracting Corruption had set up a Working Group on issues of joint participation of representatives of the business community and public authorities in combatting corruption, subordinate to the Presidium and managed by the Minister of Economic Development. The Group's objective is to ensure practical participation of representatives of the business community in the anti-corruption activities implemented by the federal public authorities. It is composed of managers of the four leading business associations (the Chamber of Commerce and Industry, the Russian Union of Industrialists and Entrepreneurs, the All-Russian public organisation "Business Russia", and the All-Russian Non-Governmental Organisation of Small and Medium-Sized Businesses "OPORA Russia").

11. GRECO commends the authorities for having initiated a systematic evaluation of the levels of corruption in the Russian Federation and of the efficiency of the anti-corruption measures taken through means, such as regular sociological research. It also acknowledges the introduction of a comprehensive and on-going assessment of the application of laws, particularly in order to ascertain their efficiency in combatting corruption. The involvement of and the contribution to such monitoring by a large group of state bodies is a welcome development. As concerns civil society's input, GRECO appreciates that a specific provision has been made for its participation in the anti-corruption monitoring and, in particular, that some solid foundations are being laid down for the engagement between the public authorities and representatives of the Russian business community. Overall, it would appear that systems for monitoring in a comprehensive, objective and on-going manner of the levels of corruption in various sectors and of the anti-corruption measures taken are in place, although co-operation with civil society would need to be further developed.

12. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

13. GRECO recommended to review the system of administrative and criminal procedures in order to firmly establish that cases of corruption are to be treated as criminal offences as a main rule.

14. GRECO recalls that this recommendation was found not to be implemented in the Compliance Report. It took note of the definition of corruption[1] as contained in Article 1 of the Federal Law "On

[1] Corruption is defined as "abuse of official position, giving a bribe, receiving a bribe, abuse of powers, a commercial graft or any other illegal use of his/her official position by an individual contrary to the legal interests of the society and state in order to receive profit or benefit in the form of money, valuables, other property and services of property nature, other property

counteracting corruption" (No. 273-FZ) of 25 December 2008, which is reportedly based on the corruption provisions of the specific articles of the Criminal Code. On the one hand, GRECO was reassured that, according to the authorities, the only type of offence of a corrupt nature for which the laws of the Russian Federation envisaged administrative liability of a natural person was "illegal reward" (compensation) from a legal entity, pursuant to Article 19.28 of the Code of Administrative Offences. On the other hand, it remained concerned that Article 13 of the Law "On counteracting corruption" remained unchanged and stipulated that individuals who commit corruption offences could be brought not only to criminal but also to administrative or civil proceedings and liability for corruption. It was concluded that the general definition of corruption, as contained in Law No. 273-FZ, may not have a decisive effect upon the selection of criminal or administrative proceedings and even if, in theory, the criminal justice process was to be given priority, the existence of two parallel procedures in respect of corruption offences afforded opportunities for manipulation.

15. The Russian authorities now report that, on 30 September 2011, the Prosecutor General's Office forwarded to the Ministry of Justice proposals regarding a modification to be introduced in the existing anti-corruption legislation. In particular, it was suggested that a new principle of counteracting corruption be added in order to ensure a clearer distinction between administrative offences and criminal offences of a corruptive nature in the following manner: article 3 of the Law "On counteracting corruption" was to be supplemented by provision 3.1 stipulating that "manifestations of corruption are to be classified, as a main rule, as criminally punishable acts". The authorities contend that the introduction of this new principle would facilitate a clearer distinction between administrative and criminal liability for corruption offences and ensure that those guilty of corruption are prosecuted, as a main rule, under the relevant provisions of the Criminal Code. Having obtained consent from the Ministry of Justice, at the end of 2011, the Prosecutor General's Office has sent the above-mentioned draft to the State Duma (i.e. lower chamber of Parliament).

16. GRECO welcomes the elaboration of amendments to the Federal Law "On counteracting corruption". It recalls that corruption, in all of its forms, is a serious offence which threatens the proper functioning of a democratic society and needs to be dealt with, as a matter of priority, by the criminal justice system. GRECO is satisfied that the new amendments purport to classify manifestations of corruption, as a main rule, as criminally punishable acts. It encourages the Russian authorities to complete this important reform without undue delay. However, for as long as the aforementioned amendments have not been adopted, GRECO cannot conclude that this recommendation has been implemented satisfactorily.

17. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

18. *GRECO recommended that precise guidelines for the distribution of corruption cases between the various law enforcement agencies/departments be established*.

19. GRECO recalls that, in the Compliance Report, it concluded that this recommendation had been partly implemented. It noted that the new legislation concerning the establishment of the Investigative Committee, directly under the executive powers and outside the structures of the

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rights for him/herself or for the third persons or illegal presenting of such advantage to the above-mentioned person by other individuals as well as committing the above-mentioned actions on behalf or in the interests of a legal entity."

Prosecution Service, was expected to centralise the investigation of crimes (including corruption) in a single institution. However, the implementation of this reform as well as the possible need for additional regulations on the distribution of cases was pending. GRECO also stressed that objective criteria had to be established for the allocation of corruption cases to other pertinent authorities, such as the Police and the Federal Security Service.

20. The Russian authorities now report that, pursuant to Federal Law No. 404-FZ of 28 December 2010, amendments have been introduced in Article 151 of the Criminal Procedure Code entitled "Investigative Jurisdiction". The revised text stipulates that the investigation of offences provided for in Article 290 of the Criminal Code ("bribe-taking") and Article 291 CC ("bribe-giving") is to be conducted by the Investigative Committee of the Russian Federation. The above amendments entered into force on 1 January 2012. The authorities submit that, as result of this reform, the overwhelming majority of corruption offences are now falling within the exclusive competence of the Investigative Committee of the Russian Federation.

21. GRECO is satisfied that, as the result of amendments introduced in Article 151 of the Criminal Procedure Code, the investigation of the overwhelming majority of corruption offences, and more specifically those covered by Article 204 of the Criminal Code ("commercial bribery"), Article 285 CC ("abuse of official powers"), Article 290 CC ("bribe-taking"), Article 291 CC ("bribe-giving") and Article 291.1 CC ("intermediation in bribery") is carried out exclusively by the Investigative Committee of the Russian Federation. As concerns investigations under Article 201 CC ("abuse of powers"), investigations are to be conducted solely by the bodies of the Ministry of the Interior.

22. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vii.

23. GRECO recommended that the operational independence of law enforcement agencies and their investigative staff be strengthened and governed by appropriate checks and balances under the Rule of Law and that the material conditions of law enforcement personnel be reconsidered in this context.

24. GRECO recalls that, in the Compliance Report, it concluded that the recommendation had been partly implemented. As concerns operational independence of law enforcement agencies and their investigative staff, it was found that the information submitted by the authorities pertained mostly to organisational structures of the investigative committees as supervisory organs in respect of operational investigative departments. However, it would appear that no action had been taken specifically in respect of the organisation and procedures of work within the law enforcement agencies which would strengthen the operational independence of the personnel carrying out investigative tasks or their accountability. Such measures, moreover, still had to be fine-tuned in light of the recent establishment of the Investigative Committee. As regards the material conditions of law enforcement staff, it was acknowledged that low salaries and poor working conditions had a negative impact on the independence of law enforcement personnel, and that improvements in this respect could assist in creating more independent law enforcement agents.

25. The Russian authorities now report that the operational independence of investigative agencies and their investigative staff has been ensured by the reform, the essence of which was the separation of investigative bodies from the public prosecution as from 15 January 2011 and the establishment of a new independent agency – the Investigative Committee of the Russian

Federation. The Committee's activities are regulated by Federal Law No. 403-FZ of 28 December 2010 and its Chair is appointed by the President of the Russian Federation. The Committee is competent, amongst others, to investigate corruption offences.

26. The authorities also refer to the setting up of the Investigative Department under the Ministry of the Interior (pursuant to Presidential Decree No. 1392 of 19 October 2011) with a view to improving the organisation of the preliminary investigation in the system of the Ministry of the Interior. The Department is headed by the Deputy Minister of the Interior, who is appointed/dismissed by the President upon submission by the Chair of Government.

27. In so far as material conditions of law enforcement personnel are concerned, on 19 July 2011, the Federal Law "On social guarantees for officers of bodies of internal affairs of the Russian Federation and on introducing modification to some legislative acts of the Russian Federation" (No. 247-FZ) was adopted (it entered into force on 1 January 2012). The law regulates the provision of financial remuneration and pension for officers of bodies of the Interior, as well as of medical care, lodging and other social guarantees for officers who are citizens of the Russian Federation and who are dismissed from service in bodies of the Interior and their family members. Also, on 7 November 2011, the Federal Law "On military pay for military servicemen and some allowances paid to them" (No. 306-FZ) was adopted. This law applies to officers of law enforcement bodies who serve in the military: military prosecutors, investigators (heads) of military investigative divisions of the Investigative Committee, officers of the Federal Security Service. The adoption of these two laws has prompted amendments to a series of other federal laws, including, *inter alia*, "On the Prosecution Service of the Russian Federation", "On the Investigative Committee of the Russian Federation", "On pension provision for persons having served in the Military Service, bodies of the Interior, the State Fire Service, bodies for Control over Traffic in Narcotic Drugs and Psychotropic Substances, institutions and bodies of the Penal System, and their families". Those amendments were adopted by Federal Law No. 309-FZ on 8 November 2011. According to the Information Letter of the Ministry of Finance of 22 July 2011, the above laws provide for a considerable increase in the level of financial provision for law enforcement officers (e.g. the average military pay has been increased two and a half times).

