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Addendum

Joint First and Second Evaluation Round

Addendum to the Compliance Report on Azerbaijan

Adopted by GRECO
at its 48th Plenary Meeting
(Strasbourg, 27 September – 1 October 2010)

I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Azerbaijan at its 29th Plenary Meeting (23 June 2006). This report (Greco Eval I/II Rep (2005) 5E) addressed 27 recommendations to Azerbaijan and was made public on 20 September 2006.
2. Azerbaijan submitted the Situation Report required under the GRECO compliance procedure on 9 February 2008. On the basis of this report, and after a plenary debate, GRECO adopted the Joint First and Second Round Compliance Report (RC Report) on Azerbaijan at its 39th Plenary Meeting (10 October 2008). This last report was made public on 4 February 2009. The Compliance Report (Greco RC-I/II (2008) 4E) concluded that recommendations ii, v, vi, ix and xxi have been implemented satisfactorily and recommendations iv, x, xv, xvii and xxiii have been dealt with in a satisfactory manner. Recommendations i, iii, vii, viii, xi, xii, xiii, xvi, xviii, xx, xxii, xxiv, xxvi and xxvii remain partly implemented and recommendations xiv, xix and xxv have not been implemented; GRECO requested additional information on their implementation. This information was provided on 12 May 2010.
3. The purpose of this Addendum to the Joint First and 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 i, iii, vii, viii, xi, xii, xiii, xiv, xvi, xviii, xix, xx, xxii, xxiv, xxv, xxvi and xxvii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation i.

4. *GRECO recommended to carry out a comprehensive study, in order to gain a clearer insight into the extent of corruption in Azerbaijan, its causes, its features and the sectors most affected by it.*
5. GRECO recalls the survey that was carried out by a network of NGOs in 2007, on behalf of the Commission on Combating Corruption and the reported use of the results of this survey – which came out in 2008 – by the authorities. However, in the absence of further information on the content and results of this survey, it found it difficult to conclude that the survey constituted a satisfactory alternative to a comprehensive study of the type prescribed and therefore concluded that the recommendation had been partly implemented.
6. The authorities of Azerbaijan now report that a new study was launched in November 2009 by the Network of Anti-Corruption NGOs¹, on the recommendation and with the support of the Commission on Combating Corruption. The 182-page study comprises the results of a countrywide survey (among 1200 respondents of 18 years old and over from all regions of Azerbaijan) and an analytical part covering prevention and prosecution of corruption as well as transparency, accountability and good governance in the activities of state bodies. Various problems were identified in different sectors of society as causing or contributing to corruption - such as poor governance, insufficient resources or salaries, lack of transparency, inadequate control mechanisms, loopholes in legislation (etc.) - and in the analytical part of the study various recommendations were formulated to address these problems. The study has been sent to the Commission on Combating Corruption and was made public by the Network of Anti-Corruption NGOs in September 2010. In the context of the reform of the Penal Code, the reform of the

¹ The Network comprises 20 NGOs specialised in combating corruption, including the Azerbaijani chapter of Transparency International, the Fund for Struggle against Corruption and the Young Lawyers Association of Azerbaijan.

system for the funding of political parties and the elaboration of the annual report on the implementation of the National Strategy on Increasing Transparency and Combating Corruption, the aforementioned recommendations will be further discussed. In addition, the authorities of Azerbaijan point to a survey carried out in 2009-2010 by the Ministry of Education to determine causes and levels of corruption in higher education, as well as opinion polls carried out by NGOs and the Commission on Combating Corruption on specific topics relating to corruption on an *ad-hoc* basis.

7. GRECO notes with interest the new study, which appears to be more comprehensive in nature than the survey mentioned in the Compliance Report. GRECO welcomes the follow-up given to this study and very much hopes that its results (and those of the previous survey) are indeed used as was intended by the recommendation: to create a better understanding of the problem of corruption in Azerbaijan and the measures required to fight it and, consequently, to increase the effectiveness of anti-corruption policies in Azerbaijan.
8. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation iii.

9. *GRECO recommended to take the necessary measures to improve communication, feedback and co-operation in practice of all agencies involved in the detection, investigation and prosecution of corruption (i.e. police, prosecution and tax authorities).*
10. In the RC-Report, GRECO welcomed various measures being taken, such as centralisation of information on preliminary investigations into corruption offences with the setting up of the Integrated Database of Corruption Offences in September 2008, the provision of feed-back on relevant court decisions to various law enforcement bodies and prosecutorial services and the establishment of bi-annual co-ordination meetings.² GRECO nevertheless concluded that the reported measures were still at an early stage and probably insufficient given the extent of the underlying problem, and thus concluded that the recommendation had been partly implemented.
11. The authorities of Azerbaijan enumerate a number of further steps taken to implement this recommendation: memoranda of co-operation were signed by the Office of the Prosecutor General with the audit Chamber in December 2008, with the Ministry of Internal Affairs and with the Ministry of Taxes in April 2009, with the State Customs Committee and the Financial Monitoring Service in February 2010. The reported purpose of these different memoranda is to facilitate the exchange of information between the Office of the Prosecutor General and these bodies (including on the proper use of special investigative techniques).³ Furthermore, in accordance with the National Strategy for Increasing Transparency and Combating Corruption (2007-2011), the Integrated Database of Corruption Offences (as mentioned in paragraph 10 above), in which information on the detection, investigation, prosecution and adjudication of corruption offences is collected, became operational in the beginning of 2009. This Database includes information on all corruption cases investigated in Azerbaijan and all investigative bodies may have access via the Department of Combating Corruption within the Prosecutor General's Office (ACD).

² As well as the possibilities for using joint investigation teams - which however appeared to have been already in place at the time of the on-site visit - which had been reportedly used twice: once in 2006 and once in 2007.

³ Since March 2009 the Department for Combating Corruption within the Prosecutor General's Office (ACD) has been designated to review the legality of the use of special investigative techniques by the different investigative bodies.

