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Second Evaluation Round

Compliance Report on Denmark

Adopted by GRECO
at its 32nd Plenary Meeting
(Strasbourg, 19-23 March 2007)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Denmark at its 22nd Plenary Meeting (18 March 2005). This report (Greco Eval II Rep (2004) 6E) was made public by GRECO, following authorisation by the authorities of Denmark, on 8 April 2005.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Denmark submitted their Situation Report (RS-report) on the measures taken to implement the recommendations on 2 October 2006.
3. At its 26th Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Norway and Spain to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Dag Nenningsland on behalf of Norway and Rafael Vaillo Ramos on behalf of Spain. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Denmark, to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its Evaluation Report addressed six recommendations to Denmark. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended to introduce clear rules/guidelines for situations where civil servants move to the private sector and to consider introducing guidelines with regard to sideline activities / outside employment, in order to avoid conflicts of interest.*
7. The authorities of Denmark reiterate that the flow of personnel between the public and private sector is considered not only normal, but also beneficial as it contributes to developing staff competencies and to improving efficiency in the workplace. That said, a number of measures are included in national legislation to provide for safeguards to avoid situations of conflicting interests. In this context, the Criminal Code and the Public Administration Act contain rules concerning confidentiality, which are also applicable after employment in the public sector. Furthermore, temporary disqualification provisions are also laid down in the Public Administration Act, e.g. situations in which the civil servant cannot participate in an administrative procedure for certain reasons (e.g. personal or economic interests at stake in the outcome of the particular case). Finally, the Civil Servants Act, as well as Circular 74 of 30 August 2005, include specific requirements concerning sideline activities in which a civil servant may engage to the extent that such activities are compatible with a conscientious performance of his/her public duties (e.g. obligation on senior officials who are appointed members of the board or directors of certain companies to inform their employer of potential conflicts of interest).
8. In addition, further provisions concerning the issue of moving from the public to the private sector are to be introduced in a Code of Conduct for civil servants, which is currently under preparation.
9. GRECO takes note of the information provided, including the adoption of Circular 74, which contains further specifications with respect to sideline activities. It encourages the Danish

authorities to actively pursue the finalisation of the Code of Conduct for civil servants, which is expected to further develop this area of interest.

10. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

11. *GRECO recommended to adopt the ethical guidelines (Code of Conduct) for public administration which are under preparation as soon as possible.*
12. The authorities of Denmark report that the drafting of the Code of Conduct for civil servants, which is being coordinated by the Ministry of Finance (the State Employer's Authority) in cooperation with other ministries, public employers' and public employees' organisations, is undergoing its final stages; its publication is foreseen by mid 2007.
13. Pending adoption of the Code of Conduct for civil servants, GRECO can only conclude that recommendation ii has not been implemented.

Recommendation iii.

14. *GRECO recommended to ensure that civil servants are aware of the possibility to report suspicions of corruption in public administration directly to the competent law enforcement authorities – i.e. even without previously informing their superior - and to ensure that civil servants who report such suspicions in good faith are adequately protected.*
15. The authorities of Denmark state that the draft Code of Conduct for civil servants refers to the obligation of civil servants to report suspicions of corruption in public administration to their management and to the possibility to report to the competent law enforcement authorities depending on the circumstances. As far as the protection of civil servants who make such reports is concerned, the authorities of Denmark stress once more that civil servants may not be subject to disciplinary or any other sanctions for having reported suspected acts of corruption in good faith.
16. GRECO notes that, in respect of the first part of the recommendation – i.e. to ensure that civil servants are made aware of the possibility they have to report any suspicion of corruption in public administration directly to the competent law enforcement authorities - the inclusion of this matter in the draft Code of Conduct for civil servants is a step in the right direction. However, pending adoption of this draft, GRECO cannot conclude that this part of the recommendation has been effectively implemented.
17. With regard to the second part of the recommendation - i.e. to ensure that civil servants who report suspicions of corruption in good faith ("whistleblowers") are adequately protected - GRECO notes that nothing new has been added to the information provided that "whistleblowers" cannot be subject to disciplinary or any other sanction, of which GRECO was already aware when adopting the Second Round Evaluation Report. GRECO would therefore have welcomed further clarifications concerning the mechanisms available to ensure that "whistleblowers" are adequately protected against any adverse consequence of their reports, as well as additional information on any new development that may have occurred in this area of concern since the adoption of the Second Evaluation Report. In the absence of more concrete information in this respect, GRECO can only conclude that this part of the recommendation has not been implemented.