28. GRECO welcomes the recent organisational reforms, notably the setting up of the Investigative Committee and of the Investigative Department under the Ministry of the Interior, which represent an important contribution to the strengthening of the respective agencies' operational independence. However, as concerns operational independence of law enforcement agents, GRECO recalls its findings, contained in paragraph 144 of the Evaluation Report, namely that the degree of operational independence of individual law enforcement personnel appeared to be rather limited and created risks of improper influence from within the system. Considering that corruption in Russia is generally perceived to be widespread, including within the law enforcement system itself, it was of paramount importance that those who fight corruption be as independent as possible in their work, i.e. that improper influence not only from outside the system be dealt with through rigorous checks, but that improper influence from within the system be eliminated to the extent possible. For this reason, GRECO stressed the need to ensure that the strict hierarchical control within the system be balanced with an appropriate level of operational independence of those who carry out corruption investigations and linked to a sufficient degree of personal accountability. In the absence of any relevant clarifications, it may not be concluded that this part of the recommendation has already been implemented satisfactorily. GRECO notes the increase in the level of remuneration and of other material conditions provided to the law enforcement staff. It is satisfied that the requirements of this part of the recommendation have been duly implemented.

29. GRECO concludes that recommendation vii remains partly implemented.

Recommendation ix.

30. *GRECO recommended that the principle of judicial independence, as provided for in the Russian Constitution and legislation, be strengthened further in practice, in particular, in respect of recruitment/promotion procedures and the exercise of judicial functions.*

31. GRECO recalls that, in the Compliance Report, it concluded that this recommendation had been partly implemented. It took note of the safeguards for the judicial independence as provided for by the 1992 Law "On the status of judges in the Russian Federation" (No. 3132-1) and observed that the adoption of the Law "On counteracting corruption" had put in place some additional rules aimed at preventing conflicts of interest and corruption within the judiciary (e.g. via the obligation to declare income and property by judges and members of their families). GRECO welcomed the creation of the Disciplinary Panel of Judges composed only of justices of the Supreme Court and of the High Arbitration Court (three judges each)[2], as well as the abolition of a three-year probationary period for the newly appointed judges. It was also observed that the legal changes pertaining to the appointment of justices of the Supreme Court and of the High Arbitration (Commercial) Court appeared to have slightly reduced the influence of the executive (these were appointed by the Federation Council, i.e. the higher chamber of Parliament, as before, following nomination by the President, as before; however the President was now to be consulted by the Chairs of these Courts and not by the Presidential Commission). Notwithstanding these positive developments, the Compliance Report concluded that not all the issues signalled in the Evaluation Report had been addressed by the authorities. This concerned notably the continuing possibilities for the executive to exercise undue influence in the appointment procedure and the establishment of the judicial practice by the Supreme Court Plenum which was not free of influence from outside the judiciary. Moreover, the rigorous implementation of the existing legal provisions in practice appeared to be missing.

32. The Russian authorities now report that a range of measures have been taken in order to strengthen judicial independence in Russia. Firstly, in accordance with Article 14.1 of the Federal Constitutional Law "On the courts of general jurisdiction of the Russian Federation" (No.1-FKZ) of 7 February 2011, the Plenum of the Supreme Court of the Russian Federation now only consists of the Chair, Vice Chairs and justices of the Supreme Court, and the obligation of the Prosecutor General or his/her deputies to participate in the work of the Plenum has been withdrawn. The law had entered into force on 14 March 2011.

33. Secondly, in 2008-2011, a total of sixteen modifications have been introduced in the Law "On the status of judges in the Russian Federation". These were aimed at further refining the recruitment requirements for judges and candidates to the office of judge, reviewing the selection and appointment procedures, strengthening the prevention of corruption and conflicts of interest, revising the system of disciplinary liability and of the procedure of bringing judges to other forms of liability (administrative and criminal), and reinforcing the training programmes made available to the judges. Pursuant to Article 6.6 of the revised law, a positive opinion by the respective

[2] Pursuant to the Federal Constitutional Law "On Disciplinary Panel of Judges" (No. 4-FKZ) of 9 November 2009, the Panel is defined as a judicial body which examines the cases of complaints against decisions of the High Qualification Panel of Judges of the Russian Federation and qualification panels of judges of subjects of the Russian Federation about early termination as a result of a misconduct.

qualification panel of judges is required for the appointment of all judges, including Chairs of the Supreme Court and of the Supreme Commercial Court.

34. Thirdly, in order to increase judicial responsibility, legislative changes have been introduced in the Federal Constitutional Laws "On the Constitutional Court of the Russian Federation", "On Arbitration (Commercial) Courts of the Russian Federation", "On military tribunals of the Russian Federation", the Federal Laws "On the bodies of the judicial community in the Russian Federation", "On jurors of federal courts of general jurisdiction in the Russian Federation", the Codes of Criminal, Civil and Arbitration Procedure, the Federal Constitutional Law "On the judicial disciplinary tribunal" and the Federal Law "On counteracting corruption". These pursued, *inter alia*, the objectives of strengthening the selection procedure within the judiciary and ensuring that the themes of ethics and ethical conduct are included in judges' preparatory and in-service training and that these permeate the exercise of the judicial duties. The above changes have, moreover, given birth to new bodies of the judicial community, for example, the General Assembly of Judges of the Supreme Court and the Council of Judges of the Supreme Court.[3] The mandates thereof include, *inter alia*, ensuring robust personnel policies within the judiciary and overseeing judges' compliance with the principles of independence and ethical conduct.

35. Fourthly, the authorities refer to the relevant statistics from the judges' qualification boards. Thus, in 2009-2012, a total of 34 296 nominations for vacant judges' posts had been subject to review by the boards. Out of these, 23 345 nominations had been confirmed and 9 756 had been rejected; additionally, the service of 4 919 judges had been terminated. It is stressed that some of the decisions may have been taken bearing in mind the persons' propensity to engage in corrupt behaviour or corrupt motivation in the judges' work. Furthermore, pursuant to the boards' decisions, resignation was rejected in respect of 765 judges, 876 judges had been subject to disciplinary liability in the form of a warning, 46 consents had been given to the opening of criminal proceedings in respect of judges and one juror, and 24 judges had been convicted for various crimes.

36. Fifthly, the authorities report that, between 2009 and 2011, the material conditions of judges have improved and a further increase in allowances is expected as per planned amendments to the "Law on the status of judges in the Russian Federation" which were recently presented to Parliament.

37. Finally, subsequent to a broad consultation process involving governmental and non-governmental sectors as well as foreign experts and organisations, including the Council of Europe, a new edition of the Code of Judicial Ethics has been elaborated by the Council of Judges of the Russian Federation. The revised Code is expected to be endorsed by the 8th All-Russian Congress of Judges in December 2012.

38. GRECO takes note of the information submitted by the authorities. It recognises that the set of measures implemented so far has the potential of reinforcing the independence and impartiality of the judiciary in law as well as in practice. GRECO is satisfied that the Prosecutor General and his/her deputies may no longer take part in the Supreme Court's Plenum which, through its rulings, has the power to establish judicial practice binding upon lower courts. GRECO also acknowledges that the procedure of appointment of judges, including specifically of Chairs of the Supreme Court and of the Supreme Commercial Court, requires a positive opinion by the

[3] Pursuant to Federal Law No. 346-FZ of 8 December 2010 amending Article 3 of Federal Law No. 30-FZ of 14 March 2002 "On the bodies of the judicial community in the Russian Federation".

respective judges' qualification panels. This increases the judiciary's influence over the recruitment and appointment process, particularly as concerns higher courts. The introduction of additional rules aimed at preventing corruption and conflicts of interest within the judiciary, the strengthening of the competitiveness of the selection process and the expansion of bodies of the judicial community are similarly welcome developments. Nevertheless, GRECO wishes to recall its findings contained in paragraph 147 of the Evaluation Report, namely that the bribe-taking in courts represents one of the biggest corruption markets in Russia. In view of the extent of the problem and the persisting widespread mistrust vis-à-vis the judiciary, including the continuing allegations pointing at undue political and vested influence over this branch of power, it would appear that, so far, the investigation and punishment of the judicial corruption have not been pursued in a proactive manner. For example, the statistics provided above do not allow an explicit link to be established between counteracting judicial corruption and criminal and disciplinary liability of judges. Also, no evidence has been presented regarding the systematic use of such instruments as supervision, regular appraisal, case management, etc. in order to deter corruption within the judiciary. For these reasons, GRECO cannot conclude that decisive progress has been achieved in this area.

39. GRECO concludes that recommendation ix remains partly implemented.

Recommendation xi.

40. *GRECO recommended to reduce the categories of persons enjoying immunity from prosecution to the minimum required in a democratic society.*

41. GRECO recalls that the current recommendation was found to be partly implemented in the Compliance Report. It was observed that the Constitution and different federal laws had established a comprehensive system of immunities from criminal proceedings applicable to a large number of officials,[4] while Articles 447-452 of the Criminal Procedure Code (CPC) regulated the special proceedings for lifting immunities. GRECO acknowledged that the initiation of criminal proceedings against rayon and city prosecutors, rayon and city heads of investigation bodies, investigators, (court) lawyers and deputies of a legislative (representative) body of state power of a subject of the Russian Federation was no longer subject to permission by a special authority; however, criminal proceedings could only be initiated by a special public official, i.e. the head of a territorial body of the Investigation Committee of a subject of the Russian Federation. Furthermore, the Government was in the process of changing procedures for more categories of officials as well as candidate deputies covered by paragraph 1 of Article 447 CPC.