12. Furthermore, the authorities report that these measures have resulted in a steady increase in co-operation between investigative bodies involved in the detection, investigation and prosecution of corruption offences: between 2005 and the first four months of 2010 the Department for Combating Corruption within the Prosecutor General's Office (ACD) referred 60 corruption cases to the court in co-operation with the Ministry of Justice (one of which was investigated by a joint investigation team), 24 cases in co-operation with the Ministry of National Security (of which six were investigated by a joint investigation teams), 21 cases with the Ministry of Internal Affairs (of which six were investigated by joint investigation teams), 16 cases with the Ministry of Taxes (of which five were investigated by joint investigation teams), five cases with the Ministry of Emergency Situations, four cases with the State Customs Committee and one with the State Border Service.
13. GRECO takes note of the information provided. It welcomes the establishment of memoranda of cooperation between the various investigative bodies and that the Integrated Database of Corruption Offences has become operational. Given the extent of the problem outlined in the Evaluation Report, GRECO had hoped that further measures including those suggested in the Compliance Report would have been taken (such as the appointment of liaison officers, internal circulars on the topic of inter-agency co-operation and review of criminal procedure rules, where necessary). Nevertheless, GRECO accepts that the measures taken so far appear to have improved co-operation between the ACD and the other investigative bodies with a mandate to investigate corruption offences (as shown by the statistics provided) and trusts that communication, feedback and co-operation in practice between all agencies involved in the detection, investigation and prosecution of corruption will remain a matter attended to by the authorities.
14. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation vii.

15. *GRECO recommended (i) to set up a working group of representatives from the various training centres to share best practices and to design a plan for joint training of police, prosecution and tax authorities on investigations into complicated economic crimes, including corruption, and (ii) to establish a comprehensive specialised training programme for the agencies concerned to increase their expertise on how to carry out financial investigations (both of financial crimes and of the possible proceeds of crime), in particular as regards corruption.*
16. GRECO recalls that it took note of the creation of a working group in November 2007 comprising representatives of the training centres of the Office of the Prosecutor General, the Ministry of Internal Affairs, Ministry of Taxes and Ministry of National Security. However, as no further information was made available on the content of the training programme and as it appeared that the courses were only designed for law enforcement officers, GRECO could only conclude that the recommendation had been partly implemented.
17. The authorities of Azerbaijan indicate that the above-mentioned working group prepares annual thematic programmes, on which the training courses of the agencies represented on the working group are based. On the basis of these thematic programmes, 12 joint training sessions were held in 2009 on issues of relevance to corruption investigations (in addition to a few joint trainings held on an *ad-hoc* basis).⁴ In 2010, a further 15 joint training sessions will be held.⁵

⁴ Topics of the training sessions conducted in the context of the thematic programme in 2009 included the particularities of the investigation of passive bribery, the use of the latest criminological technologies in the investigation of corruption

18. In addition, the Department for Combating Corruption within the Prosecutor General's Office (ACD) has developed several publications for training purposes, including on "theoretical and practical issues of the investigation of corruption cases" and "methodological recommendations for the investigation of corruption crimes" (which draws on good practices in the investigation of corruption offences).
19. GRECO takes note of the information provided and welcomes the training programme elaborated by the working group, not just focusing on police officers. However, it does have some concerns that the programme, in particular for 2010, which also includes such topics as "theoretical and practical aspects of measuring the level and extent of corruption in modern societies", appears to be a bit light on the practicalities of financial investigations, specifically as regards tracing and seizing proceeds of crime. Nevertheless, it recognises that a comprehensive training programme has been set up (and may be improved upon in the coming years) and that measures of a more sustainable nature – in the form of the elaboration of training materials – have also been taken. GRECO encourages the authorities to continue their efforts to increase the expertise of various investigative bodies in carrying out financial investigations (both as regards financial crimes and the possible proceeds of crime).
20. GRECO concludes that recommendation vii has been dealt with in a satisfactory manner.

Recommendation viii.

21. *GRECO recommended to give a core number of prosecutors from the Department for the Defence of the State Indictment and a core number of judges systematic and particular training in dealing with corruption cases - building on existing training opportunities – and to provide that, wherever possible, corruption prosecutions should be conducted in court by prosecutors with that systematic training, before judges with such training.*
22. In its Compliance Report, GRECO took note of the various initiatives taken in the area of initial and in-service training to make judges and prosecutors more familiar with the handling of corruption cases, the order signed by the Prosecutor General in September 2008 stipulating that only prosecutors who have received specialist training handle corruption cases in court as well as the fact that similar plans were being discussed in respect of judges. However, from the information provided GRECO could not deduce whether a core number of prosecutors and judges had been designated and had received sufficiently systematic and specialised training. GRECO therefore concluded that recommendation viii had been partly implemented.
23. The authorities of Azerbaijan now report that pursuant to the abovementioned order of September 2008, corruption cases in the Court of Serious Crimes, the court of Baku city and other first instance courts as well as the court of appeals of Baku Shirvan, Ganja Sumgayit and Shaki, are to be prosecuted by one of 11 specifically designated prosecutors, who have experience in prosecuting corruption crimes, have received systematic training for this purpose and continue to participate in training seminars on corruption.⁶

offences and detecting, tracing and confiscating illegally obtained property in Azerbaijan and abroad, as well as money laundering and the use of SIMs.

⁵ Topics of these training sessions will include practical difficulties in the investigation of corruption offences, modern techniques in the fight against corruption, particularities of the investigation of crimes related to the banking sector and particularities of evidence in the investigation of corruption offences.

