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## **Joint First and Second Round Evaluation**

### **Compliance Report on Azerbaijan**

Adopted by GRECO  
at its 39<sup>th</sup> Plenary Meeting  
(Strasbourg, 6-10 October 2008)

## I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Azerbaijan at its 29<sup>th</sup> Plenary Meeting (19-23 June 2006). This report (Greco Eval I-II Rep (2005) 5E) was made public by GRECO, following authorisation by the authorities of Azerbaijan, on 20 September 2006.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Azerbaijan submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 9 February 2008, slightly after the deadline (31 December 2007).
3. GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, the Netherlands and Turkey to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Bastiaan WINKEL-BOER on behalf of the Netherlands and Mr Ergin ERGÜL on behalf of Turkey. The Rapporteurs were assisted by the GRECO Secretariat in drafting this Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Azerbaijan to comply with the recommendations contained in the Joint Evaluation Report.

## II. ANALYSIS

5. It was recalled that in its Joint Evaluation Report, GRECO addressed 27 recommendations to Azerbaijan. Compliance with these recommendations is dealt with below.

### **Recommendation i.**

6. *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.*
7. The authorities of Azerbaijan report that the Commission on Combating Corruption launched a public survey programme in September 2007, 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. The Commission entrusted the Information and Cooperation Network of NGOs involved in the fight against corruption<sup>1</sup> with the production of a survey, and allocated to this effect a budget of 16.500 AZN (about 15.000 euros). The NGO network, in its turn, subcontracted the task to an independent firm (SIGMA). The survey started in November 2007 and was conducted throughout the country, covering many sectors of society. The results were made available in March 2008, together with a survey analysis produced by the NGO network. This work was taken into account for the preparation of the first semi-annual report on the implementation of the National Strategy for Increasing Transparency and Combating Corruption; in particular, it was used as a basis for the Commission to address recommendations to different state agencies. The survey is available in the national language only.
8. GRECO takes note of the information provided. The survey that was conducted between November 2007 and March 2008 has reportedly brought up meaningful information that was taken into account by the authorities in the context of their anti-corruption policies. However, in the absence of further information as to the content and results of this survey, it is difficult to

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<sup>1</sup> The Network comprises 20 NGOs specialised in combating corruption including Transparency Azerbaijan, Fund for struggle against Corruption, Young Lawyers Association of Azerbaijan etc.

conclude that it constitutes a satisfactory alternative to a comprehensive study on corruption in Azerbaijan in the manner prescribed by the recommendation.

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

**Recommendation ii.**

10. *GRECO recommended to develop a mechanism to assess whether the measures included in the State Programme on Combating Corruption are being implemented in practice within the given deadlines, and assess their impact on the various sectors concerned.*
11. The authorities of Azerbaijan report that the period of implementation of the initial State Programme on Combating Corruption (2004-2006) ended in September 2006. According to its statute, the Commission for Combating Corruption is the body responsible for monitoring the implementation of the State Programme. On the basis of various contributions (received from the Cabinet of Ministers, relevant ministries, NGOs and other sources), the Commission prepared in the beginning of 2007 an assessment report<sup>2</sup> on the implementation of the State Program. The document shows the level of implementation of the various measures contained in the Program, including some shortcomings. It was presented for a public discussion and reprinted in the newspapers. As a result, a new "National Strategy on Increasing Transparency and Combating Corruption (2007-2011)" was adopted in July 2007, following public consultations and recommendations. Measures from the Programme 2004-2006 which the Commission considered insufficiently (or not) implemented were included in the new National Strategy.<sup>3</sup>
12. GRECO welcomes the approach taken by the Commission for Combating Corruption. Although the Assessment Report of 2007 does not contain information indicating that the Commission would go so far as to monitor compliance with the deadlines and the impact of the State Programme in practice, there is a mechanism in place that allows the authorities to monitor progress and place the reform process under a reasonable pressure in order to complete the planned reforms.
13. GRECO concludes that recommendation ii has been implemented satisfactorily.

