



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

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



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Addendum II

Second Evaluation Round

Second Addendum to the Compliance Report on Greece

Adopted by GRECO
at its 49th Plenary Meeting
(Strasbourg, 29 November – 3 December 2010)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Greece at its 26th Plenary Meeting (9 December 2005). This report (Greco Eval II Rep (2005) 6E) addressed 10 recommendations to Greece and was made public on 13 December 2005.
2. Greece submitted the Situation Report required under the GRECO compliance procedure on 5 November 2007. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Greece at its 36th Plenary Meeting (15 February 2008). This last report was made public on 5 March 2008. The Compliance Report (Greco RC-II (2007) 14E) concluded that recommendations iv, ix and x had been implemented satisfactorily, and recommendations iii and vii had been dealt with in a satisfactory manner. Recommendations i, ii and v had been partly implemented, and recommendations vi and viii had not been implemented; GRECO requested for the 31 August 2009, additional information on their implementation. This information was eventually provided on 22 December 2009, after several reminders.
3. The Addendum to the Second Round Compliance Report (Greco RC-II (2007) 14E Addendum), drawn up on the basis of the above-mentioned information, concluded that, of the five remaining recommendations, recommendations i, ii and v remained partly implemented while recommendations vi and viii remained not implemented. GRECO again requested additional information on the implementation of recommendations i, ii, v, vi and viii by 30 September 2010. Greece submitted this information on 6 September 2010.
4. The purpose of this Second Addendum to the Second Round Compliance Report is to appraise the implementation of recommendations i, ii, v, vi and viii in the light of the additional information referred to in paragraph 3 above (pursuant to Rule 31, paragraph 9.1 of GRECO's Rules of Procedure).

II. ANALYSIS

5. The authorities of Greece report that on 26 May 2010, Parliament adopted Law No. 3849/2010 on the "amendment to Law No. 3213/2003,¹ provisions of the Criminal Code concerning Service-Related Offences and other provisions"² with a view to, *inter alia*, implementing outstanding recommendations addressed to Greece in GRECO's Second Round Evaluation Report. Law No. 3213/2003, as amended by the aforementioned Law of 26 May 2010 – which entered into force on the same day, regulates the "Disclosure and asset audit of parliamentary members, public officials and employees, media owners and other categories of persons". The authorities furthermore report that within the Ministry of Justice a legislative drafting committee has been set up to prepare further possible legal amendments in order to comply with recommendations addressed to Greece both in the Second and the Third Evaluation Rounds.

Recommendations i and ii.

6. *GRECO recommended to review the application of the existing provisions on tracing, seizure and confiscation of corruption proceeds and, where appropriate, to provide adequate training, as well as to increase the resources available with a view to strengthening the efficiency of financial investigations.*

¹ Gov. Gazette A 309/31.12.2003.

² Gov. Gazette A 80/26-5-2010.

7. *GRECO recommended that the Greek authorities strengthen their anti-money laundering regime with a view to increasing its efficiency and contribution to the fight against corruption, and draw-up guidelines and provide training on the detection of corruption.*
8. GRECO recalls that in the Compliance Report and its Addendum, recommendations i and ii were considered partly implemented. GRECO acknowledged the steps undertaken by the authorities to meet recommendation i, but it noted that no further developments had occurred with regard to the announced review of legal provisions on confiscation and temporary measures (in the context of the drafting of a new Criminal Code and Criminal Procedure Code) – including a review also of the application in practice of these measures, which was the objective of recommendation i – nor with regard to additional resources and training on financial investigations for State authorities responsible for the investigation of corruption and the early initiation of seizure and confiscation measures. Turning to recommendation ii, GRECO welcomed improvements in the anti-money laundering system, including legal amendments as well as arrangements made to support awareness-raising/guidance/training initiatives, but no concrete steps seemed to have been taken to increase the FIU's staff (especially analysts), to improve the detection of corruption-related money laundering and the functioning of the anti-money laundering mechanism (especially when it comes to the detection of proceeds of corruption) and to address the issue of under-reporting entities.
9. The authorities now report, with regard to recommendation i, that the above-mentioned Law No. 3849/2010 of 26 May 2010 amended the Criminal Code provisions on confiscation of corruption proceeds making confiscation compulsory for corruption-related crimes. All types of assets acquired directly or indirectly by the perpetrator may now be confiscated and the content of the eventual (or additional) penalty must now be specified when the proceeds to be confiscated no longer form part of the perpetrator's assets, at the time of the conviction. However, these amendments only concern certain corruption offences specified in sections 4 and 5 of Law No. 3213/2003, i.e. the offences of illicit enrichment by persons required to disclose their assets as listed in section 1, paragraph 1 of the law³ and of trading in influence involving such persons.
10. Concerning recommendation ii, the authorities indicate that by virtue of section 3 of Law No. 3849/2010 the offence of trading in influence – involving persons required to disclose their assets – became a predicate offence in relation to money laundering, as the minimum penalty provided for this offence had been raised to two years' imprisonment.
11. Finally, the authorities mention the organisation by the Academy of European Law (ERA) of a seminar on the topic "EU Member States' Investigative Techniques in Fraud and Corruption Cases" (Athens, 6-7 May 2010), which focused on OLAF's cooperation with the Greek financial and administrative authorities and was attended by a number of judges and prosecutors.
12. GRECO welcomes the reported legislative measures concerning confiscation of corruption proceeds and trading in influence as a predicate offence in relation to money laundering as well as the organisation of a seminar on investigative techniques in fraud and corruption cases. However, GRECO regrets that these amendments are limited to the offences of illicit enrichment by persons required to disclose their assets and of trading in influence involving such persons. Moreover, it wishes to recall, once again, that recommendations i and ii were meant to address a variety of issues including the need to review the application in practice of existing provisions on

