



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

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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Georgia

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at its 51st Plenary Meeting
(Strasbourg, 23-27 May 2011)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Georgia at its 31st Plenary Meeting (8 December 2006). This report (Greco Eval II Rep (2006) 2E) addressed 14 recommendations to Georgia and was made public on 15 January 2007.
2. Georgia submitted the Situation Report required under the GRECO compliance procedure on 1 July 2008. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Georgia at its 42nd Plenary Meeting (15 May 2009). This last report was made public on 27 May 2009. The Compliance Report (Greco RC-II (2008) 9E) concluded that recommendations i, ii, iii, v, vi, viii, xi and xiv had been implemented satisfactorily. Recommendations iv, vii, ix, x, xii and xiii had been partly implemented. GRECO requested additional information on their implementation. This information was provided on 30 November 2010.
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 iv, vii, ix, x, xii and xiii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation iv.

4. *GRECO recommended to (i) develop and implement a common methodology and standards for carrying out audits in respect of the public sector, bearing in mind the particularities of its various components; (ii) strengthen the auditing of local authorities, and (iii) ensure effective auditing of state enterprises.*
5. GRECO recalls that the development of a common methodology and standards for carrying out audits in respect of the public sector had been reported as being under preparation, following the entry into force of the new law on the Chamber of Control in January 2009. Furthermore, as regards the second and third part of the recommendation, this new law would also empower the Chamber to carry out financial and performance audits of local authorities and state enterprises (enterprises in which the state had a controlling share of more than 50%). GRECO concluded that these were steps in the right direction, but as the authorities had not reported on the implementation in practice of these instruments, it could only conclude that the recommendation had been partly implemented.
6. The authorities of Georgia now report, as regards the first part of the recommendation, that the Chamber of Control is currently in the process of the implementation of its Strategic Development Plan, which envisages the development of a modern audit methodology. As regards financial audits, a Financial Audit Manual has been developed by the Chamber of Control, in co-operation with the Swedish National Audit Office, in line with International Standards of Supreme Audit Institutions (ISSAI). In order to implement a modern audit methodology, the Chamber of Control has carried out pilot audits of the state budget (in co-operation with the Latvian State Audit Office), which will result in an audit opinion and report at the end of May 2011. To foster the implementation of the new financial audit methodology, it is planned that training will be conducted in the summer of 2011. As regards performance audits, a Performance Audit Manual is being developed in co-operation with the Swedish National Audit Office and German Technical

Co-operation (GIZ), on the basis of pilot performance audits, and the Chamber of Control will start carrying out performance audits as of January 2012.

7. In addition, a new Law on State Internal Audit and Inspection was adopted in March 2010, containing rules on state internal audits, audit methodology and standards. The law provides that internal audit units are to be established in ministries and legal persons of public law financed by the state budget. Co-ordination of the work of these internal audit units is carried out by the Internal Audit Council, which will develop guidelines and a manual for internal audits and assess the compliance of the internal audit units with them (and the law).
8. As regards the second part of the recommendation, the Georgian authorities report that the new Law on the Chamber of Control, which entered into force in January 2009, authorised the Chamber of Control to carry out audits of local authorities. After the creation of the Local Self-governing Entities' Audit Department, financial and compliance audits have been conducted of seven municipalities, comprising 157,3 million GEL in public funds. .
9. Regarding the third part of the recommendation, the authorities of Georgia report that since the entry into force of the new Law on the Chamber of Control, 33 public enterprises have been audited by the Chamber of Control, representing jointly more than 500 million GEL.
10. GRECO takes note of the information provided. It welcomes the adoption of the law on State Internal Audit and Inspection, the audits of local authorities and state enterprises that have been carried out by the Chamber of Control and appreciates, in particular, that the Chamber of Control is developing an audit methodology which not only focuses on financial audits but also includes performance audits. GRECO understands that the implementation of a common audit methodology is a lengthy process. Nevertheless, as both the Law on State Internal Audit and Inspection and the methodology prepared by the Chamber of Control have not been fully implemented yet, GRECO can only conclude that – despite the considerable progress made – the recommendation has not yet been fully addressed.
11. GRECO concludes that recommendation iv remains partly implemented.

Recommendation vii.

12. *GRECO recommended to assess the implementation in practice of the provisions of the General Administrative Code on access to information to ensure that the public's right to access information is not unduly limited, and to provide training to those public servants designated to respond to requests for information.*
13. GRECO recalls that it had taken note of the reported regular assessments of the provisions of the Freedom of Information Act, as incorporated in the General Administrative Code, indicating that a high proportion of requests were granted. In addition, it had noted that, although several training activities had been reported, only a limited number of state and local authorities were involved and no conclusive information had been provided concerning concrete training activities for all the specially designated officials entrusted with responding to information requests.
14. The authorities of Georgia now indicate that information concerning the government's activities is regularly published on the relevant websites and that the new Action Plan for the implementation of the Anti-Corruption Strategy envisages that the Civil Service Bureau together with relevant institutions will compile a list of information which must be published on the websites of public

entities. Moreover, international experts of a big internet technology company and a consultancy firm have assessed the Georgian legislation on access to information (and the application thereof). A special working group has been created to assess the need to introduce amendments to the legislation and by-laws.