⁶ The authorities of Azerbaijan report on a number of training sessions carried out in 2009: two on "particularities of the investigation and judicial examination of corruption cases" for 15 judges and 10 prosecutors, one on "particularities of the

24. In addition, the introduction of a similar requirement for judges (i.e. that corruption cases are to be prosecuted, as far as possible, before judges, who have been systematically trained as regards corruption cases) has been discussed by the Office of the Prosecutor General with the Ministry of Justice and the Judicial Legal Council. Pursuant to these discussions, it has been decided that 15 judges would be specifically designated to adjudicate corruption cases.
25. GRECO takes note of the information provided. It welcomes the stipulation that corruption cases in the Court of Serious Crimes, and various other first instance and appeals courts are to be tried by experienced prosecutors, trained on corruption-related crimes, as was also mentioned in the Compliance Report. It would appear that, in practice, corruption cases are now – as far as possible – only tried by a core number of prosecutors from the Department of the State Indictment, who have received systematic training for this purpose. However, as regards judges, it remains unclear whether, in practice, corruption prosecutions are now conducted in front of the 15 designated judges and whether these judges have received systematic and particular training to this end. GRECO can therefore not yet conclude that this recommendation has been implemented.
26. GRECO concludes that recommendation viii remains partly implemented.

Recommendation xi.

27. *GRECO recommended to make full use in practice of the new provisions allowing for the confiscation of assets of an equivalent value to the proceeds of corruption and to introduce provisions allowing for the confiscation of assets held by third parties.*
28. In the Compliance Report, as regards the first part of the recommendation, GRECO took note of the successful application of value confiscation in a major criminal case in 2008 and that it hoped that this would set a positive precedent for future corruption cases. As regards the second part of the recommendation, GRECO noted the work which had been initiated to introduce third party confiscation, but as the relevant amendment to the Criminal Code had not been adopted, it could only conclude that recommendation xi had been partly implemented.
29. The authorities of Azerbaijan stress that in 2008 assets in the amount of 14,000 Azerbaijani New Manats (AZN) (approximately €12,600) were confiscated in two corruption cases and in 2009 assets with a value of 252,000 AZN (approximately €227,000) were confiscated in six corruption cases. In the first four months of 2010, assets in the amount of 2,624,788 (approximately €2,364,700) were seized on the request of the prosecution service; judgments on the confiscation of these assets are pending.
30. GRECO takes note of the information provided on the use of confiscation in (corruption) cases and, in particular, the reported amounts, which are much less than the figure of 18 million AZN reported in the Compliance Report.⁷ It is however not made clear whether these cases in fact refer to confiscation of assets of equivalent value or simply to confiscation of the proceeds of corruption. As, at any rate, the issue of third party confiscation (without the need to obtain a

examination of different categories of crimes” for 10 judges and 10 prosecutors, and five for 25 prosecutors in which court cases were simulated. The prosecutors participating in these training activities were from the Department for the Defence of State Indictment and of other departments of the prosecution service.

⁷ It appears that the 18 million AZN (approximately €16,220,170 million) refers to a case in 2007, and not 2008.

conviction of the third party) has apparently not been dealt with, GRECO cannot conclude that the second part of the recommendation has been dealt with.

31. GRECO concludes that recommendation xi remains partly implemented.

Recommendation xii.

32. *GRECO recommended to establish guidelines and thorough training for those officials (i.e. investigators, prosecutors and judges) who are required to apply the legal provisions on confiscation and interim measures.*
33. GRECO recalls that it took note of the various training activities provided, but found that – in respect of already appointed judges and police – training on confiscation and interim measures was very limited or not provided at all. As in addition to this training efforts had not been complemented by further (more sustainable) measures such as appropriate guidelines, GRECO concluded that recommendation xii had been partly implemented.
34. The authorities of Azerbaijan now report on the following training courses which took place in 2008 (since the adoption of the Compliance Report) and 2009 on the application of the relevant legal provisions on interim measures and confiscation:
- “possible problems in the investigation of corruption cases” for six prosecutors and six investigators in October 2008, in which attention was paid to theoretical and practical problems in seizing and confiscating assets of equivalent value to the proceeds of crime and of proceeds transferred to third parties;
 - “the analysis of property confiscation in the Criminal Code and Criminal Procedure Code of the Republic of Azerbaijan” for 12 prosecutors in November 2008, which included such topics as the differences in court practice between confiscation of proceeds of crime and confiscation of instrumentalities;
 - “carrying out of measures for seizing property in the investigation of corruption cases”, for investigators and prosecutors in April 2009, which focused on the procedural rules for investigators and prosecutors in applying the provisions on seizing and confiscating property for civil claims;
 - “particularities of the examination of different categories of crimes” for ten judges and prosecutors in November 2009, which included training on confiscation and seizure of property.
35. In addition, the authorities of Azerbaijan indicate that the Prosecutor General’s Office has drawn up rules on seizing and confiscating property, which are intended to function as guidelines. These rules have been adopted by an ordinance of the Prosecutor General in September 2010.
36. GRECO welcomes the adoption of procedural rules for prosecutors on the application of the legal provisions on confiscation and interim measures. However, GRECO observes that the training, particularly in respect of judges, is still relatively limited and that this training has – for investigators and judges – not been followed up by measures of a more sustainable nature in the form of guidelines. y Therefore, GRECO cannot conclude that this recommendation has been adequately addressed.
37. GRECO concludes that recommendation xii remains partly implemented.

Recommendation xiii.

38. GRECO recommended to assess the effectiveness of the amended Penal Code and to verify, in particular, that the measures introduced are appropriate for the seizure and deprivation of the proceeds of corruption offences, by collecting detailed information on the use, and failure to use, confiscation and interim measures.
39. In its Compliance Report, GRECO noted the measures taken to implement this recommendation, such as the assessment carried out by the Department for Combating Corruption in April 2006 of the amendments to the Penal Code, the special section on temporary measures and confiscation included in the Integrated Database of Corruption Offences and the regular service reviews of the application of seizure and confiscation measures in practice, as carried out by the Department for Combating Corruption. GRECO however found that recommendation xiii had only been partly implemented, as the assessment of April 2006 was carried out before the amendments to the Penal Code came into force and the further measures reported fell short of “collecting detailed information on the use, and failure to use, confiscation and interim measures” for the purpose of assessing the measures introduced for the seizure and deprivation of the proceeds of corruption.
40. The authorities of Azerbaijan state that following amendments to the Criminal Code of October 2006, the number of cases in which perpetrators voluntarily paid damages – either during the course of the investigation or during the court proceedings – increased significantly.⁸ As a result of this, confiscation of proceeds was used less than it might have otherwise been. The following information on the use of confiscation and interim measures, as well as voluntary payment of damages, in connection to corruption and corruption-related offences investigated by the Anti-Corruption Department of the Prosecutor General’s Office, was collected from January 2007 to the end of the April 2010:

	Payments during investigations	Payments during court hearings	Seizure / confiscation of property	Total damages (AZN)
2007	227,285	9,143,940	183,380	10,186,639
2008	375,342	411,610	14,000	895,869
2009	1,350,363	557,996	252,000	4,230,798
2010 (Jan. - April)	631,389		2,624,788 (Seizure)	4,268,111

41. GRECO takes note of the information provided. It welcomes the collection of information on the use of confiscation and seizure, as well as what appears to be quite a successful alternative

⁸ The authorities of Azerbaijan indicate that ‘voluntary payment of damages’ is a sort of plea-bargain, whereby the fact that damages (which in corruption cases is reportedly broader than just a bribe) have been paid constitute a mitigating circumstance when deciding on the applicable sanction.

method to deprive offenders of the benefits of their crimes. However, the information provided does not allow GRECO to conclude that information is collected on not just the use of confiscation and interim measures (and other alternative arrangements to deprive offenders of the benefits of their crimes) but also on the failure to do so (i.e. situations in which the provisions in seizure and confiscation could not be used or did not have the desired result) and that this information is used in the way intended by the recommendation, namely to assess the effectiveness and appropriateness of the measures for the seizure and deprivation of the proceeds of corruption offences.

42. GRECO concludes that recommendation xiii remains partly implemented.

Recommendation xiv.

43. *GRECO recommended to ensure that the anti-money laundering system becomes operational as soon as possible, to rapidly provide the FIU with appropriate staff, resources and access to relevant information sources (data bases), to provide training to the FIU's staff as well as to investigators, prosecutors and judges on the new provisions, and to educate reporting entities regarding their reporting duties under the new legislation.*
44. GRECO recalls that it concluded that this recommendation had not been implemented, as pending the adoption of a general law on the prevention of money laundering, the money laundering prevention system remained rudimentary and the reported training and awareness raising activities did not address the many financial institutions and non-financial entities which would be expected to be included in the future anti-money laundering law.
45. The authorities of Azerbaijan indicate that the Law on the Prevention of Legalisation of Criminally Obtained Funds or Other Property and Financing of Terrorism came into force in February 2009. The law is meant to cover all FATF recommendations as well as the shortcomings identified by MONEYVAL in its Third Round Mutual Evaluation Report of April 2008. The law provides for a system of reporting and analysing suspicious transactions – broader than the reporting systems for banks and stock brokers as it was at the time of the visit – covering all financial institutions and designated non-financial businesses and professions (DNFBP).
46. Pursuant to the Decree of the President of 23 February 2009, the Financial Monitoring Service (FMS) under the Central Bank was established as an independently functioning financial intelligence unit for the receiving, analysing and disseminating of suspicious and currency transaction reports.⁹ The FMS has direct access to financial, administrative and law enforcement information required to carry out its functions and is authorised to obtain additional information from reporting entities. The FMS is currently staffed by 37 employees (soon to be increased to 41), in addition to a Director and Deputy Director who are appointed and dismissed directly by the President of the Republic. A budget of 4 million Euros has been allocated to the FMS for 2010.
47. In order to further improve the anti-money laundering system, an Action Plan spanning a period of 3 years was drawn up in consultation with the MONEYVAL Secretariat, which includes further measures to improve legislation, supervision and training. In addition, a number of Memoranda of Understanding were concluded with supervisory and law enforcement bodies to facilitate the exchange of information and access to databases and the conclusion of Memoranda of Understanding with foreign counterparts is currently pursued.

⁹ The FMS became operational in November 2009 and has since then (until April 2010) received more than 1600 reports, including 28 suspicious transaction reports of which 8 were further disseminated to law enforcement bodies.

48. In addition, various training activities have been provided by the deputy director and heads of department of the FMS for investigators, prosecutors and judges; a USAID expert is seconded to the FMS to *inter alia* train the staff of the FMS; seminars are being conducted in collaboration with the IMF, World Bank and USAID; and a long-term training policy has been developed (and is in the process of being implemented), targeting staff of the FMS, financial institutions, the DNFBP, supervisory authorities and law enforcement officials.
49. GRECO takes note of the information provided and also observes that Azerbaijan is no longer subject to MONEYVAL's compliance enhancing procedure. GRECO welcomes that the anti-money laundering system is now operational, staff, resources and access to relevant information sources is being provided to the FMS, training is being carried out and a broad range of reporting entities are being briefed on their reporting duties.
50. GRECO concludes that recommendation xiv has been implemented satisfactorily.

Recommendation xvi.

51. *GRECO recommended to (i) set up the 'Authorised Agency on Information Matters' as provided for in the law 'On the Right to Obtain Information' as soon as possible and to provide it with adequate resources to carry out its functions, (ii) provide training to those civil servants required to respond to requests for information under the new law, (iii) hold civil servants' accountable for failure to comply with the requirements of the aforementioned law, and (iv) raise the awareness among the general public about their right to access information.*
52. GRECO recalls that as regards the first part of the recommendation (i) it regretted the fact that the Authorised Agency on Information Matters had not been set up. As regards the second and last part of the recommendation (ii & iv) it found that the information provided in respect of training of officials and awareness raising initiatives did not allow it to gain a full picture of the various actions taken to inform the population and administration about the implications of the law on access to information. Regarding the third part of the recommendation (iii) it took note of the introduction of legal provisions dealing with accountability of officials and administration in case of non-compliance, but found it unclear whether the system would have the potential to be effective (in the absence of an Authorised Agency on Information Matters). In light of these concerns, GRECO concluded that the recommendation had been partly implemented.
53. The authorities of Azerbaijan report as regards (i) that the Authorised Agency on Information Matters is still in the process of being established. As regards (iv), the authorities of Azerbaijan report on a number of awareness raising activities carried out over the the period 2009-2010, financed by the Council on State Support, which allocated in total 67,900 AZN (approximately €61,180) to nine different NGOs to carry out various projects to raise awareness among the general public about their right to access information.¹⁰