42. The Russian authorities now report that the Prosecutor General's Office has prepared a draft Federal Law aimed at amending articles 447 and 448 of the Criminal Procedure Code as well as

[4] Such as members of the Federation Council of the Federal Assembly of the Russian Federation, deputies of the State Duma of the Federal Assembly of the Russian Federation, judges of the Constitutional Court of the Russian Federation, judges of the federal courts of general jurisdiction or arbitration courts, judges of peace (magistrates) and judges of the Constitutional (Charter court) of subjects of the Russian Federation, jurors and laymen for the period when they are administering justice; the Chair of the Audit Chamber of the Russian Federation, his deputies and auditors of the Audit Chamber, Commissioner for Human Rights in the Russian Federation, the former President of the Russian Federation, prosecutors, the Chair of the Investigation Committee, directors of investigation bodies, investigators, barristers, members of the election commission and the commission of the referendum with the right to a decisive vote, registered candidates to the deputies of the State Duma, registered candidates to the deputies of the legislative (representative) body of the state power of a subject of the Russian Federation.

a number of federal laws containing provisions on procedural immunity of persons not specified in Article 447 CPC. On 27 September 2011, the draft was submitted to the Ministry of Justice.

43. Additionally, another draft Federal Law modifying relevant provisions of the CPC has been developed by the Ministry of Justice with a view to implementing the two resolutions issued by the Constitutional Court of the Russian Federation, namely Resolution No. 22-P of 17 October 2011 (to the extent applicable to compensation by Government of damages caused by an unlawful and/or unfounded judgment of the court or a judge) and Resolution No. 23-P of 18 October 2011 (to the extent applicable to the refining of procedure for instituting criminal cases of public prosecution against a judge). The draft was submitted to the Government on 10 April 2012.

44. GRECO takes note of the two draft laws prepared, respectively, by the Prosecutor General's Office and the Ministry of Justice. The reported developments may well represent important steps in the right direction. It is regrettable, however, that no follow-up has been given by the Government to the draft law previously elaborated by the Ministry of Justice and containing amendments to paragraph 1 of Article 447 CPC (see above as well as paragraph 63 of the Compliance Report). It is recalled that the objective of this earlier draft was to withdraw immunity from parliamentary candidates, candidate deputies of constituent elements of the Federation, members of electoral and referendum commissions. GRECO takes the opportunity to refer yet again to the content of Guiding Principle 6, which requires that the categories of persons benefiting from immunity be limited to the minimum necessary in a democratic society. It would appear that important legislative reforms have been initiated by the authorities, yet not all of them have been given the requisite follow-up to this date. As a consequence, a significant reduction in the number of categories of persons enjoying immunity from prosecution has not been achieved.

45. GRECO concludes that recommendation xi remains partly implemented.

Recommendation xiii.

46. GRECO recommended to establish specific and objective criteria to be applied by Parliament, the Constitutional Court or a qualification board of judges when deciding on requests for the lifting of immunities and to ensure that decisions concerning immunity are free from political considerations and are based only on the merits of the request submitted.

47. GRECO recalls that the current recommendation had been considered as partly implemented in the Compliance Report. GRECO recognised that guidelines containing objective criteria for the lifting of judges' immunity had been adopted by the High Qualification Panel of Judges, as well as the Constitutional Court, the Supreme Court and the Supreme Arbitration Court of the Russian Federation. However, in so far as the Federal Assembly was concerned (including both the State Duma and the Federation Council), no such guidelines/criteria had been developed as yet.

48. The Russian authorities now report that, on 21 June 2011, the Prosecutor General's Office had addressed letters to the State Duma and the Federation Council with a request to:

- continue working on the draft Federal Law under which it is intended to introduce amendments to the CPC and the Federal Law "On the status of a member of the Federation Council and the status of a deputy of the State Duma of the Federal Assembly of the Russian Federation" (to the extent applicable to the lifting of immunity of members of Parliament); and

- initiate the preparation of a legal act regulating the procedure for taking decisions on the lifting of immunity of deputies of the State Duma and of members of the Federation Council, based on the Decision of the Constitutional Court of 19 May 2009.[5]

49. According to the information provided by the Federation Council,[6] a series of measures have been taken in pursuance of the aforementioned request. A round table on "The role and place of parliamentary immunity in the Russian Federation" was held on 11 November 2010. Drawing upon its results, a draft Federal Law was prepared with a view to amending: 1) paragraph 1 of Article 448 CPC entitled "Initiating a criminal case", which would regulate in a clear way the procedure for lifting the immunity of members of Parliament; 2) paragraph 3 of Article 450 CPC entitled "Particularities of selecting a measure of restraint and carrying out some investigative actions"; and 3) Article 19 of the Federal Law "On the status of a member of the Federation Council and the status of a deputy of the State Duma of the Federal Assembly of the Russian Federation" entitled "The immunity of a member of the Federation Council and of a deputy of the State Duma".

50. The need to improve the mechanism of lifting immunity was additionally discussed at the round table "On the practice of implementation and perspectives of development of anti-corruption legislation of the Russian Federation" held on 24 May 2012 by the State Duma's Committee for Security and Counteracting Corruption jointly with the Prosecutor General's Office. In this connection, in June 2012, another letter was sent by the Prosecutor General's Office to the Federation Council and the State Duma with a request to consider amending the rules of both chambers of Parliament.

51. GRECO recalls that the procedures for lifting immunity represent an important aspect of Guiding Principle 6. In its previous pronouncements, GRECO has often emphasised that systems lacking objective criteria for the procedure of lifting immunities have been considered as less secure against potential risks of undue personal or political influence in the context of decisions to lift or not to lift immunities in given cases. Complex procedures, sometimes requiring several consecutive decisions by different bodies – and causing significant delays in the initiation of investigations – have also been criticised for lack of expediency. On the basis of information presented, GRECO concludes that, despite some initiatives taken by the authorities, the process for establishing specific and objective criteria for lifting parliamentary immunity has not been completed.

52. GRECO concludes that recommendation xiii remains partly implemented.

Recommendation xiv.

53. *GRECO recommended that Article 104.1-3 of the Criminal Code be amended in order to provide for confiscation of the proceeds from corruption in respect of all corruption offences of the Criminal Code as well as other offences which may be connected with corruption and to provide for efficient seizure in such cases and that the introduction of in rem confiscation under the criminal legislation be considered.*

[5] GRECO recalls that the said decision described the content and fundamental basis of parliamentary immunity – see paragraph 72 of the Compliance Report.
[6] Letter by the Chair of the Federation Council of the Federal Assembly of the Russian Federation No. 2.6-09/330 dated 12 July 2011.

54. GRECO recalls that this recommendation was found to be partly implemented in the Compliance Report. It took note that draft legislation amending Article 104 of the Criminal Code was underway, but that no final draft was available as yet. GRECO also acknowledged the lack of concrete initiatives at the government level that would give due consideration to introducing *in rem* confiscation in the criminal legislation.

55. The Russian authorities now report that appropriate amendments have been introduced in Article 104.1 of the Criminal Code pursuant to Federal Laws No. 97-FZ of 4 May 2011 and No.250-FZ of 20 July 2011. These have extended the application of the said Article to offences – mainly, the various types of abuse of official powers – such as "failure to pay wages, pensions, stipends, allowances or other payments driven by financial gain" (Article 145.1 CC), "illegal receipt of information classified as a state secret" (Article 283.1 CC), "contraband committed by an official using his/her official powers" (Article 226.1, part 2, paragraph a) CC), etc. Furthermore, a draft law has been prepared by the Federal Financial Monitoring Service envisaging the application of Article 104.1 CC to the offences of legalisation (laundering) of money and other proceeds obtained illegally or through the commission of a crime (Articles 174 and 174.1 CC).[7] The authorities stress that, as concerns fraud-related offences[8], in place of the confiscation, recourse is often made to the other existing mechanism of seizure of illegally acquired property, namely the return to the lawful owner. It is for the same reason that Article 104.1CC (providing for the compulsory uncompensated seizure and accrual to the State pursuant to a court conviction of proceeds of crime) may not be applicable to all corruption offences and that the return to the legal owner is to be used instead.

56. As regards *in rem* confiscation, this issue is still being considered by the authorities. It is reported that, on 9 November 2011, a resolution was adopted by the joint session of the Board of the Association of Lawyers of Russia and representatives of the Prosecutor General's Office in which the issue of a possible introduction of *in rem* confiscation was recognised to be of topical importance.

57. GRECO takes note of the information submitted by the authorities. It recalls Article 23 of the Criminal Law Convention on Corruption requiring state Parties to provide for the confiscation of proceeds in respect of all corruption offences established therein. As regards amendments to Article 104.1-3 of the Criminal Code, GRECO observes that the aforementioned provision is clearly applicable to the offences covered by Article 204 CC ("commercial bribery"), Article 285 CC ("abuse of official powers") and Article 290 CC ("bribe-taking"). However, such offences as "bribe-giving" (Article 291 CC), "intermediation in bribery" (Article 291.1 CC) and "abuse of powers" (Article 201 CC) appear to be still excluded from its scope. Furthermore, although Article 104.1-3 CC may now be applied to some offences interlinked with corruption, such as certain fraud-related offences, its extension to tax crime and money laundering (cf. paragraph 217 of the Evaluation Report) has not been provided as yet. This part of the recommendation, therefore, remains partly implemented.

58. In so far as *in rem* confiscation is concerned, GRECO understands that its introduction in the national legislation had been recognised as relevant by both the Prosecutor General's Office and the Board of the Association of Lawyers of Russia. Moreover, there appears to be an intention to

[7] Following consultation with relevant federal bodies, on 28 September 2012, the draft was submitted to the Government with a view to its presentation to the State Duma.