15. More importantly, training on the General Administrative Code, focusing on access to information, was provided to representatives of the Ministry of Justice, National Enforcement Bureau, Public Registry Agency, Civil Registry Agency and National Archive of Georgia in November 2009. Furthermore, specific training on the legal provisions on access to public information was provided to 25 to 30 representatives of local authorities in December 2009 under the auspices of the Council of Europe. The training aimed to solve the day-to-day challenges connected with providing public information to citizens. Finally, in May of this year, special training was provided to officials of ministries who have been designated to respond to requests for information. The training focused on the legal provisions regulating access to information, the procedures for responding to requests for information and the development of a common practice for doing so. In addition, this training addressed the pro-active publication of certain information and the establishment of a register of public information.
16. GRECO takes note of the information provided, from which it appears that training has been provided to address the objective of this recommendation. Given the importance of this issue, as underlined in the Evaluation Report, GRECO is hopeful that this training will contribute to the full application in practice of the provisions of the Freedom of Information Act (as incorporated in the General Administrative Code).
17. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation ix.

18. *GRECO recommended to take measures to have code(s) of conduct adopted for all employees in the public sector, both at local and state level, in order to clarify and complement the rules on inter alia conflicts of interests, gifts and reporting of corruption.*
19. GRECO recalls that it had taken note of the draft amendments to the Public Service Law, which would foresee the introduction of a new chapter constituting a code of conduct (containing provisions on conflicts of interest, gifts and the reporting of corruption), and the adoption of specific codes of conduct for certain categories of public agencies or public officials.
20. The authorities of Georgia now report that the amendments to the Public Service Law entered into force on 12 June 2009. The new chapter VI.1 introduces a section called “a general code of conduct for public servants”, which contains provisions on conflicts of interest, gifts and reporting of corruption (based on the Model Code of Conduct for Public Officials of the Council of Europe) and is applicable to all public employees, both at state and local level. It is *inter alia* stipulated that a public servant is to take all necessary measures to prevent a conflict of interests and make a declaration of a (potential) conflict of interests as soon as s/he become aware of it, to refuse any gifts that can influence the performance of his/her official duties and report such situations to their superior, as well as report to their superior evidence or grounded suspicions of illegal activities of another public servant.
21. GRECO takes note of the adoption of the amendments to the Public Service Law, which are intended to serve as a code of conduct. As indicated in the Evaluation Report, GRECO

considered that a code of conduct would be useful in the Georgian context as “it would explain in simple terms what the rights and obligations of employees in the public sector (...) are and what sort of conduct is expected of them. It would thus complement existing legislation (...) and would further raise awareness among employees in the public sector.” It can be questioned whether by adding another layer of legislative provisions, as has been done by introducing a chapter on a code of conduct into the Public Service Law (which overlaps with the provisions of the Law on Conflicts of Interest), this purpose would be served. Nevertheless, GRECO accepts that a code of conduct for all employees in the public sector, both at state and local level, has now been adopted, as was required by the recommendation.

22. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

Recommendation x.

23. *GRECO recommended to introduce clear rules requiring all employees in the public sector to report suspicions of corruption in public administration and to ensure that those who report such suspicions in good faith are adequately protected from adverse consequences.*
24. GRECO recalls that it had acknowledged the draft amendments to the Public Service Law, which would introduce a reporting obligation for public servants, and the draft amendments to the Law on Conflicts of Interest providing for measures to be introduced to protect whistleblowers. As the amendments to either law had not yet entered into force, GRECO concluded that the recommendation had been partly implemented.
25. The authorities of Georgia now stress that the amendments to the Public Service Law, obliging all public servants to report to their superior evidence or grounded suspicions of illegal activities of another public servant (or to a law enforcement authority, in case there is no superior), entered into force on 12 June 2009. These amendments also provide that the superior in question will not reveal the identity of the whistleblower, will not damage his/her reputation and will protect him/her. In addition, amendments to the Law on Conflicts of Interest entered into force on 1 June 2009, which stipulate that whistleblowers reporting illegal activities (or conduct contrary to that which is required of public employees) in good faith are not to be discriminated against, intimidated, threatened and may not be dismissed or temporarily discharged of their duties for the duration of the investigation. Furthermore, no disciplinary, civil, administrative or criminal proceedings may be instigated against whistleblowers (unless the public institution can prove that there is no relation to the act of whistle blowing).
26. GRECO welcomes the entry into force of the amendments to the Public Service Law and Law on Conflicts of Interest, requiring public servants to report suspicions of corruption and setting out various measures to protect them from adverse consequences.
27. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xii.

