



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
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Addendum

Joint First and Second Evaluation Rounds

Addendum to the Compliance Report on Andorra

Adopted by GRECO
at its 50th Plenary Meeting
(Strasbourg, 28 March – 1 April 2011)

I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report at its 31st Plenary Meeting (8 December 2006). The report (Greco Eval I-II Rep (2006) 1E), which contained 18 recommendations to Andorra, was published on 7 February 2007.
2. Andorra submitted the situation report required under GRECO's compliance procedure on 30 June 2008. On the basis of this report, and following a discussion in plenary session, GRECO adopted the First and Second Round Compliance Report (RC report) on Andorra at its 41st Plenary Meeting (5 December 2008). The latter was published on 4 March 2009. The compliance report (Greco RC-II (2008) 7E) concluded that recommendations i, vii, viii, x and xi had been satisfactorily implemented and recommendations iv, v, ix and xviii had been dealt with satisfactorily. Recommendations ii, iii, vi, xii, xiii, xiv and xvii had been partly implemented and recommendations xv and xvi had not been implemented. GRECO requested additional information on their implementation. This information was supplied on 30 August 2010 and updated on 25 February 2011.
3. Pursuant to Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, the purpose of this Addendum to the Joint First and Second Round Compliance Report is to assess the implementation of recommendations ii, iii, vi, xii, xiii, xiv, xv, xvi and xvii in the light of the additional information referred to in paragraph 2.
4. The Andorran authorities state initially that, following a change of government after the April 2009 elections, changes were made to the central administration, including the anti-corruption unit (the UPLC), which is responsible for relations with GRECO. It also stressed the government's commitment to implementing all the GRECO recommendations, but stated that various material, financial and other problems made it difficult to tackle all the matters pending.

II. ANALYSIS

Recommendation ii.

5. *GRECO recommended that a study be undertaken of the scale and nature of possible corruption in Andorra, covering the most exposed sectors, coupled with an assessment of existing instruments and machinery to deal with corruption, which would provide a sound basis for the development of anti-corruption policies.*
6. In the compliance report GRECO noted the establishment in January 2008 of the anti-corruption unit (UPLC), with the task of co-ordinating and supervising the study in question, in conjunction with the Institute of Andorran Studies, the public institution charged with carrying out sociological investigations. Since the preparatory work had been completed¹, GRECO considered that the recommendation had been partly implemented.
7. According to the Andorran authorities, the government has resumed the preparatory work on the study of corruption in Andorra, which will now take the form of a consultation exercise in two parts: a. in May 2010, a questionnaire on how corruption is perceived in the country was sent to all central government personnel (public officials, central government officials and members of all special corps such as the police, fire service and judiciary) and also to the authorities of the

¹ The main thrust of these studies was laid down in the second half of 2008 and the practical work was to be carried out in the first half of 2009.

principality's seven municipalities.; b. questions on corruption have been included in the survey conducted by the Andorran socio-economic observatory, a survey carried out once or twice a year on a sample of 850 local inhabitants. The survey will make it possible to take account of the perceptions of civil society and thus help to identify what anti-corruption measures are necessary. A first survey, published by the observatory², was carried out in November 2010 and it will remain in use every year in order to trace changes in how corruption is perceived by Andorran civil society.

8. The results of the May 2010 opinion poll are currently being analysed in detail by the government and will be published once the analysis is complete.
9. GRECO notes the information provided and the effort made in view of a study of the extent and characteristics of corruption in Andorra. It regrets, however, that – notwithstanding the intervening change of government – four years after the evaluation report's adoption, no outline of the conclusions that can be drawn from the data gathered as regards anti-corruption policy has been completed. GRECO recalls that the evaluation report (notably paragraphs 17 and *seq*) underlined the absence of any information or criminal file on corruption, whereas significant vulnerabilities exist in Andorra; the principality is strongly encouraged to pursue more actively its efforts to implement this recommendation.
10. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