**Recommendation iii.**

14. *GRECO recommended to take the necessary measures to improve communication, feedback and cooperation in practice of all agencies involved in the detection, investigation and Prosecution of corruption (i.e. police, prosecution and tax authorities).*
15. The authorities of Azerbaijan indicate that after some opposition during the consultation process, the regulatory framework for the creation of the Integrated Database of Corruption Offences (IDBCO) was finally adopted by virtue of the Prosecutor General's Order N° 10/42 of 5 September 2008. The IDBCO was immediately launched and became operational within less than one month. Its purpose is to centralise all information on preliminary investigations concerning corruption offences. It is kept and managed by the Department for Combating Corruption within the Prosecutor General's Office (ACD). The Order determines the scope of corruption-related offences to be included in the database, procedures for feeding and using the database, the format of information to be stored etc Using this database, the ACD is expected to have

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<sup>2</sup> An English version of the assessment (27 pages) is available at the link below.

<sup>3</sup> The new National Strategy is available on-line ([link to the document](#)).

information about all investigations in the country in real time, as soon as they are launched and when they are completed. This should prevent law enforcement services from conducting overlapping investigations. Moreover, the Prosecutor General will thus be able, using his exceptional powers, to take over, from any law enforcement agency, cases of particular importance that should better be conducted by the Anticorruption Department. In addition, the Department of Public Prosecutions, which represents the public prosecution in all trials, is also required to feed the IDBCO. This allows ACD to also follow the results of trials in corruption cases. Among other benefits, the IDBCO gives the ACD new possibilities to perform analytical work in its area of competence. In addition, pursuant to the Prosecutor General's Order N° 4 of September 2008, the Prosecutor General's Office is to ensure that court decisions are also communicated to all the investigative bodies which have been involved in the relevant case<sup>4</sup>.

16. Moreover, the heads of departments of the 8 investigative bodies (police, tax authorities, National Security Service etc.) and the prosecution service meet twice a year in order to analyse obstacles and good practices in investigations and to identify training needs. Finally, the authorities recall that the law already provides for the possibility to establish joint investigative teams with members from different institutions; such teams have been successfully used in some cases after the ACD decided to use them more systematically.<sup>5</sup>
17. GRECO takes note of the information provided. It welcomes the steps taken so far, to centralise information on corruption offences in the IDBCO, to provide the relevant law enforcement and prosecutorial services involved in the fight against corruption with feed-back on relevant court decisions and the establishment of a bi-annual co-ordination meeting. The same goes for the legal possibilities for using joint investigative teams, which appear to have already been in place at the time of the on-site visit (see paragraph 38 of the Evaluation Report), a practice which could probably be further encouraged beyond the two cases reported as examples. Overall, although GRECO very much welcomes the steps that have been taken so far, GRECO finds that the measures reported are at an early stage and possibly insufficient given the extent of the underlying problem<sup>6</sup> (the information provided by the authorities under recommendation xiii, as regards the reporting system, might be a further illustration thereof). Without further information on, in particular, measures taken to improve co-operation and communication between the relevant agencies on a daily basis in investigations, GRECO is at this point unable to conclude that this recommendation has been fully implemented. In this context, GRECO would have welcomed the adoption of further measures which have proven to be useful to improve interaction between institutions in other countries<sup>7</sup>.
18. In the light of the aforementioned, GRECO concludes that recommendation iii has been partly implemented.

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<sup>4</sup> Currently, the court gives a copy of its judgment to the convicted or acquitted person, his defense counsel and legal representative, the victim (or victim bringing a private prosecution) and his representative.

<sup>5</sup> e.g. joint investigation group involving the Department for Combating Corruption and the Prosecutor's Office of Sumgait city in the case of gas supply violations in 2006; joint investigation group involving the Anti-Corruption Department, the Ministry of Taxation and the Chamber of Accounts in the case of energy supply violations and other cases of 2007 which involved police investigators.

