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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Slovenia

Adopted by GRECO
at its 38th Plenary Meeting
(Strasbourg, 9-13 June 2008)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Slovenia at its 16th Plenary Meeting (12 December 2003). This report (Greco Eval II Rep (2003) 1E), which contains 10 recommendations addressed to Slovenia, was made public on 19 March 2004.
2. Slovenia submitted the Situation Report required under the GRECO compliance procedure on 4 July 2005; additional information was subsequently delivered on 2 February 2006. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC-Report) on Slovenia at its 28th Plenary Meeting (12 May 2006). This last report was made public on 21 August 2006. The Compliance Report (Greco RC-II (2006) 1E) concluded that recommendations iii and ix had been implemented satisfactorily and recommendations i and x had been dealt with in a satisfactory manner. Recommendations ii, iv, v, vi, vii and viii had been partly implemented; GRECO requested additional information on their implementation. This information was provided on 11 March 2008.
3. The purpose of this Addendum to the Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations ii, iv, v, vi, vii and viii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation ii.

4. *GRECO recommended that the police specialised anti-corruption unit should be positioned close enough to the top of the Police services, with clear and short lines of responsibility and accountability, guaranteeing quick and direct contacts with the prosecution service.*
5. GRECO recalls that in the RC-report it acknowledged that steps had been taken to clarify the process of contact and cooperation between the Police and the State Prosecutor's services. However, the recommendation was considered partly implemented since it was not substantiated in the reply of the Slovenian authorities that the transfer of the anti-corruption unit to the investigation of economic crime unit had led to sufficient improvements in the decision making structure, within the Police, to allow for a swifter investigation of corruption offences. Moreover, the afore-mentioned changes in the positioning of the anti-corruption unit was, at the time of adoption of the RC-report, still subject to further consideration by the authorities.
6. The Slovenian authorities confirm that, following additional consultations on the topic of the most optimal positioning of the anti-corruption unit, it has been decided that these would be placed in the unit for the investigation of economic crime within the Police.
7. GRECO takes note of the information provided; however, in the absence of concrete information on how the new positioning of the anti-corruption unit has simplified the process of starting investigation in corruption cases, it cannot change its previous conclusion.
8. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iv.

9. *GRECO recommended to establish a regular assessment in order to: 1) ensure that the organisation of the public administration (as provided by legislation or executive decree) does not create opportunities for corruption; 2) evaluate the effects of the new recruitment and career system on the nomination and retention of highly qualified persons and 3) ensure that the provisions of the Law on access to information be implemented. The results of this assessment should be made public.*
10. GRECO recalls that, in the RC-report, ongoing progress was noted in all three areas covered by recommendation iv. GRECO particularly welcomed the monitoring of the implementation of access to information legislation via publicly accessible annual reports (recommendation iv.3) However, in the absence of precise information concerning the effective establishment and subsequent publication of a regular assessment of public administration that would ensure that the organisation of the public administration does not create opportunities for corruption (recommendation iv.1), and the effects of the recruitment and career system on the retention of highly qualified persons (recommendation iv.2), the recommendation was considered as partly implemented.
11. The Slovenian authorities inform GRECO that, with a view to fully ensuring a merit-based personnel system and to monitoring the organisation and functioning of public administration, performance appraisals of civil servants are carried out on an annual basis. Further measures to increase general transparency in the public service include the development of “Staff Reports” containing information on education levels, gender, professional experience and working titles of public servants; these reports are publicly available on the Internet. Moreover, the Prevention of Corruption Act introduced a risk assessment tool, at central and local level, through the so-called “integrity plans”, which were to identify risk areas where opportunities for corruption could arise as well as methodologies and concrete measures to prevent such risks. The Commission for the Prevention of Corruption was responsible for providing guidance concerning the development of integrity plans and monitoring their implementation. To this effect, the Commission issued “Guidelines on the Introduction of Integrity Plans” and provided targeted training for those public institutions which were under the legal obligation to establish integrity plans. A total of 330 civil servants from 216 different State and local institutions were trained/briefed in this respect. However, following the adoption of the Act on Incompatibility of Public Function with Profit-Making Activities in February 2006, and the subsequent decision of the Constitutional Court in March 2007 (Decision U-I-57/06-28), the obligation for public bodies to develop integrity plans no longer exists¹. Since a number of institutions had already launched integrity plans, these appear to have been continued with a relative level of success, mostly at State level.
12. GRECO takes note of the measures reported to monitor public administration. In particular, the adoption of “integrity plans” for public institutions and their general supervision by the Commission for the Prevention of Corruption, appeared to be a promising step to potentially address the first part of the recommendation, i.e. to ensure that the organisation of the public administration does not create opportunities for corruption. For this reason, GRECO can only regret that, with the suppression of the requirement to continue introducing integrity plans, a valuable tool in the fight against corruption in public administration will now be lost. Furthermore, although the efforts undertaken to enhance efficiency and transparency in public administration