11. *GRECO recommended that the investigation unit of the criminal police be strengthened and steps be taken, through training and other means, to enable some of its officials to specialise in corruption cases, as well as economic and financial crime, including money laundering, which might be linked to corruption.*
12. GRECO noted with satisfaction in the compliance report that: a. the staffing of the criminal police department, including that of the units responsible for serious crime, including organised crime, laundering and corruption, had been strengthened; b. the reorganisation of the police force had confirmed the existence of specialist groups concentrating more on these forms of crime. However, despite the good will of the authorities, training activities were still inadequate, so the recommendation had been considered to be partly implemented.
13. In their additional information, the Andorran authorities state that the six police officers who comprised group 2 of the criminal police (organised crime and money laundering) specialise in organised crime, corruption, money laundering and economic crime in general. The officers newly arrived in 2009 have had the following training³: a) a course on corruption and money laundering on 16 to 27 November 2009 (attended by an officer from group 2) ; b) a course on the investigation of economic crimes on 14 and 15 November 2009 (attended by an officer from group 2), and in November 2010 (also one officer); c) all the members of the group have received special training on the identification of national and international financial structures of potential interest to the law, such as trusts, off-shore companies and foundations, organised by the Andorran order of economic and financial advisers in 2009.

² See http://www.iea.ad/index.php?option=com_content&view=article&id=54&catid=4&Itemid=31; the observatory applied the Eurobarometer method used for the 2009 European survey on corruption.

³ The courses were organised by the Andorran police commissioner's office and its Spanish counterpart, under training co-operation agreements reached by the two countries.

14. Turning to continuing training, thanks to a system of rotation that has been established, members of the criminal police unit systematically attend meetings, lectures, seminars and other events on the subject organised by national and international public and private bodies. Examples include, a. a conference organised by the Andorran bar association on due diligence procedures applicable in France and Spain for the prevention of money laundering; b. a conference in February 2009 organised by various Spanish judges and prosecutors on preventing, investigating and prosecuting organised crime and money laundering; c. a seminar organised by the Europol CARIN network and the Spanish national police on the recovery and management of assets in the European Union.
15. Finally, it should be noted that on 5, 6 and 7 October 2010, in co-operation with the Spanish judicial training college, the UPLC and the Andorran judicial service commission ran a training seminar on various aspects of the fight against corruption (see also recommendation xvii, paragraphs 49 ff). The seminar, which lasted 30 hours in total, was divided into six modules of 2 to 3 hours each⁴ and was intended for police (including officers of the criminal unit) and judicial staff.
16. GRECO notes this information and expresses satisfaction with the efforts to improve police specialisation and training.
17. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation vi.

18. *GRECO recommended that the High Judicial Council establish and apply clear and objective criteria for the renewal of judges' and prosecutors' terms of office, which take particular account of merit and professional experience.*
19. GRECO notes that it was reported in the compliance report that the interior and justice ministries had drawn up preliminary draft legislation in May 2008 to make the renewal of judges' and prosecutors' terms of office more objective, by making renewal automatic, unless there were objective grounds for not going so, and to offer them more clearly defined career prospects, in the form of a six year term of office. These were still at the draft stage and the various elements could not therefore be assessed in the light of the recommendation. GRECO therefore concluded that recommendation vi had been partly implemented.
20. The Andorran authorities state that the government is currently finalising new draft legislation to establish a judicial career structure and a new and more objective reappointment system. In practice, reappointment will now be automatic unless post holders resign of their own free will or are subject to disciplinary sanctions that entail termination of duties and there will be a more clearly defined career structure that takes account of merit and professional experience. According to the authorities, the proposed legislation has been discussed with the various groups