¹⁰ The authorities of Azerbaijan mention the following projects:

- The establishment of a municipality information centre and the development of relations between municipalities and the public by the Centre for Social Initiatives;
- Legal clarifications for journalists acting in the South region by the Azerbaijan Journalists Union;
- The role of media in informing the public on the activities of Parliament by the Bipartisan Journalists;
- The establishment of a universal information network for the media by the New Generation Journalists Union;
- Public awareness and provision of information by the Public Union for the Support to the Development of the Media;
- Activities on the effective application of information technologies for the provision of information on state procurement by the Multimedia Information Technologies Centre;

54. GRECO takes note of the information provided. As regards (iv), it would appear that at least some awareness raising activities have been conducted by NGOs. However, most projects seem to be far removed from the aim of this part of the recommendation, which is to raise awareness as regards the scope of the right of the public to access information held by public institutions. As regards the other parts of the recommendation, GRECO regrets that the Authorised Agency for Information Matters has still not been established and that training of civil servants on these matters and accountability for failing to adequately respond to requested information has apparently not been provided for.
55. GRECO concludes that recommendation xvi remains partly implemented.

Recommendation xviii.

56. *GRECO recommended to enact and implement standards on conflicts of interest for all civil servants and officials – including standards with regard to situations where officials move to the private sector – and to provide for an appropriate mechanism to enforce these standards.*
57. In its Compliance Report, GRECO took note of the preparation of a draft law on conflicts of interest, which was to include rules on officials moving to the private sector and to provide for a control mechanism. However, GRECO found that this law would also need to outline the applicable sanctions and how parliamentarians, judges and employees of the prosecution service would be covered would have to be determined. As, in any case, the law had not yet been implemented, GRECO concluded that recommendation xviii had been partly implemented.
58. The authorities of Azerbaijan report that a draft law “On prevention of conflicts of interest in the activities of public officials” has been prepared. The draft law reportedly covers those civil servants and officials whose activities are regulated by the Law on Combating Corruption. The draft law includes provisions on such issues as gifts, on ownership of companies, political activities, the use of state resources, as well as situations where officials move to the private sector. The draft law foresees that its provisions will be enforced by a so-called “enforcement agency” (it is however not clear yet if this will be the Commission on Combating Corruption, a newly established agency or another state institution) and would provide that violation of the rules may lead to the imposition of disciplinary sanctions (if no administrative or criminal offence has been committed). The law is expected to be discussed by parliament after the parliamentary elections in November 2010.
59. GRECO takes note of the information provided. It would appear that no further progress has been achieved in implementing this recommendation since the adoption of the Compliance Report. As indicated in the Compliance Report, the issue of the standards on conflicts of interest for parliamentarians, judges and employees of the prosecution service will still need to be addressed. GRECO very much hopes that the delayed adoption of the draft law “On prevention of conflicts of interest in the activities of public officials” provides sufficient opportunity for the authorities of Azerbaijan to take on board the pertinent criticism of the draft law as expressed in the context of the AZPAC project.¹¹

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- Recording movies on activities of national NGOs by the Public Union “For the Sake of Richness of Humans”;
 - Support to civil society institutions as regards public relations and accountability by the Economic Research Centre;
 - Public awareness on and discussion of the activities of NGOs on FM 105.5 radio by the Public Union “Modern Youth”.

¹¹ The AZPAC-project “Support to the Anti-corruption Strategy of Azerbaijan” ran from 2007 to 2009 (supported by USAID and implemented by the Council of Europe). In the context of this project expert opinions were published on the draft law “On

60. GRECO concludes that recommendation xviii remains partly implemented.

Recommendation xix.

61. *GRECO recommended (i) to ensure that financial declarations can be verified in an effective manner, (ii) to provide for an appropriate means of enforcing the provisions regarding financial declarations with regard to all officials concerned, and (iii) consider disclosing the financial declarations of elected and appointed officials to the public, as a preventive measure, with a view to increasing transparency in the public sector.*

62. GRECO recalls that it noted that there had been no sizeable initiatives to implement this recommendation and that – on the contrary – the system of financial declarations seemed to be at an even earlier stage of development than had been assumed in the Evaluation Report. GRECO therefore concluded that recommendation xix had not been implemented.

63. The authorities of Azerbaijan state that, pursuant to Article 5.1 of the Law on Combating Corruption, officials are obliged to declare their assets (income, property, participation in companies, debts etc.). The information is to be submitted in the form of a declaration, but the format of this declaration and the rules for submission of financial declarations are still to be approved by the Cabinet of Ministers.

64. GRECO takes note of the information provided. It would appear that no further progress has been made to implement this recommendation: there is no mechanism to verify the financial declarations of the officials concerned, to enforce the provisions in question, nor would it seem that any consideration has been given to making the financial declarations public.¹²

65. GRECO concludes that recommendation xix has not been implemented.

Recommendation xx.

66. *GRECO recommended to introduce clear rules/guidelines requiring civil servants to report suspicions of corruption and to ensure that civil servants who report suspicions of corruption in public administration in good faith are adequately protected from retaliation.*

67. In the Compliance Report, GRECO noted that Article 23 of the draft law “On prevention of conflicts of interest in the activities of public officials” would require certain categories of public officials to report certain violations of the Law on Code of Ethics and Conduct of Civil Servants and the Law on Combating Corruption to their direct superior or the so-called enforcement agency (see also recommendation xviii above). However, it did find it questionable whether this required public officials to report suspicions of criminal corruption-related offences (and which

prevention of conflicts of interest in the activities of public officials”. The criticism of this draft law (See: <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/AZPAC/951-AZPAC-TP-draftCol%20law.pdf>) included the fact that the emphasis of the draft law was on preventing conflicts of interest (and failed to introduce provisions to manage conflicts of interest once they occur), that the same provisions applied to elected local officials as to civil servants and that the definition of private interests was flawed.

