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First Evaluation Round

Compliance Report on “the former Yugoslav Republic of Macedonia”

Adopted by GRECO
at its 21st Plenary Meeting
(Strasbourg, 29 November - 2 December 2004)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on “the former Yugoslav Republic of Macedonia” at its 12th Plenary Meeting (9-13 December 2002). This Report (Greco Eval I Rep (2002) 7E) was made public by GRECO, following authorisation by the authorities of “the former Yugoslav Republic of Macedonia”, on 28 January 2003.
2. In accordance with Rule 30.2 of GRECO’s Rules of Procedure, the authorities of “the former Yugoslav Republic of Macedonia” submitted their Situation Report (RS-Report) on the measures taken to follow the recommendations on 18 June 2004.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Ireland and Moldova to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Jim O’FARRELL on behalf of Ireland and Ms Elena ECHIM on behalf of Moldova. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 21st Plenary Meeting (29 November - 2 December 2004).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of “the former Yugoslav Republic of Macedonia” and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 17 recommendations to “the former Yugoslav Republic of Macedonia”. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to conduct regular studies to improve knowledge of the fields most affected by corruption with a view to developing a detailed corruption picture based on statistics and research to measure more clearly the extent of the corruption phenomenon in the country.*
8. The authorities of “the former Yugoslav Republic of Macedonia” have reported that according to NGOs (Transparency International was mentioned in particular), studies on corruption are conducted within the framework of other research related to other fields. In addition, they have mentioned an opinion poll carried out within the State administration, a scientific study of the phenomenon of corruption carried out with the assistance of the British Embassy (“Monitoring on criminal procedures”) and a survey on corruption perception conducted by the Institute for Sociological and Political Law Research. Moreover, in May 2003, the Open Society Foundation carried out research within the academic system examining the corruption level in this specific area. Finally, the State Commission for Prevention of Corruption in performing its activities is involved in research and analyses data derived from concrete cases of corruption.
9. GRECO took note of the positive measures undertaken by the authorities of “the former Yugoslav Republic of Macedonia”. Nevertheless, GRECO recalled that the main concern expressed in

recommendation i. is “to conduct regular studies to improve knowledge of the fields most affected by corruption (...)”. GRECO noted that more could be done to achieve this objective.

10. In view of the above, GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

11. *GRECO recommended to adopt a comprehensive national anti-corruption strategy, as well as raise awareness among public officials and the public about the danger entailed by corruption.*
12. The authorities of “the former Yugoslav Republic of Macedonia” have reported that the National Programme for the Prevention and Suppression of Corruption was adopted on 17 June 2003. They have also stated that, following the adoption of the Programme, competent ministries, judicial authorities and the public prosecution office have started implementing it. More specifically, the Programme contains directives with regard to the drafting of legislative changes in different fields related to corruption issues, the reinforcement of institutions involved in the prevention of and fight against corruption, the possibility of creating special bodies to combat corruption, etc. Finally, they have underlined the fact that there is broad support for the National Programme within the media, civil society and among the public and that citizens’ awareness of the need for the prevention and suppression of corruptive phenomena has increased.
13. GRECO took note of the information provided and concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

14. *GRECO recommended to develop stronger transparent and public accountability policies in the public administration to increase governmental efficiency.*
15. The authorities of “the former Yugoslav Republic of Macedonia” have reported that Article 15 of the Constitution guarantees the general right “to appeal against individual legal acts adopted in a first instance proceeding by a court, an administrative body or an organisation or other institutions performing public mandates”. They have also mentioned the Law on the Public Attorney (Ombudsman). They have underlined that the public is made aware of the government’s anti-corruption policies by means of press conferences, internet and other telecommunication means, such as the daily press and television. The Government also responds to all relevant questions, in particular through the ministries and government services concerned.
16. GRECO took note of the information provided and concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