⁴ I. General introduction to the phenomenon of corruption; II. transparency and the role of the judiciary in response to corruption, institutional set up, specialisation and *ad hoc* bodies, etc; III. International response to corruption: UN, OECD, Council of Europe and GRECO evaluations, etc; IV. The criminal law response to corruption, responsibility of legal entities, the notion of joint responsibility, influence peddling, etc, corruption in the private sector; laundering the products of corruption; V. police and judicial investigations in corruption cases (instruments and techniques, strategies for investigating fraud in public procurement, the particularities of investigations into corruption in town planning, laundering investigations and identification of assets that can be confiscated, a certain number of problems linked to money movements and the interpretation of banking documents, etc; VI. mechanisms for international judicial cooperation.

concerned, such as judges, prosecutors and members of the bar. However, as the current political situation means that the parliament is to be dissolved and elections advanced to April 2011, the government is not in a position to submit the law for parliamentary approval.

21. GRECO regrets that the draft legislation of May 2008 was not enacted before the last parliamentary elections and the change of government in 2009 and that the same will happen to the new proposals drawn up in 2010. GRECO strongly regrets the uncertainty as regards the content of the current draft legislation and its medium term future. GRECO strongly encourages Andorra to rapidly continue work on the draft legislation, which is of considerable importance for the country's system of justice, once the elections are over.
22. GRECO concludes that recommendation vi remains partly implemented.

Recommendation xii.

23. *GRECO recommended that i) steps be taken to clarify the rules on the transparency of administrative activities, particularly concerning access to public documents at both central and local levels, with responsibility for overseeing these rules being assigned to an appropriate authority, and ii) consideration be given to additional ways of improving communication with the public.*
24. GRECO notes that the compliance report considered this recommendation to be partly implemented, mainly because there had been no practical steps to implement the first part of the recommendation. The first part of the report referred to the difficulties of obtaining access to purely administrative information held by central and local authorities, and concerning the work of the judiciary. Consultations seemed to have been initiated on desirable improvements to access to public documents, but nothing tangible had yet emerged.
25. In connection with the first part of the recommendation, the Andorran authorities again state that the government consider that Article 42 of the Administrative Code adequately covers the recommendation. However, it has decided to resume discussions on a possible amendment to Article 42, to introduce more clarity and adapt it to Recommendation (2002)2 on access to official documents, adopted by the Council of Europe Committee of Ministers on 21 February 2002. The Andorran authorities said that they would keep GRECO informed of progress on the matter.
26. The authorities also report further steps to improve communication with the public, the second part of the recommendation. The government's communication department now automatically produces press releases on all the government's day-to-day activities, there is a press conference after each meeting of the council of ministers, particularly to reply to any questions put, and the press is invited in whenever an issue arises that is deemed to be important. The government portal (www.govern.ad) which provides information on the government's day-to-day activities has undergone some technical improvements and it is possible to follow progress on government members' official business as it occurs. Finally, the social networks *Facebook* and *Twitter* are used to provide members of the Andorran press with special access to information and documentation.
27. GRECO notes with satisfaction that efforts continue to make further improvements to communication with the public (the second part of the recommendation), but also notes that the situation regarding the first part of the recommendation has not evolved since the compliance

report. There has therefore been no progress concerning the regulations on access to documents held by central and local authorities.

28. GRECO concludes that recommendation xii remains partly implemented.

Recommendation xiii.