[8] For example, those covered by Articles 159, part 3 CC (fraud committed through abuse of official powers) and 160, part 3 CC (misappropriation or embezzlement through abuse of official powers).

actually introduce legislation that would allow for such type of confiscation. GRECO encourages the authorities to follow through with this promising initiative and concludes that due consideration has been given to this part of the recommendation.

59. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xvi.

60. *GRECO recommended to ensure that public administration reforms to fight corruption are applicable to a wide range of public employees/officials – and not only to the narrow category of civil servants.*

61. GRECO recalls that, in the Compliance Report, it concluded that the recommendation had been partly implemented. It acknowledged that broad public administration reforms were underway in Russia. These extended beyond the civil service to include law enforcement agents, judges and the military. The recommendation, however, was adopted specifically within the context of the public administration evaluation. From that perspective, a precise definition of the concept of civil servant was found to be missing in Russia. Also, as not all public employees were deemed to be civil servants, it was not clear whether public administration reforms to fight corruption were applicable to them, as was prescribed by the recommendation.

62. The Russian authorities now report that, on 21 November 2011, amendments were introduced in the Federal Law "On counteracting corruption" (No.273-FZ).[9] Their objective was to extend the anti-corruption prohibitions applicable to civil servants to individuals occupying state and municipal positions of the Russian Federation, public positions of the subjects of the Federation, personnel of the Central Bank, the Pension Fund, the Social Insurance Fund, the Compulsory Health Insurance Fund and other organisations established pursuant to federal laws or set up with the purpose of executing tasks assigned to the federal state bodies.[10] In accordance with paragraph 2 of the 2012-2013 National Anti-Corruption Plan, the Government is currently elaborating the necessary subordinate statutory instruments so as to facilitate the uniform implementation of the aforementioned legal requirements.

63. GRECO welcomes the widening of the scope of application of measures foreseen under the Federal Law "On counteracting corruption". Thus, in addition to civil servants, anti-corruption prohibitions are now applicable to a broader range of persons occupying state, public and municipal positions which are included in the lists established by the relevant normative acts of the Russian Federation. Also, falling within the remit of the revised law are the specifically designated positions in bodies/structures created pursuant to federal laws, e.g. in state corporations.

64. GRECO concludes that recommendation xvi has been implemented satisfactorily.

Recommendation xvii.

65. *GRECO recommended that comprehensive and precise legislation on the access to public information is adopted as a matter of priority and that adequate measures for the implementation*

[9] By means of adopting a Federal Law "On amendments made to some legislative acts of the Russian Federation in connection with promoting state management in the area of combating corruption" (No. 329-FZ).
[10] Article 8(1) of the Federal Law "On counteracting corruption".

of such legislation throughout the public administration, including proper supervision of the implementation, be provided following the adoption.

66. GRECO recalls that the recommendation was found to be partly implemented in the Compliance Report. GRECO qualified the adoption of the Federal Law "On providing access to information on the activities of state bodies and bodies of local self-government" on 9 February 2009 (No.8-FZ)[11] as a major achievement. The importance of making this new fundamental legislation work in practice was specifically emphasised. Thus, it was indicated that the adoption of the new law would need to be followed by massive training of staff throughout the public administration at all levels and would benefit from a co-ordinated plan of action on a broad scale to provide for its uniform implementation and application throughout the country. It was also suggested that the measures taken in pursuit of the law be included, as a long-term objective, in Russia's extensive anti-corruption reforms, or in the National Anti-Corruption Plan.

67. The Russian authorities, firstly, recall that, according to Articles 5.39 and 5.59 of the Code of Administrative Offences, officials at all levels may be brought to administrative liability for failure to provide public information or respond to citizens' requests for information. In pursuance of its supervisory duties, in 2011, 44 967 violations were registered by the Prosecutor's Office in the sphere of access to public information which resulted in the administrative sanctioning of 974 officials, whereas 7 346 officials were held disciplinarily liable. In the first six months of 2012, 36 209 such violations were registered, which resulted in the administrative sanctioning of 2 477 officials and the imposition of disciplinary penalties in respect of 5 311 officials. The Prosecutor's Office has pursued rigorous analysis of the aforementioned cases and proposed measures aimed at ensuring greater effectiveness of the implementation and supervision of the Federal Law "On providing access to information on the activities of state bodies and bodies of local self-government" (No.8-FZ). These measures have been included in the consecutive national anti-corruption plans.

68. Secondly, the authorities report on rolling training programme. Thus, as from 2009, state civil servants whose mandate includes the processing of information and ensuring of access to it, have received systematic training on the right to access public information and its practical implementation. Between 2009 and 2011, such training was undertaken by a total of 28 000 public officials at federal, regional and municipal levels. Moreover, training of trainers has been organised on an annual basis for 400 officials representing all federal state bodies. In 2010, Methodological Recommendations have been adopted in order to support the aforementioned training and to clarify the provisions of Governmental Order "On the common system of information support provided to citizens and organisations in their interaction with executive and municipal bodies" (No. 478) of 15 June 2009.

69. Thirdly, in the course of the past few years, the President of the Russian Federation has issued a set of decrees approving the list of information items to be placed on the government agencies' web sites in order to present and explain their activities to the public. In 2009-2011, the Ministry of Economic Development has carried out a monitoring of Internet sites of federal and regional executive bodies in order to assess the accessibility of information presented therein. In the course of this monitoring, the sites of all 79 federal executive bodies and of all 83 supreme public executive bodies of the subjects of the Federation, as well as of more than a thousand official sites of other regional public executive bodies have been examined. Annual monitoring reports

[11] The law had entered into force on 1 January 2010.

were submitted to Government on a regular basis,[12] and the consolidated analysis can be found on the Ministry of Economic Development's web site. The monitoring will continue in 2012.

70. The authorities indicate that, in addition to the aforementioned Federal Law No.8-FZ, general rules pertaining to the preparation and posting on Internet web sites of information on the activities of federal executive bodies are regulated by the two governmental Decrees[13] and an Order by the Ministry of Economic Development.[14] These are used by the latter as a basis for elaborating methodological guidelines for public executive and legislative bodies of subjects of the Russian Federation and for local self-government bodies. For example, on 3 March 2012, the Ministry presented to the Council for the Development of Information Society in the Russian Federation under the President of the Russian Federation, a methodological recommendation on using social Internet media and networks for posting information on the activities of public executive bodies and on their integration with the official web sites.

71. Lastly, as part of the 2012-2013 National Anti-Corruption Plan, the Ministry of Labour and Social Protection has elaborated common rules on the design and content of subsections of the official Internet sites of federal state bodies focusing on anti-corruption. The authorities emphasise that a uniform approach will increase transparency and accessibility of this information to the wider public. By 15 April 2013, the Ministry will report to the Government on results of monitoring compliance by the federal bodies with the aforementioned rules.

72. GRECO notes that the uniform supervision over the implementation of the Federal Law on access to public information has been vested with the Prosecutor's Office and the effectiveness of this supervision has been confirmed by a growing number of cases where public officials have been brought to liability for failure to ensure access to public information. Although a separate co-ordinated broad scale plan of action, as referred to in the conclusions of the Compliance Report has not been developed, GRECO is satisfied that the implementation and supervision of Federal Law No. 8 has been integrated as one of the objectives into consecutive anti-corruption action plans. GRECO furthermore commends the Russian authorities for having invested in such a large scale development of official web sites of federal executive bodies and executive and legislative bodies of the subjects of the Russian Federation, including the sites specifically dedicated to anti-corruption. It would appear that the information explaining the procedures and the activities of those bodies is presented in a coherent manner and is subject to on-going monitoring by the Ministry of Economic Development, as well as the Ministry of Labour and Social Protection.

73. GRECO concludes that recommendation xvii has been implemented satisfactorily.

Recommendation xviii.

74. *GRECO recommended to pursue efforts to improve procedures of administrative and judicial appeals against acts and decisions of public administration and to consider, as a long term objective, the establishment of a specialised administrative court system.*

[12] The last report was presented to Government on 21 March 2012.

[13] Decrees of the Government of the Russian Federation "On ensuring access to the information on the activities of the Government of the Russian Federation and federal executive authorities" (No. 953) of 24 November 2009 and "On Model Rules of Internal Organisation of federal executive authorities" (No. 425) of 28 July 2005.

[14] Order of the Ministry of Economic Development of the Russian Federation "On requirements for technological software and linguistic tools ensuring the use of official web sites of federal executive authorities" (No. 470) of 16 November 2009.

75. GRECO recalls that this recommendation was considered as partly implemented. The Compliance Report, firstly, referred to the Russian legislation which provided for the possibility to appeal decisions and actions (or inactions) by state organs, self-government bodies, public associations and officials in a court of law as well as to appeal certain decisions of certain authorities, for example, in respect of the Federal Bailiff's Office and criminal justice authorities, according to the Criminal Procedure Code. It was also recalled that, at the time of the evaluation, draft legislation on uniform administrative procedures, on the creation of administrative courts and on judicial administrative procedures was under consideration by the State Duma and that the prospects for the adoption of such legislation were not very clear. Secondly, having assessed the new information submitted, the Compliance Report did not observe any significant changes compared to the Evaluation Report. Nevertheless, the new elements reported – a resolution by the Supreme Court on the practice of examination by courts of cases of appeal against decisions, action (inaction, omission to act) by state power organs, local self-government bodies, officials, state and municipal employees as well as some initiatives of the State Duma (a round table on the role and place of administrative justice held in December 2008 and a draft law on the federal administrative justice) represented some progress and confirmed an awareness of the need for reform in this area.