17. *GRECO recommended that the public should be able to identify those with whom they come in contact and to be well informed about procedures for making complaints.*
18. The authorities of “the former Yugoslav Republic of Macedonia” have reported that the Government and all ministries have websites containing the name, surname and functions of civil servants, an organisation chart of the main institutions, laws and regulations. There are open free-of-charge telephone lines for reporting cases of corruption to the Ministry of the Interior, the

Customs and the Public Incomes Administration, where data are collected, analysed, processed and handed over to the competent institutions. The employees in State institutions are required to wear identification badges. They have also indicated that the Law on Administrative Procedure provides the right to lodge a complaint against an administrative decision made in the first instance or to appeal against an administrative decision made in the second instance. Third persons have the right to appeal against an administrative decision taken in the first instance that infringes their rights and interests.

19. GRECO took note of the information provided and concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

20. *GRECO recommended to develop and implement, in addition to what is already in place, procedures and policies to support managers of State bodies and agencies to identify, prevent, challenge and deal with corrupt, dishonest and unethical behaviour. Such procedures should include education, training and prevention.*
21. The authorities of “the former Yugoslav Republic of Macedonia” have mentioned a number of measures taken to address recommendation v:
 - In 2003 and in the first half of 2004, 348 civil servants from central government and 278 from local self-government followed training courses organised by the State Agency for Civil Servants entitled “The System of civil servants and ethics in state office”. The training deals, *inter alia*, with ethical rules and anticorruption principles.
 - 15,000 Codes of Ethics for civil servants were distributed to employees of the civil service.
 - The State Agency for Civil Servants prepared flyers and brochures containing *inter alia* anticorruption and ethical rules. These documents will be distributed in due course to all civil servants and to citizens as well.
 - 98 senior civil servants participated in a 3-years training programme carried out in cooperation with France.
22. GRECO took note of the information provided by the authorities of “the former Yugoslav Republic of Macedonia” and concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

23. *GRECO recommended to create, or to strengthen where they already exist, special departments and/or inspection bodies responsible for the prevention and examination of internal cases of corruption.*
24. The authorities of “the former Yugoslav Republic of Macedonia” have reported that there are special departments or inspection bodies responsible for preventing and examining internal cases of corruption within the Ministry of the Interior and the Ministry of Finance. In particular, in the Ministry of Finance there is a Department for Central and Internal Revision, the Public Incomes Administration has an Internal Revision Unit and the Customs have a Department for Control and Revision of work of all custom employees. Within the Ministry of the Interior, the Department for Internal Control and Professional Standards is in charge, *inter alia*, of internal revision matters pursuant to the internal rules adopted by the Ministry of the Interior.

25. GRECO took note of the information provided and concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

26. *GRECO recommended to swiftly implement all the measures provided by the Law On Preventing Corruption and, at the same time, that the State Commission establishes a comprehensive and clear plan of action. It also recommended that the commission's work be published in an annual report to the Parliament.*
27. The authorities of "the former Yugoslav Republic of Macedonia" have reported that an Action Plan was prepared as an integral part of the State Commission's anticorruption programme. It contains measures to be taken in the short, medium and long term by the competent bodies for the prevention of and fight against corruption. They have also reported that according to the Law on the Prevention of Corruption, the State Commission for Prevention of Corruption prepares an annual report that is submitted to Parliament and communicated to the President of the Republic, the Government and the media. The report on the period November 2002-November 2003 had already been presented to Parliament. Finally, the authorities of "the former Yugoslav Republic of Macedonia" have enumerated a long detailed list of activities carried out by the State Commission to implement the National Programme for the Prevention and Suppression of Corruption.
28. GRECO took note of the information provided and concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