29. *GRECO recommended that the role of the court of auditors and the general inspection department in combating corruption be strengthened, in particular by i) inviting the court to check more frequently whether public accounts are being applied efficiently and in accordance with objectives; ii) authorising the court to recommend individual (disciplinary) and institutional measures to government; and iii) strengthening co-operation between the court and the department, particularly by making the results of the department's internal audits available on a regular basis.*
30. In the compliance report, GRECO noted that apart from the awareness-raising events that members of the Court of Auditors had attended after the evaluation visit, there had been no reported measures to achieve greater involvement of the Court and the general inspection department in anti-corruption efforts. Nevertheless, both appeared to have started to include objectives management and effectiveness monitoring in their working plans and methods. Turning to the second part of the recommendation, despite the broad wording of the legislation, the Court still lacked (or considered itself to lack) the power to recommend disciplinary measures. Discussions appeared to be under way on how to deal with this issue. Regarding the third part of the recommendation, GRECO noted that the general inspection department produced regular reports, which the Court's auditors had access to and used, in contrast to the situation at the time of the on-the-spot visit, when the Court had had no access to department information. The recommendation was therefore considered to have been partly implemented as GRECO expected additional efforts to be made in order to increase the involvement of the Court of Auditors and the general inspection department in the fight against corruption and to ensure the recommendation of individual (disciplinary) and institutional measures to government.
31. The Andorran authorities state that, with an aim to full implementation of this recommendation, meetings were organised in January and February 2011 between the anti-corruption unit (UPLC), the Court of Auditors and the general inspection department. Two aims were pursued. First, reinforcing cooperation between the general inspection department and the Court of Auditors, beyond current arrangements under which the results of the department's audits are made available to the Court of Auditors, to develop common audit standards and coordinated planning of their activities (which will most certainly require legislative amendments). The second aim was to associate the services responsible for procurement decisions with the Court of Auditors and the general inspection department. For the services concerned, this would result in a) improved budgetary planning (in order to remedy the most common irregularities that stem from changes and revisions in the price of public works or supply contracts which do not generate, in practice, a new public spending authorisation as required under article 31 of the public finance law, and b) the establishment of a system to ensure transparency, objectivity and uniformity of the criteria for allocating public contracts (notably, the systematic inclusion of terms and conditions in all invitations to tender). The conclusions of these meetings should be available in June 2011.
32. GRECO notes that new initiatives have been taken with a view to a closer association of general government supervision with anti-corruption efforts, in this case, in the framework of strengthened budgetary regulations and public tender procedures – the latter being a sector that is reputed to

be highly exposed to corruption and conflicts of interest in Andorra, as underlined in the evaluation report. GRECO hopes that these initiatives will also target the regulation of public tenders at local government level, a sector particularly exposed to risks. GRECO regrets that no draft legislation nor any initiative by the Court of Auditors itself to allow for it to recommend to government individual (disciplinary) and institutional measures as a result of its audits have been reported. GRECO is therefore not in a position to conclude that the recommendation has been fully implemented.

33. GRECO therefore concludes that recommendation xiii remains partly implemented

Recommendation xiv.

34. *GRECO recommended that immediate steps be taken: i) to approve ethical guidelines, in the form of a code of conduct, for the central and local public services as well as for specific bodies such as the police and customs; and ii) to provide suitable training on ethical issues.*
35. GRECO notes that in the compliance report it was stated that work had started on drawing up ethical principles, including a draft ethical code for central government authorities based on the model code of conduct for public officials appended to Recommendation (2000)10 of the Council of Europe Committee of Ministers. However, work had been suspended pending a general revision of the Civil Service Act, and there were currently no equivalent proposals for the staff of local authorities and departments. The question of training needed to be looked at anew once the various codes of ethics had been approved.
36. The Andorran authorities state that the country's council of ministers finally approved the code for all central government staff on 21 April 2010 and it was published in the official bulletin on 30 June 2010. It has been sent to all officials by email in order to draw it to their attention. A French translation has been submitted to GRECO. The authorities indicate that the text applies to all central government officials, without distinction (those under contract or temporary staff), including therefore special advisers. Members of government are still governed by the law of 15 December 2000 (which apparently contains no similar rules of conduct). The council of ministers approved a specific code for the special corps of customs officials on 7 July 2010. The one for the special corps of police is currently being drawn up. In August 2010, the anti-corruption unit (UPLC) sent a copy of the central government ethical code to the local municipalities and invited them to adopt a similar one applicable to each authority. To date, two of the seven municipalities have adopted regulations similar to the code referred to above.
37. Once all the codes have been approved, training sessions will be organised to increase awareness of them. However, as already noted in the compliance report, the question of ethics is also raised in the regular corruption awareness sessions that the central authorities organise for all officials. The Andorran authorities state, on the one hand, that anti-corruption training and awareness raising are now obligatory for all new central government public officials and, on the other, that the government has invited the various departments to ensure that training is provided on the code of conduct. For the moment, no information is available on the follow-up given to that invitation.
38. GRECO notes the progress made under this recommendation, in particular the introduction of the customs code and the one applicable to all central government officials (the provisions of which GRECO has been able to fully assess, noting that they provide for a system of sanctions in case of breaches, which is linked to the Civil Service Act). It encourages the country to finalise the