76. The Russian authorities now report that, on 2 February 2012, in his speech at the session of the Russia-2012 Investment Forum, and at the meeting with political scientists on 6 February 2012, the Former Chair of Government Mr V.V. Putin had proposed to create a system of administrative courts and to adopt an Administrative Code and Code of Administrative Procedure. Similar ideas were also advanced by the Judicial Department under the Supreme Court in the 2013-2017 Federal Task Programme entitled "Development of the Russian Judicial System" presented to the Council of Judges of Russia. Moreover, two draft laws have been submitted to the State Duma by the Supreme Court: Federal Constitutional Law No. 7886-3 "On Federal Administrative Courts in the Russian Federation" and Federal Law No. 381232-4 "The Code of Administrative Justice of the Russian Federation". At its December 2012 session, the 8th All-Russian Congress of Judges is expected to adopt a Resolution requesting the lower chamber of Parliament to give priority to the consideration of the abovementioned drafts.

77. The authorities also refer to the legislative reforms covering certain categories of appeals against acts and decisions of public administration. Firstly, in 2006, legal provisions on compulsory pre-trial appeals against decisions by tax authorities based on the results of field and office tax audits were introduced into the civil legislation (they entered into force in 2009). In accordance with the newly established procedure, a tax dispute challenging the results of a field or office tax audit is to be mandatorily considered first by a higher tax authority and only then by a court. In other types of disputes, a taxpayer is given a choice: within three months, recourse may be made to the administrative or to the judicial appeal procedure. The authorities contend that the introduction of pre-trial appeals represents a first step towards creating a special procedure for considering tax disputes. To this end, in 2006, special units were created within the tax authorities specifically responsible for pre-trial proceedings. The aforementioned developments have allegedly led to the decrease in the number of taxpayers' complaints and the number of judicial litigations in the country at large. For example, the number of taxpayers' complaints has decreased from 55,000 in 2010 to 49,000 in 2011. Also, in 2010, the number of litigations with the participation of legal persons stood at 74,000 as compared to 61,000 in 2011.

78. Secondly, on 3 December 2011, amendments were introduced into the Federal Law "On the provision of state and municipal services" (No. 210-FZ) of 27 July 2010 providing for the pre-trial (out-of-court) appeal of decisions and actions (or inactions) of state and municipal bodies or their

officials/employees charged with the provision of state or municipal services. The amendments have also laid the foundation for the setting up of a federal information system of pre-trial appeals.

79. Thirdly, on 25 June 2012, the Arbitration (Commercial) Procedure Code of the Russian Federation was modified so as to allow for a wider and more effective recourse to summary proceedings in order to challenge decisions and actions (or inactions) of public bodies and their officials, including those based on normative acts contravening the law.

80. Furthermore, in order to improve the procedures of judicial appeals against acts and decisions of public administration, a range of training activities have been organised by the Russian Academy of Justice upon commission by the Supreme Court and with participation of Supreme Court justices. These activities included, amongst others, lectures and discussions held in 2011 on the counteracting corruption and the application of legislation on public service and administrative offences, and entailed the professional retraining of 2 668 judges and 530 newly appointed judges in 2011 on topics addressing, *inter alia*, litigation arising from administrative legal relations. The authorities emphasise that the legislation, e.g. paragraphs 2 and 3 of Article 20.1 of the 1992 Law "On the status of judges in the Russian Federation" (No. 3132-1), provides for regular (once every three years) professional retraining and advanced training of judges, including on issues pertaining specifically to the consideration of cases arising from administrative legal relations.

81. GRECO takes note of the information presented by the authorities, which only partially addresses the concerns expressed by the recommendation. GRECO acknowledges that the establishment of a specialised administrative court system is now considered as a priority by the Russian authorities. In the absence of such a system, the administrative matters continue to be dealt with by the general courts and by arbitration (commercial) courts. Furthermore, extensive training is being provided on a regular basis to judges of both categories of courts in order to allow them to develop a degree of specialisation in administrative matters. GRECO recalls, however, that, apart from certain categories of cases mentioned above, no other improvements in the procedures of administrative and judicial appeals against acts and decisions of public administration can be observed. Thus, a uniform administrative appeal procedure against administrative decisions, as was specifically requested by the Evaluation Report, has still not been introduced, and the draft legislation on the setting up of the administrative courts submitted to the State Duma remains to be adopted. GRECO reiterates the principle that any decision or action/inaction by the public administration must be subject to judicial control. Given that the Russian Federation continues to pursue a sector-by-sector approach entailing diverse procedures and safeguards, GRECO cannot conclude at this stage that this recommendation has been implemented satisfactorily.

82. GRECO concludes that recommendation xviii remains partly implemented.

Recommendation xix.

83. *GRECO recommended that the authorities take determined measures to ensure that recruitment to the civil service in practice is based on the principles contained in pertinent legislation (e.g. announcement of vacant posts, fair competition between candidates and avoidance of conflicting interests) and that these principles be applied, as appropriate, also in respect of other types of employment in the public administration.*

84. GRECO recalls that this recommendation was considered as partly implemented. The provisions concerning recruitment contained in the Federal Law "On counteracting corruption", the Federal

Law "On the State Civil Service" (2004, No. 79-FZ), the Federal Law "On Municipal Service" (2007, No. 25-FZ) and the Order of the President of the Russian Federation "On competition to a vacant position in the State Civil Service" (2005, No. 112) had not been challenged in the Evaluation Report. It was their implementation in practice and the scale of the problems identified in the functioning of the system that attracted criticism (this was also confirmed by the data on violations of pertinent rules provided by the Prosecution Service and included in paragraph 97 of the Compliance Report[15]). GRECO also noted that the Federal Law "On counteracting corruption" appeared to regulate the officials' conduct during recruitment in order to prevent conflicts of interest and that the monitoring of these rules, as well as of other laws mentioned above, was ensured through regular checks by the prosecution bodies. In view of the foregoing, GRECO was not convinced of the need to introduce yet more legislation on conflicts of interest in combination with repressive measures as those already in place appeared to be sufficient. However, other efforts, such as long-term awareness raising and educational measures were clearly needed in order to develop a new culture within the public administration, as foreseen by the legislation, and were deemed to be more appropriate for the problems described in the Evaluation Report.

85. The Russian authorities now report that, pursuant to the Strategy for Developing Information Society in the Russian Federation, approved by the President of the Russian Federation on 7 February 2008 (No.Pr-212), and the Concept of Establishing an Electronic Government in the Russian Federation, approved by a Governmental Directive (No.632-r) on 6 May 2008, a package of measures has been implemented with a view to creating a single information space of federal and regional public authorities and ensuring efficient exchange of staff-related information. Thus, a single information system for the management of the civil service was established on the basis of the infrastructure provided by the Federal State Information System "Federal Portal of the Administrative Personnel" within the framework of the Governmental Programme "The Information Society (2011-2020)" approved on 20 October 2008. The System consists of several functional modules, the Portal being one of them. The objective of the Portal is to provide access to complete and regularly updated information on vacant positions in the civil service to interested citizens, as well as to ensure a possibility for them to post their personal data in order for it to be directly accessible by pertinent staff management services of federal and regional public authorities, government corporations and other organisations from various economic spheres. The overall responsibility for the System and the Portal has been entrusted to the Ministry of Labour and Social Protection, while its technical maintenance is being ensured by the Ministry of Communication and Mass Media.[16] The pilot version of the Portal was launched in January 2009, and the Portal became fully operational on 13 April 2011. As of July 2012, access to the Portal has been provided to the staff management units of central and territorial organs of nearly all federal and regional executive bodies, the Presidential Administration, the secretariats of the Presidential Plenipotentiaries in the federal districts, the Government, as well as state corporations and other organisations.

86. As of 27 September 2012, the Portal contained information on 57 800 potential candidates for civil service positions. Since 2009, some 46 000 vacancies have been announced, and a total of 67 041 persons have responded to vacancy announcements, out of which 45 382 applications were made to the federal civil service (25 968 to the central offices and 19 414 to the territorial bodies), 20 499 persons have applied for vacant positions of public service of the subjects of the Federation, and 1 160 for vacancies in government corporations and organisations. As a result of

[15] In 2009, the prosecutors revealed 263 715 violations of the laws on state and municipal service, and on counteraction to corruption. In 2008, the number of such violations stood at 208 284.

[16] The Portal's operation is carried out pursuant to a Joint Regulation of both Ministries of 12 August 2011 (No.914n/207).

the recruitment process, 1 898 persons from the Portal database have been appointed to office: 1 040 individuals have been appointed to positions in the federal executive bodies, 836 have been appointed to positions in higher public executive authorities of subjects of the Federation, and 22 persons have been promoted to positions in government corporations and organisations.

87. The operation of the Portal called for the amendment of the aforementioned Presidential Order "On competition to a vacant position in the State Civil Service". In particular, it was deemed essential to allow for the relevant vacancy notices to be placed not only on the official web sites of a relevant public authority but also on the Portal's web site and to include such information as: the requirements for the candidates, the conditions of civil service, the information on and the time for the submission of documents, the applications deadline, the date planned to hold a competition, the place and the procedure for holding a competition and the results of a competition. To respond to those needs, the Ministry of Labour and Social Protection had prepared a draft Decree, which was submitted to Government in 2009. On 24 October 2009, the draft was returned for finalisation in order for it to take into account critical remarks submitted by the State Legal Administration of the President of the Russian Federation and the results of a discussion held by the Department of Public Service and Staff of the Government of the Russian Federation. The authorities confirm that a draft Decree is planned for approval in the course of 2012, pursuant to the Detailed List of Measures of the Federal Programme "Reforming and Developing the System of Public Service of the Russian Federation (2009-2013)".