³ E.g. the Prime Minister, Ministers, parliamentary members, chairmen of political parties represented in Parliament, mayors, media owners etc.

tracing, seizure and confiscation of corruption proceeds, in view of a possible harmonisation of the different provisions applicable (Criminal Code, Criminal Procedure Code, AML Law and legislation aimed at the ratification of international conventions on corruption); the lack of resources, staffing and training in this area; the need to increase the FIU's staff, to improve the detection of corruption-related money laundering and to address the issue of under-reporting entities. The reported measures are clearly insufficient to meet these requirements.

13. GRECO concludes that recommendations i and ii remain partly implemented.

Recommendation v.

14. *GRECO recommended to regulate more strictly conflicts of interest (including the improper migration to the private sector), incompatibilities and accessory activities in respect of all public officials and to establish proper monitoring of the application of the rules in this area.*
15. GRECO recalls that in the Compliance Report and its Addendum, it had welcomed the adoption of the new Civil Service Code which, reportedly, contained a number of new provisions that covered more strictly incompatibilities and accessory activities of civil servants, as well as the introduction of rules according to which members of the judicial bodies and financial intelligence unit were required to refrain from dealing with a case or procedure in circumstances where a conflict of interests might arise. However, as there was no evidence that similar rules also applied to the civil service and public officials as a whole and as several questions remained as regards the existence of adequate rules on improper migration to the private sector, incompatibilities and accessory activities in respect of all public officials, as well as mechanisms to ensure the enforcement of these rules, GRECO concluded that recommendation v had only been partly implemented.
16. The authorities now merely report that according to section 7, paragraph 3 of Law No. 3849/2010, in convictions for certain offences involving persons required to disclose their assets – namely illicit enrichment, trading in influence, non-submission or submission of a false asset declaration, participation in off-shore companies – the perpetrator is deprived of his/her political rights for one to five years in the case of imprisonment and for two to ten years in the case of incarceration, leading also to forfeiture of any public office.
17. GRECO notes that compulsory deprivation of political rights and of the holding of public offices now applies to perpetrators of certain criminal offences. However, GRECO regrets that the relevant legal amendments are limited to offences involving persons required to disclose their assets and that nothing has been achieved in respect of the remaining questions raised – in particular, the need for adequate rules on improper migration to the private sector, incompatibilities and accessory activities in respect of all public officials, as well as mechanisms to ensure the enforcement of these rules.

18. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

19. *GRECO recommended to establish appropriate protection for whistleblowers and to take all other measures deemed necessary to facilitate the reporting of corruption.*

20. GRECO recalls that in the Compliance Report and its Addendum, recommendation vi was considered not implemented, because the reported measures – including witness protection measures, participation of trade unions in all major career-related decisions and protection mechanisms applicable to entities required to report suspicions of money laundering to the FIU – could not be seen as a satisfactory alternative to the absence of protection for those who report corruption-related acts in both the private and the public sector and no initiative had been taken to facilitate the reporting of corruption.
21. The authorities now report that section 15 of Law No. 3849/2010 introduced a provision on “protection measures and clemency for those who contribute to the disclosure of corruption acts” in the Criminal Code. According to the new section 263B, a person who contributes elements concerning the involvement of a public official in an act of corruption is not sanctioned for having participated in the act. This rule also applies if the complainant is a public official, on the condition that his/her remorse helps to disclose a “circuit of corruption” – i.e. involving other public officials – or corruption acts of his/her superiors; otherwise a reduced penalty is imposed on the public official.
22. GRECO notes the introduction of a provision in the Criminal Code according to which persons who report corruption acts in which they participated may avoid sanction but it wishes to recall, once again, that the considerations underlying recommendation vi (as explained in the Evaluation Report) were clearly related to the protection of employees and their career (against possible retaliation from an employer, supervisor, colleague etc.). GRECO regrets that since the adoption of the Addendum to the Compliance Report, no new initiatives have been taken in this respect, nor in respect of the second part of the recommendation, aimed at other measures to facilitate the reporting of corruption (such as awareness-raising, encouragement and internal policy).
23. GRECO concludes that recommendation vi remains not implemented.

Recommendation viii.

24. *GRECO recommended to establish an appropriate system of professional limitations for persons found guilty of criminal offences.*
25. In the Compliance Report and its Addendum, recommendation viii was considered not implemented, because no specific measures to address the matter of professional limitations had been reported, with the exception of the introduction of measures to exclude from public tenders persons found guilty of having committed certain serious offences, including bribery.
26. The authorities now indicate that section 67, paragraph 1 of the Criminal Code contains a general provision on professional disqualification, according to which “if the perpetrator committed felony or misdemeanour with heavy violation of the duties of his/her profession, for the pursuance of which a special authorisation is required, and if upon him/her a custodial sentence of at least three months is imposed, the Court may impose also incompetence for the exercise of this profession for a period of one to five years. Such incapacity implies a permanent withdrawal of any authorisation granted to the defendant.”
27. GRECO takes note of the information provided with regard to the general provision of the Criminal Code on professional disqualification. It would appear, however, that this provision only applies under particular circumstances – namely with regard to professions requiring a special

authorisation – and that it does not allow to disqualify those found guilty of economic and financial crimes from holding positions in legal persons, as was aimed at by the recommendation.

28. GRECO concludes that recommendation viii remains not implemented.

IV. CONCLUSION

29. In addition to the conclusions contained in the Second Round Compliance Report and the Addendum to the Second Round Compliance Report on Greece, and in view of the above, GRECO concludes that there have been no further decisive changes to the situation since the adoption of the Addendum. Therefore, recommendations i, ii and v remain partly implemented and recommendations vi and viii remain not implemented.
30. With the adoption of this Second Addendum to the Second Round Compliance Report, GRECO concludes that out of the 10 recommendations issued to Greece, in total 5 recommendations have been implemented satisfactorily or dealt with in a satisfactory manner. GRECO acknowledges that Law No. 3849/2010 of 26 May 2010 introduces legal amendments to provisions of the Criminal Code and of some other laws, which could potentially contribute to fighting corruption more effectively. It also notes that further possible legal amendments are under preparation. That said, GRECO very much regrets that no significant progress has been achieved by the Greek authorities in implementing GRECO's recommendations (since the adoption of the Addendum to the Compliance Report) and that five years after the adoption of the Evaluation Report, half of the recommendations remain not or partly implemented. Such important matters as reviewing the application of the existing provisions on tracing, seizure and confiscation of corruption proceeds, measures aimed at increasing the efficiency and contribution of the anti-money laundering regime to the fight against corruption, arrangements concerning conflicts of interest and incompatibilities, whistleblower protection and professional disqualifications for persons found guilty of criminal offences have still not been addressed in a comprehensive manner. GRECO urges the Greek authorities to take meaningful action with a view to fulfilling the outstanding recommendations.
31. The adoption of the present Second Addendum to the Compliance Report concludes the Second Evaluation Round compliance procedure concerning Greece. The authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations i, ii, v, vi and viii.
32. Finally, GRECO invites the Greek authorities to authorise, as soon as possible, the publication of the Second Addendum, to translate it into the national language and to make the translation public.