adoption of similar provisions for members of government, the police and the various local authorities and to organise equivalent training, in order to secure full compliance with the recommendation.

39. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xv.

40. *GRECO recommended that arrangements be made to protect public officials who report suspected corruption in good faith from possible reprisals.*

41. GRECO notes that in the compliance report this recommendation had been deemed non-implemented because of the lack of any concrete action.

42. The Andorran authorities state that this issue is still under consideration but that in the mean time a first step has been taken to facilitate such reporting following the establishment of the UPLC web site (www.uprevencio.ad), which includes a letter box to which anonymous reports can be sent. The aim of the web page is to present the anti-corruption unit to the public. It includes information on corruption, including the GRECO reports translated into Andorran. The police service is also currently setting up a new web site, including a letter box to which anonymous reports can be sent about any offence. Anonymous reporting has been introduced precisely with the attention of enabling the police to open inquiries that could lead to a criminal prosecution while avoiding the risk of the whistle-blower suffering possible reprisals.

43. GRECO notes the introduction of electronic letter boxes to which anonymous reports can be sent. However, it does not consider such measures to be a satisfactory alternative to those proposed in the recommendation⁵. In addition, the existence of a fully fledged system of protection for whistleblowers acts as a disincentive to corruption within institutions. It is therefore pleased to note that these issues are still under active consideration but overall there has still not been any significant progress on this recommendation.

44. GRECO concludes that recommendation xv has not been implemented.

Recommendation xvi.

45. *GRECO recommended that i) stricter regulations be introduced on conflicts of interest, incompatibilities and ancillary activities of public officials (civil servants, employees under contractual relationship or with special status, elected officials), ii) appropriate arrangements be made for overseeing the application of these regulations, and iii) rules be introduced on migration of officials to the private sector.*

46. GRECO notes that the compliance report referred to the lack of progress on or practical proposals for implementing this recommendation. In response to the views expressed about the difficulties of implementing the proposed measures in a country the size of Andorra, GRECO emphasised that the aim of the recommendation was not to establish absolute bans on conflicts of interest, ancillary activities and the migration of public officials to the private sector, but rather

⁵ GRECO considers that given the way the letter box is incorporated into the UPLC site, for example the absence of any additional information or explanation concerning its existence and use (there is almost no information at all on the site) it is simply a normal electronic address and offers nothing more than traditional letter post, which can also be anonymous.

to introduce arrangements that would limit certain abuses – some of which had been observed during the on-site visit - and make it harder to take advantage of them ("stricter regulations").

47. The Andorran authorities state that the matter is still under consideration and that, in the larger context of the extensive revision of the Civil Service Act that is under way, the subject of incompatibilities and migration to the private sector should result in broader regulation than at present. Revised draft legislation on the public service is now being prepared, involving negotiations bringing together public service unions, members of the government and representatives of parliament groups (meetings on 27 July and 26 October 2010). Conclusions had been reached at the beginning of the year and even though they are not yet public, it is possible to say that numerous potential conflicts of interest have been identified (notably as regards public officials with functions on boards of directors of private companies or holding mandates in associations or federations) which would indeed require legislative amendments. The question of establishing a mechanism to monitor application of the regulations had been discussed during the meeting on 26 October 2010. The calling of early elections in April 2011 will, however, delay this process.
48. GRECO notes the information supplied and welcomes the preparation of amendments to the public service legislation which go some way towards the implementation of this recommendation. The country's intentions and the content of draft legislative amendments remain to be examined in the light of the various points addressed in the recommendation. The same applies as regards interaction with the code of conduct referred to in paragraphs 35 *et seq* whose articles 10 to 12 establish basic provisions (formulated in general terms) on conflicts of interest, incompatibilities and public or political activities. Moreover, the code refers to the public service legislation for the sanctions to be applied in case of a breach of its provisions. There is some considerable degree of uncertainty as to future stages of this work, due to the holding of early elections.
49. GRECO concludes that recommendation xvi has been partly implemented.