88. As concerns the principle of fair competition, it was announced as primordial to the on-going civil service reform by the Presidential Order "On main directions for improving the state administration system" (No. 601) of 7 May 2012. To ensure the Order's implementation, the Ministry of Labour and Social Protection has prepared a 2012-2016 Plan for promoting new personnel principles in the state civil service policies.[17] According to the Plan, in 2013, a pilot project will be launched in several federal bodies allowing for the acceptance of electronic documents submitted by candidates taking part in a competition for a vacant post in the civil service and for the organisation of distance identification, pre-selection and testing of candidates. The project's results will be translated into methodological guidelines on objective and transparent competitions for use by federal government agencies.

89. GRECO commends the Russian authorities for having developed and introduced dedicated IT tools allowing for improved announcement of vacancies in the public service at the federal level, at the level of subjects of the Federation, as well as in government corporations and other organisations in various economic spheres. Although some preparatory steps have been taken to ensure that the recruitment to the civil service/public administration is based on the principle of fair competition amongst candidates, the concrete practical outcomes, namely the selection of best candidates pursuant to objective and transparent criteria and the creation of a "cleaner administration" (cf. paragraph 287 of the Evaluation Report) are yet to be achieved. Also, it would appear that no decisive efforts have been deployed to raise awareness on the new rules pertaining to conflicts of interest and to develop a new culture within the public administration as was emphasised in paragraph 98 of the Compliance Report. In the absence of any such information, GRECO cannot conclude that all the elements of this recommendation have been implemented satisfactorily.

90. GRECO concludes that recommendation xix remains partly implemented.

[17] Approved by the Deputy Chair of Government on 1 October 2012 (No.5378p-17P).

Recommendation xx.

91. *GRECO recommended to review the current measures designed to prevent conflicts of interest in order to clarify their scope of application in respect of public officials and their relatives, to remedy the shortcomings identified and to ensure that the necessary measures are fully implemented in practice.*

92. GRECO recalls that this recommendation was found to be partly implemented in the Compliance Report. It notes that the main criticism, as outlined in paragraph 288 of the Evaluation Report, was directed at the insufficiently wide scope of rules aimed at preventing conflicts of interest (so as to cover the relevant public functions, officials and their close relatives) and, more importantly, at the lack of practical implementation of these provisions. The existing control mechanisms were also deemed to be weak; for example, the restriction in respect of post-employment ("revolving doors") was not subject to adequate control or legal consequences in cases of infringements. Later on, in paragraph 101 of the Compliance Report, GRECO noted that the Law "On counteracting corruption" and "On the State Civil Service" appeared to cover in a satisfactory manner situations of conflicting interests when state and municipal officials and civil servants, while executing their official duties, obtained advantages for themselves or third persons, including relatives. Also, it was observed that the authorities were preparing a number of measures in order to strengthen the implementation of the regulations in place to prevent and detect situations of conflicts of interest. The establishment of a special commission with supervisory functions was found to be a welcome development. However, as these reforms were not yet fully implemented in practice, their possible impact could not be assessed at the stage of the Compliance Report.

93. The Russian authorities now report that, pursuant to the Federal Law "On amendments made in some legislative acts of the Russian Federation in connection with promoting state management in the area of combating corruption" (No. 329-FZ) of 21 November 2011, the loss of trust has been introduced as one of the grounds for the dismissal of a state or municipal official in case s/he fails to take measures to prevent (or resolve) conflicts of interest. Similarly, an executive official of the state or municipal service who fails to take measures to prevent (resolve) conflicts of interest by his/her subordinate may also be subject to dismissal. Furthermore, pursuant to the 2012-2013 National Anti-Corruption Plan, the Presidium of the Council for Counteracting Corruption and the federal state bodies, within the limits of their competence, have been mandated to detect conflicts of interest in case one of the parties thereto is a person occupying a state position of the Russian Federation and is appointed by the President or the Government or occupies a public position of "chief executive". The procedure for resolving conflicts of interest by senior public executives has been determined by Presidential Decree No. 233 of 25 February 2011.

94. As concerns the commissions set up by a Presidential Decree "On Commissions for controlling compliance with the requirements of service conduct by federal public officials and the settling of conflicts of interest" (No. 821) of 1 July 2010 (see paragraph 102 of the Compliance Report), it is reported that, as of the end of 2011, such commissions have been established by all federal public authorities and 3 416 commissions have been set up by the authorities' territorial bodies. The strengthened observance of the conflicts of interest rules has brought about a significant increase in the number of disciplinary proceedings being initiated against federal state servants. Thus, the number of persons who were subject to disciplinary liability in 2010 was 556, as compared to 2 232 in 2011 (or 4.4 times rise). For the period 2010-2011, the total number of public officers brought to disciplinary liability is 2 788. In accordance with a mandate obtained

from the Presidium of the Council for Counteracting Corruption, as from February 2009, the Ministry of Labour and Social Protection has been conducting quarterly monitoring of the commissions' activities.

95. Furthermore, pursuant to the 2010-2011 National Anti-Corruption Plan, the Government and the Presidium of the Council for Counteracting Corruption have been commissioned, within the limits of their powers, to organise, in a centralised manner, retraining and advanced training of those federal public officers whose duties include the participation in counteracting corruption (under a programme agreed with the Administration of Public Service and Staff of the President of the Russian Federation). The authorities have presented an impressive list of training courses and training events held in 2010-2011 which included, *inter alia*:

- the advanced training of 1 500 public officers in the 36-hour educational programme "Functions of Units of Staff Management Services of Federal Public Authorities Concerning the Prevention of Offences of a Corruptive Nature and Other Offences";

- the training of 500 federal public officers from staff management units and units participating in the implementation of anti-corruption measures in the targeted educational programme delivered by the Russian Academy of Public Service in September-November 2010 and of 1 000 federal public officers from 74 federal public authorities – in July-November 2011.

96. According to the authorities, such centralised training extending to a large number of public officers, and supported by tailored methodological guidelines has allowed the promotion of uniform approaches to counteracting corruption within the public administration. Moreover, the provision of training activities in 2010-2011 has been subject to monitoring by the Ministry of Labour and Social Protection. Based on the results of this monitoring as well as on the assessment of further training needs, relevant proposals have been made by means of a Presidential Directive (No. 370-p) of 7 June 2011 regarding the continuation of the advanced training of federal public officers whose official duties include participation in counteracting corruption.

97. GRECO is satisfied that the setting up of commissions to monitor compliance with the conflicts of interest regulations within the public administration has produced concrete and tangible results, as demonstrated by the statistics on disciplinary proceedings instituted in 2010 and 2011. It would also appear that, pursuant to the 2012-13 National Anti-Corruption Plan, a high political priority has been given to the prevention and resolution of conflicts of interest, including amongst high-level officials, which has brought about a number of important legislative changes. Lastly, GRECO commends the Russian authorities for having elaborated and implemented systematic and comprehensive educational programmes targeting in particular those public officers who are bound to detect and resolve conflicts of interest within their respective services.

98. GRECO concludes that recommendation xx has been implemented satisfactorily.

Recommendation xxi.

99. *GRECO recommended to eliminate the practice of accepting substantial gifts of any form in the public administration and to consider abolishing the legal justification for such gifts as contained in Article 575 of the Civil Code.*

100. GRECO recalls that this recommendation was considered as partly implemented by the Compliance Report. It took note of the envisaged amendments to Article 575 of the Civil Code[18] and to a large number of other laws with corresponding provisions. The draft text was expected to prohibit the acceptance of gifts by persons holding federal state positions, state positions in the subjects of the Russian Federation, municipal positions as well as by state employees, civil servants, municipal employees and employees of the Bank of Russia. Moreover, "protocol" gifts would be considered public property. The ban on the receipt of gifts was to be reflected in various codes of ethics. GRECO welcomed the intentions reported to legislate against this long standing practice. If such legislation were to be adopted, it would be essential for it to be followed up with intensive awareness campaigns for the larger public, as making and receiving gifts appeared to be a deep-rooted tradition in Russian society.

101. The Russian authorities now report that the Ministry of Labour and Social Protection is finalising modifications to Article 575 of the Civil Code amounting to a prohibition on officials receiving gifts. In particular, the draft law would prohibit the receipt of any rewards (gifts, monetary rewards, loans, services, payments for entertainment, recreational, transport expenses, granting of discounts, etc.) from legal or natural persons directly or through an intermediary under two conditions: a) if this would create conflicts of interest, including when the official concerned is exercising or exercised some functions within the public administration in respect of the grantor in the course of the past two years; or b) in the event the official's functions allow him/her to render preferential treatment to the grantor. In cases of conflicts of interest, the restriction would be extended to the official's family members and other relatives (parents, spouses, children, brothers and sisters and those of his/her spouse). Exception to the above rule could only be made in cases of accepting gifts in relation to hospitality (protocol) events, official trips and other official events; also, the possibility for officials to buy back gifts would be withdrawn. The text of the draft law was approved by the Council for Counteracting Corruption on 25 July 2012.