29. *GRECO recommended to make the necessary amendments to article 17 of the Constitution and to the Code of Criminal Procedure notably by introducing new clear provisions making the use of special investigative means in criminal investigations of the most serious crimes, including corruption, possible. These legal measures have to be followed by concrete actions to provide both appropriate training and proper technical equipment for police officers, prosecutors, investigating judges and judges.*
30. The authorities of "the former Yugoslav Republic of Macedonia" have reported that, in December 2003, changes to Article 17 of the Constitution (Amendment XIX) were adopted which enable the use of special investigative means in criminal investigations for the most serious criminal offences, including corruption. The use of these special investigative means is allowed only upon a court decision and under conditions and procedures defined by law. They have also reported that consequent changes in the Criminal Procedure Law have been made (Article 142-b of the Law on Changes and Supplements to the Criminal Procedure Code provides for a detailed list of special investigative means and their use) and the drafting of the new Law on Interception of Communications is under consideration. The authorities of "the former Yugoslav Republic of Macedonia" have also reported that these legislative changes will be followed by appropriate training and technical equipment for police officers, prosecutors, investigating and other judges.
31. GRECO acknowledged with satisfaction that Article 17 of the Constitution was amended in order to make the use of special investigative techniques possible in cases of most serious criminal offences, including corruption. It also took note of the positive measures described by the authorities of "the former Yugoslav Republic of Macedonia" to ensure the conformity of the legal and institutional system with the new established constitutional provision and that the measures

needed to provide law enforcement bodies with the necessary means to make use of the special investigative schemes will be undertaken.

32. GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

33. *GRECO recommended to introduce and above all implement a comprehensive legal framework precisely defining measures to protect witnesses and to consider the institution of a procedure for interviewing whistle-blowers and other witnesses whose identity is known only to the competent judicial authority.*
34. The authorities of “the former Yugoslav Republic of Macedonia” have reported that a new chapter of the Criminal Procedure Law (Chapter XIX) on “Protection of witnesses, collaborators of justice and victims” has been adopted on 14 October 2004. The new Articles 270 a, b and c address all concerns expressed in recommendation ix.
35. GRECO took note with satisfaction of the provisions included in the recently adopted Criminal Procedure Law. It considered that these provisions - on condition that they are effectively enforced - will implement recommendation ix.
36. GRECO concludes that recommendation ix. has been dealt with in a satisfactory manner.

Recommendation x.

37. *GRECO recommended that all public officials receive training on codes of conduct and applicable integrity / ethical rules and regulations relating to their employment.*
38. The authorities of “the former Yugoslav Republic of Macedonia” have reported that according to the Code of Ethics for Civil Servants all civil servants are obliged to act in compliance with its provisions (Official Gazette No. 96/2001) and to respect the principles of legality, professional integrity, efficacy and loyalty, accessibility to citizens and other legal entities as well as the principles relating to impartiality, autonomy in decision-making, misuse of powers and the status of a civil servant, transparency of information, political activity, conflict of financial interests, gifts and other kinds of advantage, protection and economical use of state funds, conduct in the service, conducts in private life and public relations. They have recalled and described those provisions of the Code dealing with a) disciplinary measures and sanctions provided in case of violation of the Code, b) moving from the public to the private sector (“pantouflage”) and c) regulation on gifts. The authorities of “the former Yugoslav Republic of Macedonia” have also reported that there is a specific requirement for all public organisations to display the provisions of the Code of Ethics in their premises so that civil servants are aware of their rights and obligations. In some other cases, public employees have to sign a paper declaring that they have been personally informed on the contents of the Code.
39. GRECO took note of the detailed information provided on the provisions of the Code of Ethics for Civil Servants and notably the fact that all civil servants have an obligation to respect them.
40. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