¹² In addition, it would appear that even if the financial declarations were to be verified (or even made public) control would seriously be hampered by the fact that the Law on State Registration and State Registry of Legal Entities requires only the registration of persons who establish, manage or represent a legal entity, and not who ultimately own it (See, for example, the Third Evaluation Round Report of MONEYVAL of December 2008, p. 127 and further: [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2008\)27Rep-AZE3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2008)27Rep-AZE3_en.pdf))

ones) and whether this was clear enough. It also found that – in cases in which a report on violations of the law was received internally – it remained unclear to what extent discretion is left to the administrative bodies not to forward the file to the enforcement agency. Furthermore, although GRECO was pleased to learn that a mechanism for the protection of whistleblowers was envisaged, it feared that this would not be adequate to protect whistleblowers in practice. Besides these reservations, the draft law had at any rate not been implemented yet and GRECO therefore concluded that this recommendation had been partly implemented.

68. The authorities of Azerbaijan refer again to Article 23 of the draft law “On prevention of conflicts of interest in the activities of public officials” and claim that the law will be submitted to parliament soon.
69. GRECO takes note of the information provided. It would appear that the reservations GRECO expressed in its Compliance Report have not been taken into consideration yet and that no further progress has been made in the implementation of this recommendation. In addition, the draft law is apparently not applicable to civil servants in so-called auxiliary positions (secretaries, clerks etc.). As before (see under recommendation xviii and footnote 10), GRECO hopes that the delay in the adoption of the draft law “On prevention of conflicts on interest in the activities of public officials” will provide further opportunity to address the questions raised in the Compliance Report, as well as the criticism expressed in the context of the AZPAC project, in particular as regards the envisaged mechanism for the protection of whistleblowers.¹³
70. GRECO concludes that recommendation xx remains partly implemented.

Recommendation xxii.

71. *GRECO recommended to establish rules requiring periodic and continuing anti-corruption, ethics and integrity training for all civil servants, including such issues as reporting corruption, gifts and conflicts of interest.*
72. GRECO recalls that it took note of the training on ethics provided by the ministry of internal affairs for the police, the training carried out by the Azerbaijani chapter of Transparency International for a broader audience, the plans of the Commission for Civil Service to conduct continuous training programmes on the new Law on Rules of Ethics for Civil Servants and the training organised in the context of the co-operation programme “Support to the Anti-corruption Strategy of Azerbaijan” (AZPAC). However, GRECO found that – apart from police officers for whom periodic anti-corruption training had been made a requirement – it was insufficiently ensured that this training was a genuine statutory requirement for all civil servants and therefore concluded that the recommendation had been partly implemented.
73. The authorities of Azerbaijan stress that the Action Plan of the National Strategy for Increasing Transparency and Combating Corruption requires all central and local executive bodies to hold regular training activities on ethics. Each year the Civil Service Commission sends instruction letters to all governmental bodies at central and local level recommending the establishment of rules requiring regular and long-term training on anti-corruption, ethics and integrity and requesting these bodies to submit information on conducted trainings. On the basis of the information submitted to the Civil Service Commission it appears that most ministries and other

¹³ <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/AZPAC/951-AZPAC-TP-draftCol%20law.pdf>, p. 8-9.

state bodies have organised some sort of training covering ethics.¹⁴ In addition, the Civil Service Commission has adopted an annual action plan, which sets out, for 2008 onwards the organisation of regular (quarterly) trainings for civil servants.¹⁵

74. GRECO takes note of the information provided. It welcomes that training on ethics appears to be regularly carried out by various state and local government bodies, in addition to training activities organised by the Civil Service Commission. GRECO very much hopes that the content of this training goes beyond the framework provided by the Law on Rules of Ethical Conduct of Civil Servants, and provides real guidance to civil servants on how to behave when confronted with an ethical dilemma, be it a conflict of interest, the provision of gifts or other benefits, and what to do when suspicions of corruption in the workplace arise. While it is not clear if a genuine statutory requirement on periodic and continuing anti-corruption, ethics and integrity training is now in place, it would appear that such training is carried out, periodically and on a continuous basis, in practice.
75. GRECO concludes that recommendation xxii has been dealt with in a satisfactory manner.

Recommendation xxiv.

76. *GRECO recommended to adopt the necessary legislation to provide for liability of legal persons for the offences of bribery, trading in influence and money laundering with sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption (ETS 173), and to provide training to investigative and judicial authorities on these issues.*
77. In its Compliance Report, GRECO welcomed the preparatory work undertaken to introduce corporate criminal liability, but as legislation was still in the drafting process (and training could thus also not be provided) it could only conclude that the recommendation had been partly implemented.
78. The authorities of Azerbaijan report that the new version of the Penal Code is expected to be finalised towards the end of 2010. The draft article on corporate criminal liability provides:

¹⁴ The Ministry of Transport, Ministry of Finance and the Ministry of Economic Development approved modules and a time table for periodic training to be conducted during 2009 and 2010 concerning ethical conduct and the training was organised in accordance with this time table. In addition, the Azerbaijani authorities have submitted a list of 25 state bodies (including the Ministry of Defence Industry, Ministry of Health, Ministry of Energy and Industry, State Students Admission Commission, State Agency on Procurements and the State Committee on Management of Property) and 60 local governments, which have – according to the information submitted to the Civil Service Commission – conducted some form of training on ethics for their employees.