102. Besides, some activities aimed at eradicating the practice of accepting gifts in state and municipal service have been planned as part of the 2012-2013 National Anti-Corruption Plan. In particular, on 13 November 2012, the Presidium of the Council for Counteracting Corruption had examined a draft Government Resolution "On the procedure of reporting the acceptance of gifts by certain categories of persons in connection with their official position or in connection with performance of their official duties and on the handing over, value assessment, selling and remittance of the monetary value of gifts" containing a Model Regulation with the same title. The draft recommends that the state executive bodies of the subjects of the Russian Federation, local self-government bodies, the Central Bank, organisations established pursuant to federal laws and those that were set up with the purpose of executing tasks assigned to the federal state bodies adopt relevant acts to ensure the Model Regulation's implementation. Once the above draft is adopted, it will be accompanied by a broad awareness-raising campaign. Furthermore, the Ministry of Labour and Social Protection will monitor compliance with the Model Regulation and report twice a year to the Presidium (the first reports are to be produced in January and July 2013).

103. GRECO notes the lack of substantial progress as concerns the revision of Article 575 of the Civil Code as compared to the situation presented in the Compliance Report. It observes that, pursuant to the current wording of the said article, the threshold for accepting "ordinary" gifts has meanwhile been raised to 3 000 RUB or 75 Euros. GRECO expresses reservations as regards the language of the draft amendments which still fall short of the requirement to introduce a

[18] At the time of the Evaluation Report Article 575 CC provided for the general rule that no gifts may be accepted except for "ordinary" ones whose value does not exceed five minimum wages (approximately 500 RUB or 14 EUR).

prohibition on the acceptance of gifts by public officials. While welcoming the various initiatives carried out by the authorities pursuant to the 2012-2013 National Anti-Corruption Action Plan, GRECO remains concerned that the planned legal reforms have still not been completed and are yet to be accompanied by an intensive awareness campaign, including for the wider public.

104. GRECO concludes that recommendation xxi remains partly implemented.

Recommendation xxii.

105. *GRECO recommended to introduce clear rules/guidelines requiring public employees/officials to report suspicions of corruption, to introduce specific protection of those who report suspicions of corruption in public administration in good faith ("whistleblowers") from adverse consequences and to provide systematic training to all staff concerned.*

106. GRECO recalls that this recommendation was found to be partly implemented in the Compliance Report. Concerning the first part of the recommendation, relating to the reporting of suspicions of corruption, it was noted that such a requirement was limited to situations where a public official him/herself had been subject to an offer or the like that may amount to corruption. The authorities had not indicated any general rules/guidelines for reporting all forms of corruption that a public official may come across. GRECO therefore encouraged the Russian authorities to broaden the scope of what should be reported. As regards the second part of the recommendation, i.e. protection of those who report corruption ("whistle-blowers"), GRECO was satisfied that general rules to this end appeared in the Law "On counteracting corruption" and that further regulations were to be included in other pertinent laws, such as the Labour Code. Thirdly, the intention to develop the details of public officials' training following the adoption of the Law "On counteracting corruption" was acknowledged. It was noted, however, that the focus so far had been on training of law enforcement staff. GRECO, therefore, called upon the authorities to extend the prevention-oriented training for the vast number of civil servants/public employees, as requested by the recommendation.

107. The Russian authorities, firstly, reiterate that the Law "On counteracting corruption" already contains an obligation for state and municipal officials to report instances when they are induced to commit acts of a corrupt nature and that, pursuant to Article 9, paragraph 5 thereof, the procedure for the notification and verification of this information, as well as the registration of notifications is to be defined by the recruiter (employer). The authorities indicate that the delegation of such powers to public authorities (local self-government bodies) allows particularities of internal organisation and specific features of the powers exercised to be taken into account.

108. In order to ensure the uniformity of legal acts adopted by public authorities and local self-government bodies, the Ministry of Labour and Social Protection has prepared draft methodological recommendations regarding the procedure of notification of acts of corruption to the recruiter (employer). Input to the draft was also provided by the Ministry of Finance, the Ministry of Justice, the Ministry of Regional Development, the Ministry of Economic Development, and the Presidential Administration. The recommendations provide a framework regulation covering issues, such as information to be included in a notification, the procedure for registering notifications, the mechanism of organising verifications (including by way of sending appropriate requests to the Prosecutor General's Office, the Ministry of the Interior and the Federal Security Service), and the confidentiality of the information obtained. Sample notification forms as well as a sample notification register have been developed and form part of the methodological

guidelines. Following consultation with all interested partners, the Methodological Recommendations were submitted to Government on 19 October 2009. In the second half of 2010, these were further reviewed so as to explicitly cover issues pertaining to the special protection of persons reporting corruption in good faith ("whistle-blowers"). Subsequent to another series of consultations with relevant government agencies, on 14 September 2010, the finalised recommendations were forwarded to the federal executive authorities for implementation.

109. Pursuant to decisions by the Government office and by the Administration of Public Service and Staff of the President of the Russian Federation, on 24 December 2009, the Methodological Recommendations were forwarded to the federal executive authorities with a view to preparing institutional legal acts aimed at implementing Article 9, paragraph 5 of the Law "On counteracting corruption". The authorities report that, in 2010-2011, all public authorities have adopted internal normative legal acts (or organisational directive documents) on the reporting of corruption, including notification procedures to be followed in cases where state or municipal officials report instances of being personally induced to commit acts of a corrupt nature, or facts of corruption they may come across.

110. Secondly, pursuant to a decision by the Presidium of the Council on Counteracting Corruption of 24 November 2010, the Ministry of Labour and Social Protection has developed another set of Methodological Guidelines regarding the procedure for the notification by a state or municipal official to his/her recruiter (employer) of facts of corruption that became known to him/her as well as the liability of those officials who have failed to report facts of attempts to induce him/her to commit offences of a corrupt nature. Also, pursuant to the 2012-2013 National Anti-Corruption Plan, the Ministry is currently preparing proposals for enhanced legal protection of persons reporting facts of corruption to employers, the mass media, relevant bodies and organisations. Those are to be submitted to the Presidential Council for Counteracting Corruption by April 2013.

111. Thirdly, a large-scale and systematic training of civil servants on the prevention and counteracting of corruption, with relevant methodological support, has been provided as from 2009 by the Ministry of Labour and Social Protection. Between 2009 and 2011, it covered a total of 40 144 federal civil servants. Also, in 2010-2011, a specialised training was offered to some 1 500 federal civil servants, representatives of staff management units whose duties include counteracting corruption.

112. GRECO takes note of the Methodological Recommendations issued by the Ministry of Labour and Social Protection which now provide for the reporting of all forms of corruption a public official may come across. It also welcomes the on-going attempts to further strengthen the legal protection of those who report corruption in good faith. It is, therefore, concluded that this part of the recommendation has been implemented satisfactorily. Also, GRECO is impressed by the scale and scope of the various training initiatives implemented by the authorities. It would appear, nevertheless, that no broad and systematic training focusing specifically on the reporting of corruption and the protection of whistle-blowers has been provided, except for that covering a limited number of persons from selected staff management units.

113. GRECO concludes that recommendation xxii remains partly implemented.

Recommendation xxiii.

114. *GRECO recommended to elaborate and promulgate a model code of conduct/ethics for public employees/officials, including civil servants, which can be adjusted in light of the particular needs pertaining to different sections of public administration, and to ensure its implementation in practice, including offering adequate training to all staff concerned.*

115. GRECO recalls that this recommendation was considered as partly implemented. It took note of the information provided that the 2002 Presidential Order "On the General Principles of Service Conduct of State Employees" has been updated in 2009 and that the drafting of a model code based on international standards was in its final stages. GRECO welcomed this process and indicated that it had to be followed by an implementation phase, once the model code was adopted.

116. The Russian authorities now report that, on 23 December 2010, a Model Code of Ethics and Service Conduct for Public Officers of the Russian Federation was adopted by the Presidium of the Council for Counteracting Corruption. The Code is based on universally recognised principles and contains general rules of ethics and conduct as laid down by the anticorruption legislation to be followed by public officials of the Russian Federation as well as by citizens serving in the military and law enforcement bodies. The experience drawn from the adoption of codes of ethics by such categories as judges, law enforcement officers, auditors, advocates/lawyers was used in the development of the Model Code. The authorities submit that the Model Code is aimed at regulating the norms of professional conduct and ethics, rendering assistance to public officials while complying with these norms and informing the citizens of the conduct that is to be expected from public officials.

117. Following adoption of the Model Code, federal public authorities, public authorities of subjects of the Russian Federation and local self-government bodies have proceeded with the development and approval of their own codes of ethics and conduct and incorporated in the officials' labour agreements (contracts) the provisions on liability for violating the said codes. By mid-2012, codes of ethics have been developed by 55 federal public authorities, of which: 44 have been agreed with high ranking authorities, two have been sent to the Ministry of Justice for registration, two remain to be adopted shortly and two more have been finalised in view of the critical remarks provided by the Ministry of Justice. Additionally, 43 federal public agencies have introduced necessary changes to their service contracts and eight more have been completing this work. Moreover, Plenipotentiary Representatives of the President of the Russian Federation in the federal districts have organised work on the approval of codes of ethics and incorporation of the provisions on liability for violations of the codes in labour agreements (contracts) of public officials by public authorities of subjects of the Russian Federation and local self-government bodies.

118. Lastly, the authorities indicate that the training of public officials on compliance with the codes of ethics and principles of official conduct has been provided as part of the initiatives presented in paragraph 110 above.

119. GRECO takes note of the Model Code of Conduct as approved by the Presidium of the Council on Counteracting Corruption. It commends the authorities for taking decisive steps in ensuring that the codes of conduct are adopted by the public authorities at federal level, as well as at the level of subjects of the Russian Federation and municipal level. It would also appear that the codes adopted so far or those at the stage of preparation have been adjusted to the particular needs pertaining to different sections of public administration. GRECO also accepts that

adequate training has been offered to staff concerned to ensure the implementation of the codes in practice. Given the vast number of civil servants/officials in the Russian Federation, the intensity of the training should be preserved.