41. *GRECO recommended to set up a specialised anti-corruption unit, either as a special unit integrated into the new financial police or as a separate body within another State agency. This unit should be responsible for dealing specifically with the prevention, detection and investigation of corruption cases. It also recommended that the unit produce an annual progress report of its activities to be made available to the public.*
42. *The authorities of “the former Yugoslav Republic of Macedonia” have reported that according to new changes foreseen in the Law on Financial Police, it is expected that the proposal for the creation of a specialised anticorruption unit be adopted. It would be a special unit within the new Financial Police. In addition, as a result of the reorganisation of the Department for Financial Crime, a Money Laundering and Corruption Department will be created within the Ministry of the Interior. They have also reported that, within Ministry of the Interior, the Department for Organised Crime has a unit dealing with economic crime, corruption and smuggling.*
43. *GRECO took note of the information provided by the authorities of “the former Yugoslav Republic of Macedonia” regarding the changes which are being made through amendments to the Law on Financial Police and the creation of a Money Laundering and Corruption Department within the Ministry of the Interior. It acknowledged that reforms to target corruption are being implemented. Nevertheless, it considered that there is room for progress with regard to anti-corruption specialisation of the investigation services, in particular by creating “a special body or institution with a multidisciplinary character dealing exclusively or predominantly with the fight against corruption” (First Round Evaluation Report, page 23, paragraph 111).*
44. *GRECO concludes that recommendation xi has been partly implemented.*

Recommendation xii.

45. *GRECO recommended to undertake the necessary measures to create, within the Public Prosecution Office, a special section/unit responsible for dealing with corruption and corruption-related offences. It also recommended selecting specialised and well-trained prosecutors to deal exclusively with these forms of crimes and provide them with appropriate education, training and technical equipment. For this reason, it also recommended preparing internal guidelines and annual education/training for prosecutors of all levels of the Public Prosecution Office.*
46. *The authorities of “the former Yugoslav Republic of Macedonia” have reported that by virtue of the recently adopted Law on the Public Prosecutor’s Office, a “Department for Prosecution of Perpetrators of Criminal Offences from the Area of Organised Crime and Corruption” has been set up within the Public Prosecutor’s Office. The department deals with criminal offences that are prosecuted *ex officio* and are committed by an organised group. The department is competent to act throughout the country. It is staffed by a manager and four members. It has already started working on some concrete cases and, as regards training, some seminars and other specific activities are being organised together with other country’s organisations involved in the fight against corruption, as well as in cooperation with certain other countries (Italy and Slovenia were mentioned).*
47. *GRECO took note of the information provided and considered that the recommendation has been addressed by the creation of the “Department for Prosecution of Perpetrators of Criminal Offences from the Area of Organised Crime and Corruption”.*

48. GRECO concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiii.

49. *GRECO recommended to create clearly defined conditions and examination procedures for appointment of all new candidates to the Public Prosecution Office and to the Courts valid equally to both prosecutors and judges. It further recommended to undertake all necessary measures to reduce the risk of any interference in the process of nomination of prosecutors and judges.*
50. The authorities of “the former Yugoslav Republic of Macedonia” have reported that the National Programme for the Prevention and Suppression of Corruption (see paragraphs 12 and 27 above) contains a proposal for considering the setting up of a National Justice Council. Moreover, they have reported that the Strategy for the Reform of the Justice System, which contains *inter alia* provisions aimed at reforming the courts system and the Public Prosecutor’s Office, has been adopted on 22 November 2004. They have also reported that the new text of the Law on the Public Prosecutor’s Office proposes that a Public Prosecutors’ Council be established, to give opinions on proposals for appointment and dismissal of as well as starting administrative procedures against public prosecutors and deputy public prosecutors.
51. GRECO took note of the two proposals in the Programme for the Prevention and Suppression of Corruption and in the new text of the Law on the Public Prosecutor’s Office for the creation of organisations representing judges and prosecutors to play an advisory role in the appointment procedures of these judicial professions. It also took note of the important changes introduced by the Strategy for the Reform of the Justice system. It considered that the reforms under way show that the authorities of “the former Yugoslav Republic of Macedonia” are aware of the importance of having clearly redefined conditions and examination procedures for appointment of all new candidates to the Public Prosecution Office and to the Courts to reduce the risk of any interference in the process of nomination of prosecutors and judges.
52. GRECO took note of the positive measures undertaken and under consideration as described by the authorities of “the former Yugoslav Republic of Macedonia”. It considered that these measures, once fully in place, would comply with recommendation xiii.
53. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xiv.