¹⁵ The Azerbaijani authorities indicate that from May to November 2009 the Civil Service Commission organised training on ethics for employees of the Ministry of Economic Development on eight different occasions; that similar trainings were organised for employees of the State Committee on Architecture and City Building on 16 March 2009 and the Ministry of Communication and Information Technologies on 4 March and 19 October 2009; that further training was organised in co-operation with the United Nations Development Program (UNDP); that a series of training sessions were carried out for the heads of administration and human resource departments in co-operation with the Council of Europe (in the context of the AZPAC programme) and that regional training activities were held for 44 public officials from 5 different regions of Azerbaijan.

19.1 Legal persons, with the exception of State and municipalities, shall be criminally liable for the offences committed directly to achieve their goals or committed on their behalf by their organs or representatives in the cases provided for by this Criminal Code.

19.2 The criminal liability of legal persons does not exclude that of the natural persons who are perpetrators or accomplices to the same act. Legal persons shall be criminally liable even in circumstances where liability of natural persons can be excluded according to this Code.

79. GRECO takes note of the information provided. It would appear that no noticeable progress has been achieved in implementing this recommendation since the adoption of the Compliance Report.

80. GRECO concludes that recommendation xxiv remains partly implemented.

Recommendation xxv.

81. *GRECO recommended to ensure that a sanction disqualifying a person from engaging in certain specific professions and activities is effective in practice, in respect of persons acting in a leading position in a legal person.*

82. GRECO recalls the information provided by the authorities of Azerbaijan on the simplification of the system for registering legal persons and the fact that court decisions on disqualifications would be sent to the employer of the person concerned and to court officers; it considered at the time of the adoption of the Compliance Report that these measures did not address the concerns raised in the recommendation about the effectiveness in practice of this sanction. GRECO therefore concluded that the recommendation had not been implemented.

83. The authorities of Azerbaijan now indicate that since 2007 the Ministry of Taxes has been using a special feature in its Automated Tax Management System (which is the information management software used by tax bodies), which limits the registration of persons on whom a disqualification sanction has been imposed. If a person has been disqualified from engaging in a certain profession or activity, the relevant judgment will be sent to the Ministry of Taxes. If, subsequently, in defiance of the court judgment, a new legal person is to be registered in which – according to the registration documents – a disqualified person would have a leading position (founder, manager etc.), the Ministry of Taxes will refuse registration. The authorities furthermore state that the enforcement of a disqualification sanction in respect of persons having a leading position in an already existing private company will be enforced by the Service for the Enforcement of Court Decisions of the Ministry of Justice. To this end, the judgment is communicated to the legal person in question. If the legal person does not enforce this decision (or the natural person who has been disqualified does not step down from the position in the company him/herself), natural persons within the company can be prosecuted under Article 306 of the Criminal Code. This article provides “Intentional evasion of (...) a decision of a court (...) as well as obstructing the execution thereof, will be sentenced to a fine in the amount of 500 to 1000 AZN, or community service for a term of 160 to 200 hours or corrective work for a term of two years (...) or up to two years’ imprisonment”.

84. GRECO welcomes the checks carried out by the Ministry of Taxes in respect of newly established legal persons, which have the potential of preventing legal persons in which disqualified persons would have a leading role from being registered. It would appear that a disqualification sanction

can also be enforced in respect of already registered companies. At the same time, it notes that this information would have already been available at the time of the adoption of the Compliance Report. However, it accepts that possibilities for enforcing a disqualification sanction are in place and hopes that best use is made of it in practice.

85. GRECO concludes that recommendation xxv has been dealt with in a satisfactory manner.

Recommendation xxvi.

86. *GRECO recommended that tax authorities pay particular attention to the problem of corruption in the exercise of their fiscal duties, and to this end develop guidelines and specific training modules concerning the detection of corruption offences and the enforcement of the relevant legislation.*
87. In the Compliance Report, GRECO noted the information submitted on the modernisation of the tax administration and efforts to limit internal corruption. However, as the main purpose of the recommendation was for Azerbaijan to increase the detection by tax employees of corruption externally and few measures had been reported related to this purpose, GRECO concluded that the recommendation had been partly implemented.
88. The authorities of Azerbaijan report that the training centre of the Ministry of Taxes together with the Department of Internal Security and Preliminary Investigation of Tax Crimes developed the structure, content and themes of the training to be provided for tax officers. The topics of the training include the most frequent offences as well as shortcomings in the activities of tax officers, based on the finding of the Internal Security Department in the Ministry. In addition, training sessions were held in June and December 2009 for 39 tax officials on “Combating corruption, codes of ethics, conflicts of interest and access to information”.
89. As regards training on detecting ‘external’ corruption, the authorities indicate that 20 training hours a year are dedicated to the Law on Combating Corruption (and the tasks defined in the context of this law for the tax administration). Furthermore in 2008, 30 tax officers participated in a special training seminar on improving professional and theoretical skills in the fight against corruption, and, in 2009, tax officers regularly took part in several external training seminars, including on the topic “Combating Corruption – practical and theoretical aspects” organised by the Ministry of the Interior (February 2009), on the topic “Investigation and application of operational search measures concerning corruption crimes” (October 2009) and on the topic “Rules on the development of protection of whistleblowers in the area of civil service” organised in the context of the AZPAC project (March 2009).
90. In addition, the authorities indicate that the Ministry of Taxes has signed a memorandum of co-operation with the Office of the Prosecutor General on the co-operation between tax officers and prosecutors in the fight against corruption in April 2009. The Anti-Corruption Department of the Office of the Prosecutor General referred three cases to the court in which it had co-operated with the Ministry of Taxes, in 2008; five in 2009 and one in the first four months of 2010.
91. GRECO takes note of the information provided. It accepts that training on corruption offences and the enforcement of relevant legislation has been and is being provided, although it continues to have concerns as to whether the training modules are sufficiently focused on the specific task of detecting corruption in the exercise of fiscal duties. However, as no information has been provided on the development of guidelines for tax inspectors on the detection of corruption,

GRECO can nonetheless not conclude that this recommendation has been adequately addressed.