¹ The decision of the Constitutional Court determines that, while the Prevention of Corruption Act continues to be the enforceable legal framework in this area, some of its provisions are no longer applicable, i.e. Article 30, paragraph 5 (dismissal from public service as a sanction for failures to submit financial declarations) and Articles 40 to 43 (integrity plans).

(through performance appraisals of staff and publicised information on their profiles) are to be acknowledged, these alone cannot fully satisfy the comprehensive aim of the recommendation. Finally, no information has been provided on evaluating the effects of the career system on the retention of highly qualified persons.

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

Recommendation v.

14. *GRECO recommended that a conflict of interest restriction that provides for consistently applied and enforceable standards be adopted for all those who carry out or have carried out functions on behalf of the public.*
15. GRECO recalls that in the RC-report it reviewed the incompatibilities introduced by the Act on Incompatibility of Public Function with Profit-Making Activities (hereafter Incompatibility Act) and concluded that these were not sufficient to meet the recommendation. In this context, GRECO took the view that a conflict of interest restriction was broader than an incompatibility standard since it would, for example, cover the official actions of public officials where the outside activity or interest is not prohibited, but could nevertheless create a conflict with a specific official task. Moreover, GRECO noted that the incompatibilities listed did not cover all persons who carry out or have carried out functions on behalf of the public. In particular, conflicts of interest rules for employees of private companies holding concessions and/or having the authority to issue licenses of behalf of the public were still needed.
16. The Slovenian authorities stress that the implementation of the Incompatibility Act (which was designed to supersede a number of provisions of the Prevention of Corruption Act, including by dismantling the Commission for the Prevention of Corruption) was suspended by the Constitutional Court on 24 April 2006 pending the review of the constitutionality of a number of its provisions. In the meantime, and with a view to complying with GRECO's recommendation, the Commission for the Prevention of Corruption drafted the Integrity in Public Sector Act, which dealt *inter alia* with conflict of interest restrictions, including on the movement of public officials to the private sector (i.e. by requiring a two-year "cooling-off" period). The aforementioned draft was rejected at first reading (30 in favour, 36 votes against).
17. On 29 March 2007, the Constitutional Court issued a decision (cf. Decision U-I-57/06-28), which repeals several requirements of the Incompatibility Act and declares its monitoring mechanism, i.e. through a Parliamentary Commission, to be in conflict with the Slovenian Constitution (notably, with respect to the principle of separation of powers enshrined by the Constitution). It further ruled that until the aforementioned unconstitutionality is remedied, the enforceable instrument in this area continues to be the Prevention of Corruption Act (see footnote 1). In this context, the Government has now drafted the Restrictions and Limitations for Public Office Holders Act, which passed its first reading in Parliament on 29 February 2008 (37 votes in favour, 36 against)². It contains provisions to prevent situations that may give rise to (actual or/and potential) conflicts of interest. It further foresees the abolishment of the Commission for the Prevention of Corruption.

² The Restrictions and Limitations for Public Office Holders Act passed its second reading in Parliament on 21 April 2008, when it was decided that the Act was ready for its final adoption (third reading). The third reading was scheduled to take place on 22 April 2008, but has been postponed to a forthcoming parliamentary session.