28. *GRECO recommended (i) to amend the provisions on corporate liability in the Criminal Code to ensure that legal persons can be held liable in cases where lack of supervision or control by a natural person has made possible the commission of active bribery, money laundering or trading in influence and (ii) to provide appropriate training on criminal liability of legal persons to all*

officials concerned with a view to ensuring that full use of these provisions is made in cases of active bribery, trading in influence and money laundering.

29. GRECO recalls that, as regards the first part of the recommendation, it had welcomed the amendments made to the Criminal Code in October 2008, according to which legal persons were to be held liable in cases where lack of supervision or control by a natural person made the commission of a crime for the benefit of the legal person possible. As regards the second part of the recommendation, it had noted that a training seminar on liability of legal persons had been organised for prosecutors and investigators in July 2008, in the framework of the project “Support to the National Anti-Corruption Strategy of Georgia” and this topic had been included in three training seminars for judges on the amendments of the Criminal Code and Criminal Procedure Code in October to December 2007. However, as the criminal liability of legal persons constituted a new concept in Georgian law, it was of the opinion that more substantial training of all officials concerned would be necessary.
30. The authorities of Georgia now stress that the topic of liability of legal persons has been included in the curriculum for the annual training of prosecutors, as provided by the Training Centre of the Ministry of Justice. In addition, in October 2009 two two-day training seminars on the development of uniform judicial practice in criminal cases were provided to judges and prosecutors, which *inter alia* focused on the newly enacted legislation on liability of legal persons. A total of 400 prosecutors and 64 judges have benefited from the training.
31. GRECO welcomes the inclusion of liability of legal persons in the training curriculum for prosecutors and the training provided on this issue since the adoption of the Second Round Compliance Report. Although it is not entirely clear whether sufficient attention is paid to liability of legal persons in the regular training curriculum of judges, GRECO accepts that training has been provided, as is required by the second part of the recommendation.
32. GRECO concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiii.

33. *GRECO recommended to develop guidelines and effective training to improve the ability of tax inspectors to detect corruption offences, in particular as regards bribes concealed as legitimate expenses.*
34. GRECO recalls that guidelines for tax inspectors on detection of corruption offences had been adopted by the Revenue Service. It found, however, that only a limited number of tax inspectors specialised in investigating tax matters had benefited from the training.
35. The authorities of Georgia now stress that further training on enhancing the ability of officials of the revenue service to detect corruption offences was provided to 22 tax officials in November 2010, in co-operation with the Council of Europe. The training aimed to make tax inspectors familiar with various bribery techniques and to provide them with the tools to detect and identify bribes. The seminar followed a “train-the-trainers” format, providing training to specially selected officials in a position to continue to train other officials, thereby ensuring that the necessary knowledge and skills would be passed on.
36. GRECO welcomes the training provided and trusts that the “train-the-trainers” format will continue to contribute to the ability of tax inspectors to detect corruption offences.

37. GRECO concludes that recommendation xiii has been implemented satisfactorily.

III. CONCLUSION

38. In addition to the conclusions contained in the Second Round Compliance Report on Georgia and in view of the above, GRECO concludes that recommendations vii, ix, x, xii and xiii have now been satisfactorily implemented or dealt with in a satisfactory manner. Recommendation iv remains partly implemented.

39. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 14 recommendations issued to Georgia, in total 13 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner. With the entry into force of the Public Service Law and Law on Conflicts of Interest, employees in the public sector are now required to report suspicions of corruption, provisions requiring the protection of those who report such suspicions in good faith from adverse consequences are in place and a code of conduct has been adopted (even though some criticism can be expressed on the format of this code of conduct). An assessment of the provisions of the Freedom of Information Act (as incorporated in the General Administrative Code) had been reported on at the time of the adoption of the Compliance Report. Similarly, criminal liability of corporations had already been introduced at that time, and guidelines for tax inspectors to detect corruption offences had been developed. These measures have now been complemented by further training on access to information for officials designated to respond to requests for information, on corporate criminal liability for prosecutors and judges, and on the detection of corruption offences for tax inspectors, which should contribute to the effective implementation of these measures in practice. Finally, positive developments have also been reported as regards audits in respect of the public sector: the Chamber of Control is in the process of implementing a methodology for carrying out audits in respect of the public sector and has carried out audits of local authorities and state enterprises and it is therefore expected that recommendation iv will be fully implemented in the future.

40. To conclude, GRECO considers that commendable progress has been achieved towards implementing the recommendations of the Second Round Evaluation Report. GRECO welcomes this outcome and encourages Georgia to fully implement the remaining (partially implemented) recommendation. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Georgia. The authorities of Georgia may, however, wish to inform GRECO of further developments with regard to the implementation of recommendation iv.

41. Finally, GRECO invites the authorities of Georgia to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.