<sup>6</sup> As indicated in paragraph 48 of the Evaluation Report, "Again and again, the GET found that the investigative and prosecutorial authorities interviewed were able to report the referral of cases to other agencies for investigation or prosecution but had little idea, or even apparent interest, in what had happened to those cases afterwards. Jurisdictional boundaries appeared to be very rigid - to the extent that the prosecution service and the police did not have access to the same information and data bases - and this situation has induced a somewhat rigid mindset."

<sup>7</sup> for instance the appointment of liaison officers, conclusion of memoranda of understanding, a review of criminal procedure rules as regards cooperation between law enforcement and prosecutorial investigators, Heads of investigative and prosecutorial agencies issuing internal circulars on the topic of inter-agency cooperation etc.

#### **Recommendation iv.**

19. *GRECO recommended to fully staff the Department for Combating Corruption within the Prosecutor General's Office as a matter of urgency and to immediately provide the Department with permanent and suitable premises.*
20. The authorities mention that after the visit of the GET and the adoption of the GRECO Report, the Department for Combating Corruption within the Prosecutor General's Office was provided with new premises in the summer of 2006 in the centre of the city, which allowed to increase the number of employees from 20 (at the time of the on site visit) to 34; the premises can accommodate 45 employees. Although 6 positions are still vacant in the Department, 7 junior prosecutors have been temporarily assigned to the ACD to assist with certain on-going investigations and prosecutions and, as the procedure for the recruitment of 79 new prosecutors to the prosecution service in general has just been completed, it is expected that the filling of the vacant positions in the Department for Combating Corruption takes place shortly.
21. GRECO notes that the situation of the Department for Combating Corruption within the Prosecutor General's Office has improved as regards its premises and the number of staff; although not all vacant positions have been filled yet, GRECO acknowledges that the number of employees of the Department, including those temporarily assigned to it, has increased significantly.
22. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

#### **Recommendation v.**

23. *GRECO recommended to explore possibilities, consistent with national law and public funding rules, for allocating an appropriate proportion of the assets confiscated in corruption cases to bodies specialised in fighting corruption.*
24. The authorities report that by a Presidential Decree of 16 October 2006<sup>8</sup>, "Rules on allocating part of confiscated property to the improvement of material-technical resources of law enforcement and other bodies" have been approved. These new rules allow allocating up to 30% of assets confiscated by courts and/or sold through public auctions directly on the account of the agency which conducted the case. These additional resources are to be registered as extra-budgetary funding.
25. GRECO welcomes it that the authorities of Azerbaijan have managed to introduce the kind of measures suggested in the recommendation and very much hopes that they will be used to the fullest. It thus concludes that recommendation v has been implemented satisfactorily.

#### **Recommendation vi.**

26. *GRECO recommended (i) to adopt a more proactive approach with regard to the investigation of corruption, by - inter alia - making greater use of special investigative techniques and (ii) to provide training on the use of special investigative techniques to all those involved in the detection and investigation of corruption.*

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<sup>8</sup> The Decree is available on-line ([link to the document](#))