18. With respect to the effective enforceability of the incompatibility standards in force, the Commission for the Prevention of Corruption is frequently confronted with situations of actual and potential conflicts of interest and then counsels the officials (through non-binding interpretative guidance, i.e. specific opinions and general opinions), in a preventive manner, on the steps that must be taken to avoid the conflicts. Until the end of February 2008, the Commission had issued a total of 129 specific opinions/general opinions on this matter.
19. Moreover, in order to address the need for conflict of interest rules for employees of private companies holding concessions and/or having the authority to issue licenses on behalf of the public, the Commission for the Prevention of Corruption recommended to the Government of Slovenia, in the second half of 2007, that the relevant provisions on conflict of interest contained in the Code of Conduct for Public Officials be annexed to all contracts concluded with private entities. A final decision from the Government on this proposal is still pending.
20. GRECO takes note of the ongoing legal changes, in particular, the intention of the Government to replace the legislation in force, i.e. the Prevention of Corruption Act, by the Draft Restrictions and Limitations for Public Office Holders Act. Since GRECO has not been provided with the text of the draft amendments, it is not in a position to assess whether its concerns have been sufficiently addressed (i.e. that the coverage of the relevant provisions on conflicts of interest is broader than an incompatibility standard and applies to all those who carry out or have carried out functions on behalf of the public). In any case, as the draft amendments have not yet been adopted, GRECO cannot anticipate and assess the final result at this stage.
21. Moreover, GRECO points out that the recommendation attached key importance to consistent application and enforceability of the applicable standards. In this connection, GRECO welcomes the monitoring and advisory role that the Commission for the Prevention of Corruption has played in this field. However, GRECO has now learned that the Draft Restrictions and Limitations for Public Office Holders Act foresees the abolishment of the Commission. In this context, GRECO is mindful that the consistency in implementation pursued by the recommendation risks being undermined if institutional changes occur. Likewise, GRECO recalls that it had already expressed its concern that the dismantling of the Commission might amount to a substantial weakening of the control of incompatibilities standards (see Greco RC-I (2003) 1E Addendum). Finally, it is not unequivocally clear which body would exercise the crucial role of the Commission in this area (if it were to be abolished) and to what extent the institutional changes planned would lead to improvements in implementation.
22. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

23. *GRECO recommended that any requirement for the filing of a financial declaration have an effective mechanism for enforcement, for instance that intentionally false statements made on the reports be actionable under the criminal code, that information required to be reported is related to restrictions of office including any new conflict of interest standard, and if reports are required, that they provide a basis for counselling in ways to avoid potential conflicts of interest.*
24. GRECO acknowledged in the RC-report the establishment of a potentially effective mechanism for the enforcement of the requirements to submit financial declarations. However, since no information was provided on the use of financial declarations for preventive purposes (recommendation vi *in fine*), it considered that the recommendation had been partly implemented.

25. The Slovenian authorities provide updated information on changes which have occurred in this area since adoption of the RC-report. In particular, in 2006, the Commission for the Prevention of Corruption concluded an agreement with the General Tax Directorate of the Ministry of Finance according to which information on the assets and income of a public official are to be submitted to the Commission in a swift manner; similarly, cooperation in this area has been enhanced with other public bodies responsible for keeping information on movable and immovable property of officials. Moreover, the decision of the Constitutional Court (cf. Decision U-I-57/06-28) repealed the obligation to make financial declarations accessible to the public. The Draft Restrictions and Limitations for Public Office Holders Act establishes that only assets and income acquired during the term of office of the relevant official are to be published.
26. With respect to the outstanding requirement of the recommendation, i.e. the use of financial declarations for preventive purposes, the authorities add that the Commission for the Prevention of Corruption not only reviews financial declarations for purposes of accuracy, but also provides personalised advice to the filers on how to avoid potential conflicts of interest. A total of 115 advisory opinions/clarifications (of a non-binding nature) had been issued by the end of February 2008. If in the review process, the Commission comes across instances of incompatibility, it issues a binding decision to rectify the situation. If the official does not follow the relevant decision, the Commission is entitled to ask for his/her dismissal; up to now, this has never happened, despite the fact that the Commission has adopted 87 decisions on incompatibility (in the 80 cases which have been closed to date, the decisions of the Commission were followed by the relevant officials). Finally, criminal charges have been brought in three cases where false statements were made; the Commission has referred these cases to the responsible prosecution services.
27. GRECO is pleased to learn that the Commission for the Prevention of Corruption is using financial reports for preventive purposes through providing counsel to filers on how to avoid potential conflicts of interest, in line with the outstanding part of the recommendation. GRECO also commends the efforts undertaken by the Commission to establish cooperation routines with other authorities with a view to facilitating the gathering and cross-checking of financial information in a swift and effective manner.
28. GRECO concludes that recommendation vi has been satisfactorily implemented.