18. On the basis of the above information, GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

19. *GRECO recommended to consider the possibility of establishing a register of convicted legal persons that would be used for the same (preventive) purposes as the register of convicted natural persons who have been disqualified by the court as managers or directors of legal persons.*
20. The authorities of Denmark report that the Central Criminal Register has confirmed that judgements against legal persons are recorded in the same manner as judgments on natural persons. In addition, records are kept by the Danish Commerce and Companies Agency concerning convicted persons who have been disqualified by the court as managers or directors. The founding of a company in contravention of a disqualification order is punishable under Section 131(1) of the Criminal Code. Furthermore, as case-law proves, if the disqualified management of a legal person continues its criminal activity under a different corporate name, it would be considered as recidivism, which entails an aggravation of the sanction imposed and this generally results in the dissolution of the convicted company through bankruptcy or liquidation procedures. In light of the above, the Danish authorities are of the opinion that the safeguard mechanisms against the potential use of legal persons in criminal activities provided by national legislation for legal persons have a similar deterrent effect as those established for natural persons.
21. GRECO takes note of the information provided and acknowledges the consideration given to the recommendation by the Danish authorities, which has led them to conclude that the existing mechanisms provided in national legislation to prevent the use of legal persons for shielding corrupt activity are sufficient and, for this reason, there appears to be no particular need at present to establish a special register of convicted legal persons.
22. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

23. *GRECO recommended to establish special training - and/or provide guidelines - for the tax authorities concerning the detection of corruption offences and their reporting to the competent law enforcement agencies.*
24. The authorities of Denmark state that the Tax Administration has paid due attention to this recommendation. In this connection, it has been decided that a special training course for tax officers in the Control and Anti-Fraud Units will be developed to supplement the ongoing training programme on the fight against economic and fiscal crime. It will consist of the following components:
- guidance to detect, handle and report instances of corruption, money laundering and financing of terrorism;
 - exchange of information and cooperation with the law enforcement authorities;
 - guidelines for companies to avoid situations that may involve corruption and to report suspicions of corruption to the competent authorities.

25. During the autumn of 2006, the Tax Administration discussed the concrete development of the above-mentioned training course in close coordination with the law enforcement authorities. It is expected that the first pilot course will take place in the second half of 2007.
26. GRECO takes note of the positive developments reported to provide training and guidance to the tax authorities concerning the detection and subsequent reporting of corruption offences. GRECO particularly welcomes the steps undertaken to coordinate the development of such training with law enforcement authorities. As regards the effective implementation of the recommended training sessions, the Danish authorities may wish to provide additional information to GRECO.
27. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

28. *GRECO recommended to consider introducing additional sanctions for legal persons.*
29. The authorities of Denmark state that the main sanction provided for legal persons is a fine. Confiscation is considered a “legal consequence” in Danish legislation; however, its deterrent effect in practice is said to be equivalent to that of a sanction. In addition, the commission of a criminal offence by a legal person would entail its exclusion from participating in public procurement procedures in accordance with EC Directive 2004/18/EC, as transposed in national legislation by Governmental Order of 1 January 2005. In this context, a system has also been set up to allow companies and contracting authorities to obtain an official certification from the Danish Commerce and Companies Agency containing all relevant information for procurement purposes, including past convictions for bribery offences.
30. GRECO recalls that, the Criminal Law Convention on Corruption (ETS No. 173) acknowledges the discretionary power of the Parties to create a system of offences and sanctions that is coherent with their existing national legal framework. In this connection, GRECO takes note of the different types of penalties listed, some of which were not reported at the time of the adoption of the Second Round Evaluation Report. GRECO takes the view that this system of sanctions/measures, if properly applied in practice, has the potential of addressing corruption in connection with legal persons in an appropriate manner.
31. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

III. CONCLUSIONS

32. **In view of the above, GRECO concludes that Denmark has implemented satisfactorily or dealt with in a satisfactory manner half of the recommendations contained in the Second Round Evaluation Report.** Recommendations iv, v and vi have been dealt with in a satisfactory manner. Recommendation i has been partly implemented and recommendations ii and iii have not been implemented.
33. GRECO invites the Head of the Danish delegation to submit additional information regarding the implementation of recommendations i, ii and iii by 30 September 2008.

34. Finally, GRECO invites the authorities of Denmark to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.