54. *GRECO recommended that in public procurement matters, the courts should be able to pronounce interlocutory decisions that suspend the tender procedure in the event of an appeal by a bidder on grounds of unlawful exclusion from the consultation or adjudication procedure.*
55. The authorities of “the former Yugoslav Republic of Macedonia” have reported that they have addressed this recommendation in different ways:
- Pursuant to Article 91 of the Law on Public Procurements (“Official Gazette” No. 19/2004), any person participating in a tender procedure may, in the course of the entire procedure, submit complaints as to the working methods and manner in which offers made to the Public Procurements Commission are considered and evaluated. If the Commission judges that the complaint is justified, it may make the necessary rectification. If it does not accept the

complaint, it can then be submitted to the Appeals Commission. During the examination of a complaint, the Commission interrupts its work until a decision is taken.

- A rejected tenderer may appeal to the Appeals Commission within 7 days from the date of notification. The appeal suspends the enforcement of the decision on the choice of a holder of the procurement, until the decision on the appeal becomes effective.
- Other specific procedures exist in order to check the regularity of tender procedures such as the appointment of experts for contracts of more than 30,000 euros.
- The decision of the Appeals Commission against Public Procurements is final. Nevertheless, the tenderer/applicant may still challenge this decision by introducing a lawsuit before a competent (Basic) Court.

56. GRECO took note of the information provided and concludes that recommendation xiv has been implemented satisfactorily.

Recommendation xv.

57. *GRECO recommended to amend the national legislation to ensure that the procedure for deciding on immunities of members of Government is not carried out by the Government itself.*

58. The authorities of “the former Yugoslav Republic of Macedonia” have reported that the Action Plan (see paragraph 26), contains a suggestion for amending the Constitution with regard to the issue of lifting the immunity of members of the Government.

59. GRECO took note of the fact that consideration of the issue of amending legislation with regard to immunity of members of the Government has commenced.

60. GRECO concludes that recommendation xv has been partly implemented.

Recommendation xvi.

61. *GRECO recommended to establish guidelines for Deputies of the Assembly, and especially its Committee on Immunities, containing criteria to be applied when deciding on requests for lifting immunities.*

62. The authorities of “the former Yugoslav Republic of Macedonia” have reported that the issue of immunities of Deputies of the Assembly has recently arisen because of some concrete cases of Deputies for whom the lifting of immunity has been requested.

63. GRECO considered that the concerns expressed in the recommendation xvi have not adequately been addressed.

64. GRECO concludes that recommendation xvi has not been implemented.

Recommendation xvii.

65. *GRECO recommended to reduce the list of categories of officials covered by immunity to a minimum.*

66. The authorities of “the former Yugoslav Republic of Macedonia” have reported that no concrete action or activities have been undertaken to address this recommendation, given that its implementation would require changing the Constitution.
67. GRECO concludes that recommendation xvii has not been implemented.

III. CONCLUSIONS

68. **In view of the above, GRECO concludes that “the former Yugoslav Republic of Macedonia” has implemented satisfactorily or dealt with in a satisfactory manner the majority of the recommendations contained in the First Round Evaluation Report.** Recommendations ii, iii, iv, v, vi, vii, viii, x, xii and xiv have been implemented satisfactorily. Recommendation ix has been dealt with in a satisfactory manner. Recommendations i, xi, xiii and xv have been partly implemented and recommendations xvi and xvii have not been implemented.
69. GRECO invites the Head of the delegation of “the former Yugoslav Republic of Macedonia” to submit additional information regarding the implementation of recommendations i, xi, xiii, xv, xvi and xvii by 31 May 2006.