92. GRECO concludes that recommendation xxvi remains partly implemented.

Recommendation xxvii.

93. *GRECO recommended to review the provisions on account offences, and to establish appropriate sanctions fully in line with Articles 14 and 19 of the Criminal Law Convention on Corruption.*
94. GRECO recalls that it took note of a new provision in the Code of Administrative Violations, dealing with possible infringements of accounting regulations. The provision referred in broad terms to general infringements defined in other provisions, without naming them. Without further explanation GRECO found it was unclear as to whether this could possibly cover the offences of Article 14 of the Criminal Law Convention on Corruption (ETS 173), in particular as links between criminal and administrative law were considered to be complex and the infringements defined in the Criminal Code, to which the Code of Administrative Violations seemed to refer, did in any case not cover “unlawful omitting to make record of a payment” and “creating an accounting document containing false or incomplete information”. It welcomed the intention of the authorities of Azerbaijan to increase the sanctions, but found that the resulting fines – a maximum in the equivalent of €2000 for a legal person – would still remain quite low. In light of this, GRECO concluded that the recommendation had been partly implemented.
95. The authorities of Azerbaijan indicate that article 247-1 of the Code of Administrative Violations was amended in June 2009 to implement this recommendation. In addition to changes to the text of this article, the sanctions applicable to accounting offences have been increased seven to ten times. The text of the new article reads as follows:

Article 247-1. Violation of accounting legislation, rules of submission of statements and information

Violation by the accounting subject of the regulations for execution, filing the statutory financial accounts and consolidated financial reports and other statements and information to be submitted to insurance supervision body, including correct reflection of information and indices in statements and other forms required under legislation, as well as keeping registration documents stipulated by the legislation

(...)

entails imposition of the penalty on official persons¹⁶ in the amount of 300-400 legal entities (1500-2000 AZN).

96. In addition, the authorities refer to Article 313 of the Criminal Code on forgery of legal documents by officials and civil servants or employees of institutions of local governments who are not

¹⁶ As explained in the Compliance Report (footnote 36), the authorities have indicated that the concept of “officials” is quite broad: “persons who carry out duties of a representative of the state power, persons working full-time or part-time at economic-administering positions at state authorities, institutions of local governing, Armed Forces of the Azerbaijan Republic, at other bodies of troops established in accordance with the legislation of the Azerbaijan Republic, at state and non-state organisations, establishments and enterprises, or persons who perform similar duties in view of special authority, also natural persons who perform such duties dealing with business undertakings without establishing a legal person” (Article 16 of the Code of administrative violations).

officials, which carries a fine of 500 to 1000 AZN (approximately €450 to €900) or 2 years' imprisonment (with possible deprivation of the right to hold certain posts or to engage in certain activities and confiscation of property).

97. GRECO welcomes that Article 247-1 of the Code of Administrative Violations has been amended and now includes a reference to correct information to be contained in accounting documents. By referring to "regulations" and "stipulated by legislation" Article 247-1 appears to rely on the definition of accounting obligations in other provisions. Without further information on whether these other provisions cover the offences detailed in Article 14 of ETS 173, GRECO cannot yet at this point conclude that this part of the recommendation has been properly addressed. GRECO takes note in this regard of Article 313 of the Criminal Code, but observes that this provision is neither applicable to persons working in the private sector, nor to legal persons. In addition, GRECO must reiterate its concerns about the low level of sanctions. Despite assurances by the authorities that with the June 2009 amendments the level of sanctions has been increased by seven to ten times, the maximum fine has remained 2,000 AZN, approximately €1,800. As already indicated in the Compliance Report, this amount is not likely to be dissuasive and effective enough with regard to account offences committed to conceal corrupt acts. Even though the sanctions listed in Article 313 CC include imprisonment and confiscation of property, they – as indicated before – cannot be imposed on persons working in the private sector or on legal persons.
98. GRECO concludes that recommendation xxvii remains partly implemented.

III. CONCLUSION

99. In addition to the conclusions contained in the Joint First and Second Round Compliance Report on Azerbaijan and in view of the above, GRECO concludes that recommendations i and xiv have been implemented satisfactorily and recommendations iii, vii, xxii and xxv have been dealt with in a satisfactory manner. However, recommendations viii, xi, xii, xiii, xvi, xviii, xx, xxiv, xxvi and xxvii are partly implemented and recommendation xix remains not implemented.
100. With the adoption of this Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the 27 recommendations issued to Azerbaijan, in total only 15 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner, which is less than two thirds of the recommendations issued to Azerbaijan. While GRECO welcomes the unambiguous progress made in ensuring that the anti-money laundering system is now operational, it also observes that this is one of only six of the 17 outstanding recommendations in which clear progress can be reported since the adoption of the Compliance Report. Many initiatives have remained at the same stage as already reported in the Compliance Report and the conclusions and/or reservations contained therein appear to have been largely ignored.
101. GRECO regrets in particular that no progress has been reported as regards the implementation of recommendations relating to prevention of corruption in public administration. Leaving aside observations that a public administration based on meritocratic principles, in which wages are provided to permit an appropriate standard of living, have yet to be established, GRECO cannot ignore the fact that determined efforts to properly address conflicts of interest, the provision of an effective system for the verification of financial declarations, the reporting of suspicions of corruption of public officials and the protection of whistleblowers, as well as various measures relating to the accessibility of official information, remain wanting. Two of these remaining

recommendations in the area of public administration relate to the draft law “On prevention of conflicts of interest in the activities of public officials”, which had already been drawn up in 2007, but which appears still not to have taken on board previous reservations expressed by GRECO, nor the criticism expressed in the context of the AZPAC-project.

102. The adoption of the present Addendum to the Compliance Report terminates the First and Second Evaluation Round compliance procedure in respect of Azerbaijan. The authorities of Azerbaijan may, however, wish to inform GRECO of further developments with regard to the implementation of the pending recommendations.
103. Finally, GRECO invites the authorities of Azerbaijan to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.