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Tour de table
on Compliance Issues
(GRECO 36, 11 – 15 February 2008)

Summary Record

Introduction

At its 36th Plenary Meeting (Strasbourg, 11-15 February 2008) GRECO held a *tour de table* on challenges faced in implementing certain recommendations issued during the First and/or Second Evaluation Rounds.

The organisation of regular *tours de table* on certain issues emanating from GRECO's Evaluation Rounds had been agreed upon by the Bureau in 2006 (Bureau 37, Strasbourg, 13-14 November 2006), with a view to using GRECO as a *forum* for an exchange of information and good practice (including difficulties encountered while implementing recommendations; promising practices; emerging trends). This new platform is part of a series of measures adopted in order to raise the level of compliance with GRECO's recommendations and to further strengthen the compliance procedure, which is considered one of GRECO's strongest points, providing a thorough verification of members' action in order to address its recommendations.

Having dealt, during the first and second *tours de table*, with recent developments in anti-corruption institutions and strategies in member states (33rd Plenary Meeting, Strasbourg, 29 May–1 June 2007) and with the topic of revolving doors/pantouflage (34th Plenary Meeting, Strasbourg, 16-19 October 2007), GRECO dedicated its third *tour de table* specifically to compliance issues. On this occasion, delegates of various countries informed the Plenary, on a voluntary basis, about problems encountered as well as progress achieved with regard to the implementation of certain recommendations.

Areas of concern

The challenges described by delegations centred, for the most part, on recommendations on the following themes:

- The scope of and procedures for lifting immunities: In numerous countries, changes relating to immunities require amendments to the Constitution and are therefore particularly difficult to achieve. Procedural requirements for changing the Constitution are high, and in addition, the scope of immunities is often of great political sensitivity as they have been established in order to ensure independence of the persons concerned.
- Specialised anti-corruption agencies and bodies (establishment, independence, resources): Delegates reported progress achieved but also political obstacles and lack of experience in this area. It appears that in some countries, the path is long between a political decision to establish such an independent body and its implementation in practice.
- Liability of legal persons (in particular, corporate criminal liability): Delegates reported on difficulties to achieve a political decision to introduce liability of legal persons in the Penal Code – in particular when there already exists some case law establishing such liability – and/or to develop provisions of high legal quality which fit into the national legal framework. However, there appears to be an overall consensus among the member states that, in principle, criminal liability of legal persons should be established.
- Revolving doors/*pantouflage*: In a large number of countries, there is little experience with “pantouflage”, i.e. the improper movement of a public official to the private sector. Therefore, they lack expertise and would need information and examples of good practice provided by countries with pertinent legislation; in this connection, the information shared by several countries during the second *tour de table* dealing specifically with this topic may be of considerable help (cf. document Greco (2007) 23E). Furthermore, in some countries it appears to be difficult to convince decision-makers of the need for regulation of this phenomenon which is claimed to cause no significant problems in practice.

Other matters raised included more general challenges such as:

- The time needed to implement recommendations which require legislative changes: Lengthy legislative procedures are frequently an obstacle to achieving changes within the first 18-month period established by GRECO's compliance procedure, especially in federal states or in smaller countries with limited resources. On the other hand, it should be noted that draft legislation may be sufficient for concluding "partial implementation" of a given recommendation and that subsequently countries are given another 18 months to report on further developments.
- The adherence of newly formed governments to commitments established under previous governments (in the case of GRECO: implementation of recommendations and adequate reporting on implementation): Some delegates reported on practical problems in this respect, due to political considerations. However, it should be clear that commitments to GRECO are binding on the country as a whole and not only to a specific government.
- Awareness of the fact that the responsibility for implementing GRECO recommendations is not solely that of the government, but it can lie with any of a number of institutions (e.g. the Judiciary, Parliament, ...): Such awareness appears to be absent in a number of countries, and the executive powers are called upon to draw the attention of other powers to this shared responsibility.
- The understanding of recommendations to "consider" certain issues or measures: Countries are sometimes uncertain about the steps to be taken in order to implement such recommendations. While GRECO tries to reduce the number of such recommendations, they are sometimes justified when there is a broad consensus in GRECO about desirable objectives and measures to achieve them, without a corresponding explicit international standard. In such cases, a country must provide substantial information on how GRECO's recommendation has been taken into account (draft proposals/legislation, consultations held, reasoning forming the basis of the decisions reached ...) in order to warrant a positive assessment by GRECO of the measures taken, even if the underlying objective of the recommendation is not achieved.

Outlook

GRECO's first *tour de table* dealing specifically with compliance issues clearly helped identify areas where members face common problems when implementing recommendations. It also proved to be a good opportunity for delegates to exchange experience and good practice in this regard. The organisation of further *tours de table* on compliance issues, as agreed by the Bureau, has therefore the potential of contributing to the intended rise in compliance levels.

During the *tour de table*, several countries expressed a need for support in the implementation of certain recommendations. In this connection, the President reminded the plenary of preliminary discussions held within the Bureau on possible action that could be taken to provide such support, where appropriate, to members who face difficulties in implementing certain recommendations. The idea was not to envisage further technical assistance activities as these were already managed within a clearly defined in-house framework. Consideration could be given to other forms of tailored support. Several speakers wondered if it was possible for GRECO to reconcile its role as a monitoring body with providing formal advice on how to implement recommendations resulting from its monitoring. However, any advice given or expert opinion expressed could not pre-empt in any way the position GRECO might take at a later stage, i.e. in the context of its formal compliance procedure. It was also suggested that the Secretariat could possibly provide members with access to resources which might be helpful in designing appropriate policy responses to GRECO's recommendations (legislation, guidelines, research papers, etc).