120. GRECO concludes that recommendation xxiii has been implemented satisfactorily.

Recommendation xxiv.

121. *GRECO recommended to adopt the necessary legislative measures in order to establish liability of legal persons for corruption offences and to provide effective, proportionate and dissuasive sanctions in these cases, including monetary sanctions, in compliance with the requirements of the Criminal Law Convention on Corruption (ETS 173).*

122. GRECO recalls that this recommendation was found not to be implemented in the Compliance Report. It took note of Article 19 of the Criminal Code according to which only natural persons could be subject to liability under the Code. It welcomed amendments to the Code of Administrative Offences introducing Article 19.28 entitled "Illegal Remuneration on behalf of a legal entity". Pursuant to this new provision, administrative liability had been established, *inter alia*, for corruption offences, and illegal transfer of money, securities or other property. Such acts were punishable by administrative fines of up to three times the amount transferred, three times the value of the securities, other property and services of property nature rendered, but not less than one million roubles (EUR 24,000) in addition to confiscation of the transferred money, securities and other property. GRECO acknowledged the existence of cases where a natural person (e.g. a manager of a corporation) had been convicted for giving a bribe according to Article 291 CC ("bribe-giving") and the corporation had been convicted for the illegal reward (gratification), according to Article 19.28 CAO for the same action. GRECO was however concerned that the Russian authorities had not linked administrative liability of legal persons to the particular corruption offences provided for under the Criminal Code, in particular "the offer" of a bribe. Also, apart from active bribery, liability of legal persons had not been established for the offences of trading in influence and money laundering.

123. The Russian authorities now report that, pursuant to Federal Law No. 97-FZ of 4 May 2011, Article 19.28 of the Code of Administrative Offences has been amended so as to establish liability for the illegal handing over, proposal or promise on behalf of for the benefit of a legal person to an official, person exercising managerial functions in a commercial or any other organisation, foreign official or an official of public international organisation of money, securities, other assets, providing services of a pecuniary nature or granting property rights for the commission of any act for the benefit of the said legal person (or omission to act) by an official, person exercising managerial functions in a commercial or any other organisation, foreign official or an official of a public international organisation in connection with his/her official duties. The revised Code has also adopted a differential approach to calculating the amount of the administrative fine for the bribe-giving. For a bribe not exceeding 1 million Roubles (EUR 25 000), the amount of the fine is up to three times the amount of the bribe but not less than 1 million RUB with the confiscation of the bribe item. For a bribe not exceeding 20 million RUB (EUR 500 000), the amount of the fine is up to thirty times the amount of the bribe but no less than 20 million RUB with the confiscation of the bribe item; for a bribe exceeding 20 million RUB – up to 100 times the amount of the bribe but not less than 100 million RUB (EUR 2 500 000) with the confiscation of the bribe item.

124. The authorities additionally report that a number of measures aimed at expanding the practice of bringing legal persons to liability for corruption offences has been foreseen by the 2012-2013

National Anti-Corruption Plan. Thus, pursuant to Presidential Decree No. 297 of 13 March 2012, the Supreme Court is mandated to study the practice of application of the anti-corruption legislation by courts and elaborate, taking into account relevant international obligations, clarifications regarding the application of criminal and administrative laws to corruption offences, including the administrative liability of legal persons for corruption offences. Also, the Prosecutor General's Office has been tasked with developing methodological recommendations and devising appropriate training programmes for prosecutors and investigators in order to increase the efficiency of applying the provisions of the civil and administrative legislation of the Russian Federation to the extent applicable to the liability of legal persons, in case of corruption offences committed on their behalf or for their benefit. The results of this work had to be presented to the Presidium of the Council for Counteracting Corruption by 1 September 2012.

125. Moreover, by virtue of the Directive of the Prosecutor General of the Russian Federation "On improving the work of bringing to justice of legal entities, on behalf of and in the interests of which corruption crimes are committed", prosecutors have been obliged to analyse all resolutions pertaining to the institution of criminal cases under Articles 204, 290, 291 and 291.1 CC reported in accordance with Article 146(4) of the Criminal Procedure Code ("Initiation of criminal case of public prosecution"), in order to consider initiating administrative proceedings on the basis of Article 19.28 CAO. The authorities submit that, as a consequence of this exercise, pertinent jurisprudence has expanded considerably and fines amounting to several million Euros were imposed in respect of certain legal persons.

126. Furthermore, the authorities refer to the recent ruling by the Constitutional Court (No. 674) of 11 May 2012, according to which holding a natural person responsible for the commitment of a criminal act of corruption does not prevent bringing a relevant legal person to administrative liability for the same act.

127. Lastly, the authorities report that, pursuant to aforementioned Federal Law No. 97, a Chapter on international legal assistance has been added to the Code of Administrative Offences. This law has extended the statute of limitation for administrative offences from one year to six years from the date of commitment of an administrative offence. It is, moreover, stipulated that a legal entity which has committed an administrative offence outside the territory of the Russian Federation shall be liable in conformity with the Code in cases provided for by the international treaties of the Russian Federation.

128. GRECO recalls yet again the wording of Article 18 of the Criminal Law Convention on Corruption which stipulates that "legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention…". It is well aware that the Convention does not impose an obligation to establish criminal liability; however, it obliges states to establish some form of liability for criminal offences of corruption. GRECO acknowledges that offences of active bribery committed in the interests or for the benefit of a legal person appear to be captured by the revised provisions of the Code of Administrative Offences and that sufficiently effective, proportionate and dissuasive sanctions have been provided in this regard. It also welcomes the seminal ruling by the Constitutional Court of the Russian Federation which establishes a clear practice of bringing to justice both natural and legal persons for the commission of the same act of corruption. However, it would appear that no concrete steps have been taken by the authorities to provide for the liability of legal persons for the offences of trading in influence and money laundering, as required by the Criminal Law Convention on Corruption. For this reason, GRECO cannot conclude that this part of the recommendation has been implemented.

129. GRECO concludes that recommendation xxiv has been partly implemented.

III. CONCLUSION

130. **With the adoption of this Addendum to the Joint First and Second Round Compliance Report on the Russian Federation, GRECO concludes that out of the twenty-six recommendations issued to the Russian Federation, fifteen of them have to date been implemented or dealt with in a satisfactory manner and eleven have been partly implemented.** Now, in view of the above, recommendations iii, v, xvi, xvii, xx and xxiii have been implemented satisfactorily. Recommendations iv, vii, ix, xi, xiii, xiv, xviii, xix, xxi, xxii and xxiv have been partly implemented.

131. GRECO wishes to reiterate that the Russian Federation received a vast number of recommendations in the Joint First and Second Evaluation Rounds, which necessitated fundamental policy, legislative and organisational reforms, as well as awareness-raising measures in public administration, law enforcement and the judiciary, with active engagement by civil society. This has been a challenging task to accomplish in the course of only 18 months, particularly for a country with such complex state structures as the Russian Federation. However, as is confirmed by the findings of this report, even in this relatively short time span, the country has demonstrated the requisite will to follow through with some of the previous actions, as well as initiating a whole series of new measures in pursuance of GRECO's recommendations. As of December 2010, fourteen new federal laws have entered into force, thirty-four amendments have been introduced into existing federal laws, including the Criminal, Administrative Offences and Labour Codes and more than 750 normative legal acts have been adopted, including thirty Presidential Orders. Even though eleven recommendations remain partly implemented, the efforts deployed by the authorities are commendable. Thus, a systematic evaluation of the levels of corruption and of the efficiency of the anti-corruption measures taken has been carried out through means such as regular sociological research. Also, major progress has been achieved in centralising investigations of corruption crimes, the overwhelming majority of which now fall within the exclusive competence of the Investigative Committee of the Russian Federation, a new structure established directly under the executive powers and outside the structures of the Prosecution Service. In addition, supervisory commissions have been established throughout the public administration in order to prevent and detect conflicts of interest, complemented by the targeted training programmes. The concrete result of those measures has been a drastic increase in the number of disciplinary proceedings initiated against public officials in 2011.

132. At the same time, a number of legislative reforms remain to be completed. These relate, in particular, to the planned amendments to the Law "On counteracting corruption" (which are to ensure that acts of corruption are to be considered, as a main rule, as criminally punishable), to the Criminal Code (which should make provision for the confiscation of proceeds from all corruption offences), as well as to the Civil Code (which are to prohibit gifts within the public administration). Also, GRECO remains concerned that a large number of Russian officials continue to enjoy immunity from prosecution, including for corruption crimes. Furthermore, the strengthening of judicial independence – not only in law but also in practice – and of the operational independence of law enforcement agents remains an on-going challenge. Lastly, while several fundamental reforms have been launched, these appear to be still at a rather nascent stage. The authorities are therefore strongly encouraged to continue building the momentum of such vital anti-corruption mechanisms as the effective judicial control over public administration, the unimpeded access to public information, the reporting of corruption and

protection of whistle-blowers. The implementation and monitoring of impact of such measures should continue to feature prominently in the national anti-corruption action plans, including by ensuring input by civil society.

133. The adoption of the present Addendum to the Compliance Report terminates the First and Second Evaluation Round compliance procedure in respect of the Russian Federation. The Russian authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations iv, vii, ix, xi, xiii, xiv, xviii, xix, xxi, xxii and xxiv.

134. Finally, GRECO invites the Russian 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.