Recommendation vii.

29. *GRECO recommended that the draft anti-corruption strategy be adopted and that its provisions to promote education, training and counselling on codes of conduct and other standards of public service be implemented without delay; GRECO also recommended that the Commission for Prevention of Corruption be provided with some authority to review, in a public fashion if appropriate, the manner in which each employing entity is providing preventive services as well as enforcing the codes.*
30. GRECO recalls that in view of the uncertain situation, at the time of adoption of the RC-report, over both the continued existence of the Commission for the Prevention of Corruption and the transfer of its tasks (in the areas covered by the recommendation), it could not conclude that recommendation vii had been fully complied with and therefore, considered it partly implemented.

31. The Slovenian authorities now report that the Resolution on the Prevention of Corruption continues to be the principal policy document defining objectives and assigning responsibilities in the prevention of, and fight against, corruption. Likewise, the Prevention of Corruption Act is, for the time being and until the Government remedies the established unconstitutionality of the Act on Incompatibility of Public Function with Profit-Making Activities (see paragraph 17), the legal framework governing anti-corruption measures in Slovenia. Both instruments entrust the Commission for the Prevention of Corruption with key responsibilities in the overall coordination of anti-corruption policy (including in the areas covered by recommendation vii). Since the adoption of the RC-report, the Commission has sustained its educational, advisory and awareness-raising activities with respect to ethical standards in public administration. In particular, the Commission has organised, between 2005 and 2007, 22 meetings with 275 representatives from 42 different institutions in order to provide explanatory information and guidance on codes of conduct and other standards of public service. The Commission further issued 120 general opinions, 9 specific opinions, 114 clarifications and 405 reports (all of these instruments have a non-binding character), which were sent to different institutions, mainly the Police, the Prosecution Service and the different ministries during the period from 1 October 2004 to 22 February 2008. These documents contain, *inter alia*, suggestions to the different employing entities as to how to provide meaningful preventive services and streamline the application of the relevant codes of conduct.
32. Concerning the effective enforcement of the ethical standards, these are contained at present in the General Code of Conduct for Public Officials of 2001, as well as in the Civil Servants Act of 2002. While the Civil Servants Act includes provisions on disciplinary sanctions, these are not applicable to violations of the Code of Conduct.
33. GRECO welcomes the sustained efforts of the Commission for the Prevention of Corruption to raise awareness and promote practical application of ethical standards in public administration. However, GRECO recalls the concern expressed in its Second Round Evaluation Report (paragraph 48) as to the lack of enforcement of such standards, which continues to be prevalent since breaches of the provisions contained in the General Code of Conduct for Public Officials are not coupled with a sanctioning system. GRECO further notes that the situation remains as uncertain as it was at the time of adoption of the RC-report: legislative and institutional reform in this area, including the potential dismantlement of the Commission (which has been to date the institution entrusted with the implementation of the areas targeted by recommendation vii), are currently being discussed. Consequently, on the basis of the information at its disposal, GRECO cannot change its previous conclusion.
34. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

35. *GRECO recommended that officials from the investigative and judicial authorities make full use of the provisions of the Law on Liability of Legal Persons and receive specific training, to complement their skills, on how to better apply these provisions.*
36. GRECO recalls that this recommendation was considered partly implemented as, in spite of the training provided to improve the level of awareness of corporate criminal liability, the practical application of the relevant legal provisions remained limited.