Recommendation xvii.

50. *GRECO recommended that i) legal persons be made liable for corruption offences and thus liable to financial and other penalties and ii) the necessary steps be taken, in terms of training, familiarisation etc., to raise the awareness of the police and judiciary practitioners about the new legislation on the liability of legal persons.*
51. In the compliance report, GRECO noted, regarding the first part of the recommendation, that Andorra had introduced the principle of liability of legal persons for offences of corruption and trading in influence in October 2008 and that the fines and other penalties appeared to be adequate. However, it had not taken steps to familiarise the police and judicial officials with the new legislation (second part of the recommendation, which was therefore judged to be partly implemented).
52. The Andorran authorities state that on 5, 6 and 7 October 2010, in co-operation with the Spanish judicial training college, the UPLC and the Andorran judicial service commission ran a training seminar on this subject that was designed to familiarise the police and judicial officials with the new criminal provisions. The opportunity was also taken to consider corruption in more general terms. The seminar, which lasted 30 hours in total, was divided into six modules, one of which, lasting three hours, considered the criminal liability of legal persons, as well as other topics such

as corruption in the private sector, and the notions of joint-principals, trading in influence, prohibited negotiations involving public officials, misappropriation and laundering the proceeds of corruption. The 23 participants were principally members of courts (investigating judges, registrars of court criminal divisions), prosecutors and police officers from the criminal investigation departments.

53. GRECO notes the information concerning the seminar in October 2010, where the criminal liability of legal persons was discussed with those concerned by the recommendation. GRECO regrets that no more time or training modules have been devoted to this topic. It considers that overall, and bearing in mind the country's size, steps have been taken regarding all aspects of the recommendation, even though the Andorran authorities would be well advised to ensure that the criminal liability of legal persons is considered on a future occasion, so that various technical aspects can be dealt with in more detail.
54. GRECO concludes that, overall, recommendation xvii has been implemented satisfactorily.

III. CONCLUSION

55. In the light of the foregoing, GRECO concludes that recommendations iii and xvii have been implemented satisfactorily. Recommendations ii, vi, xii, xiii, xiv and xvi remain partly implemented. Recommendation xv has still not been implemented.
56. Following adoption of this addendum to the second round compliance report, GRECO concludes that of the 18 recommendations addressed to Andorra 11 have now been implemented or dealt with satisfactorily. Despite this generally satisfactory situation, GRECO regrets that none of the five key recommendations concerning anti-corruption measures in the public administration identified in the evaluation report have so far been fully implemented. In particular, these include the regulation of conflicts of interest and protection for whistleblowers, two crucial elements of any policy to prevent corruption, particularly in the context of Andorra. GRECO therefore strongly hopes that determined efforts will be made to bring the various current discussions and reviews to a successful conclusion so that additional measures can be taken in the near future.
57. The adoption of this addendum to the compliance report terminates the joint first and second round compliance procedure for Andorra. However, if they so wish the Andorran authorities can keep GRECO informed of any relevant developments concerning the implementation of recommendations ii, vi, xii, xiii, xiv, xv and xvi.
58. Finally, GRECO invites the Andorran authorities to authorise publication of this report as soon as possible, translate it into the national language and publish this translation.