37. The Slovenian authorities indicate that training efforts in this area have been maintained. In particular, the Judicial Education Centre has included in its regular training programme specific chapters on corporate criminal liability, including in relation to corruption offences; several seminars were held in 2006 and 2007 and further courses are scheduled for 2008. Similarly, a number of articles have been issued in the Judicial Bulletin (a regular publication targeting prosecutors, judges and other members of the law enforcement and judicial authorities) dealing in depth with different aspects of corporate criminal liability (e.g. in connection with tax evasion, corruption, etc.). The awareness-raising measures undertaken to date have led *inter alia* to measurable improvements concerning the effective application of the Law on Liability of Legal Persons: in 2005, 14% of the criminal cases initiated against legal persons were adjudicated; in 2006, the proportion increased to 42% (three of those cases dealt with corruption offences).
38. GRECO welcomes the training sessions held to further familiarise officials from the investigative and judicial authorities with corporate criminal liability, which appear to have had a positive impact in the application of the provisions of the Law on Liability of Legal Persons in practice. In this connection, GRECO notes with satisfaction the sharp rise in prosecution and adjudication of criminal cases involving legal persons.
39. GRECO concludes that recommendation viii has been satisfactorily implemented.

III. CONCLUSION

40. In view of the above, GRECO concludes that recommendations vi and viii have been implemented satisfactorily. Recommendations ii, iv, v and vii remain partly implemented. Slovenia has taken important steps to promote institutional integrity; the monitoring and advisory role played by the Commission for the Prevention of Corruption appears to be pivotal in this respect. Likewise, noticeable progress has been made with respect to the practical application of corporate liability provisions. With respect to the outstanding recommendations, it is important to ensure that the positioning of the specialised anti-corruption unit within the Police allows a swifter investigation of corruption offences. GRECO further encourages the authorities to enhance their efforts to undertake a regular assessment of public administration, to provide more effective administrative enforcement of codes of conduct, and to adopt conflict of interest standards for all persons who carry out or have carried out functions on behalf of the public.
41. More generally, Slovenia has created an impressive infrastructure of legislative and institutional mechanisms to prevent and combat corruption. The encouraging steps undertaken in this field have repeatedly been acknowledged by GRECO and have served as an example of good practice for other countries in the area. In particular, GRECO welcomed the establishment of a specialised and independent body for the overall co-ordination of anti-corruption policy in Slovenia, i.e. the Commission for the Prevention of Corruption, in line with a recommendation made by GRECO during its First Evaluation Round. Indeed, in many instances GRECO recommended the setting-up of independent anti-corruption institutions (without pointing at one unique model) endowed with adequate attributions and resources. GRECO is of the opinion that the dismantlement of such institutions without the establishment of an alternative oversight body, which is able to operate in the same conditions of impartiality, is not the right way to demonstrate adherence to strict anti-corruption standards. For this reason, GRECO has followed with growing concern the recent developments in Slovenia and the possible dismantlement of the Commission for the Prevention of Corruption. In particular, GRECO has made it clear, *inter alia*, that such a move would certainly have a negative impact on the overall co-ordination of anti-corruption policy in Slovenia (Greco RC-I (2003) 1E Addendum). In the Council of Europe context, the matter was

brought before the Committee of Ministers through a written question of a member of the Parliamentary Assembly³. This concern appears to be equally shared by other international organisations⁴.

42. In view of the uncertainty of both the legal and institutional framework which will govern in the future the anti-corruption policy in Slovenia (a number of reforms in this area are currently the focus of much internal debate), and since full implementation of recommendations iv, v and vii is tied to the operation of the Commission for the Prevention of Corruption, the abolishment of which has been reintroduced on the Government's agenda, GRECO wishes to be kept informed of future developments and reassured that the efforts undertaken to date in the prevention and fight against corruption have not been in vain. Consequently, it requests the Slovenian authorities to provide further information on the implementation of the recommendations iv, v and vii. This information should reach GRECO by 31 December 2008.
43. Finally, GRECO invites the Slovenian authorities to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.

³ CM/AS(2007)Quest525 final, 9 November 2007.

⁴ The OECD Working Group on Bribery in International Business Transactions specifically signalled in its latest report on Slovenia: Phase 2 (adopted on 21 June 2007) that the priority and commitment given to fighting corruption in Slovenia was declining, when the focus should have been sharpened and the mechanisms for combating it strengthened. It further recommended the Slovenian authorities to support the Commission for the Prevention of Corruption (or any other body charged with combating foreign bribery in the future) in its efforts to curb corruption in the country (cf. pages 4, 7 and 8).