27. The authorities claim that the approach followed by the law enforcement and prosecutorial becoming more proactive since special investigative techniques are used in an increasing number of corruption cases, allowing to identify a larger number of suspects involved in those cases. A number of joint operations conducted by the Department for Combating Corruption and the operative bodies of the police have been conducted last years<sup>9</sup>. These provided sufficient information to launch criminal investigations in respect of 5 cases in 2006 and 7 cases in 2007. As opposed to the cases processed in 2005, which were related to single perpetrators, those processed in 2006 and 2007 mostly dealt with organised groups involved in corruption. Operations were conducted both in Baku and in the regions to apprehend, in the act of a crime, officials suspected of being corrupt and to carry out simultaneous searches and seizures on the basis of insider information. Such operations are given a certain degree of publicity, as a measure of general prevention.
28. The use of special investigation techniques was addressed in the framework of the 2<sup>nd</sup> Training session of the Seminar Series on Prosecuting Corruption Offences, organised on 29-30 October 2007 by the Department for Combating Corruption in cooperation with the US Department of Justice and US Embassy in Azerbaijan. The training was provided jointly by Azerbaijan operative personnel and their American counterparts. Furthermore, the Inter-agency Working Group on Drafting and Organising Anti-Corruption Training has included special investigation techniques as a topic in the curriculum of the 2008 training for law enforcement officers (see also recommendation vii).
29. As regards the first part of the recommendation, GRECO would have welcome more conclusive and explanatory information as to whether meaningful initiatives have been taken to change the working methods of the authorities, i.e. issuing guidelines, instructions, orders concerning the more systematic use of various existing or new investigative or intelligence gathering working methods. This being said, it would appear that to some extent a more proactive approach was adopted. As for the second part of the recommendation, GRECO welcomes the extra training efforts in relation to the use of special investigative techniques at the level of the prosecutorial services, and the intention of the authorities to pursue these efforts beyond those services.
30. GRECO concludes that recommendation vi has been implemented satisfactorily.

#### **Recommendation vii.**

31. *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.*
32. The authorities indicate that an Inter-agency Working Group was established in November 2007 from the representatives of the training centres of the General Prosecutor's Office, Ministry of Internal affairs, Ministry of Taxes and Ministry of National Security. The Group adopted its Rules

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<sup>9</sup> In a major case, it was suspected that corrupt civil servants were providing support to the illegal and large scale production of medications: searches were carried out in the offices of a number of pharmaceutical entities, which allowed to seize instruments of crime and other evidence. In another case based on intelligence and insider information, large scale searches were conducted in respect of several business companies and banks involved in a banking fraud scheme.

of Procedure and prepared in January 2008 a work plan for the training activities to be conducted for law enforcement officers in 2008. It is also stressed that efforts are made to involve international as well as non-governmental organisations in the preparation and implementation of this programme.

33. GRECO takes note of the creation of a working group comprising training specialists from various institutions, in line with the first part of the recommendation. Although it would appear that the training programme has now been finalised, and as no information was made available on the concrete content of this programme, GRECO is not in a position yet to conclude that the second part of the recommendation has also been fully addressed. Furthermore, it would appear that the courses are designed only for law enforcement officers.
34. GRECO concludes that recommendation vii has been partly implemented.

#### **Recommendation viii.**

35. *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.*
36. The authorities report that the Justice Academy in 2006 and 2007 included special courses on the issues of prosecution and investigation of corruption offences in the curriculum of training for the candidates for judicial posts (judges). Similar measures are planned for the prosecutors. In addition, a series of training seminars entitled “Prosecuting Corruption Offences” was organised in September, October and December 2007<sup>10</sup>, in cooperation with the US Embassy and US Department of Justice. Overall, 127 officials from 15 ministries, public institutions and NGOs participated in these, including 40 prosecutors, 20 judges and 20 police officers. Seminar materials were produced and disseminated to the various authorities. As regards the second part of the recommendation, the Prosecutor General signed on 26 September of 2008 an order (Order N° 10/45) by virtue of which only prosecutors who received sufficiently systematic and specialised training (these will be prosecutors from the Department of public prosecution of the General Prosecutor’s Office) are entitled to handle corruption cases before the first instance

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<sup>10</sup> a) the first seminar on “**Collection of evidence and detection, arrest and confiscation of criminal proceeds**” was held on 25-27 September 2007. Prosecutors, police, tax, custom and ministry of justice officers were involved. The training seminar covered foreign experience in combating corruption, collecting and using evidence for the prosecution of corruption offences, asset recovery, detection, arrest and confiscation of illegally obtained property and assets, proof of the origin of the illegally obtained property; b) the second training seminar, on “**Detection, investigation, collection and assessment of evidence in bribery cases**”, was held on 29-30 October 2007 for members from the prosecution services, police, tax and customs authorities, the ministry of justice and NGOs; it allowed to discuss i.a. the use of special investigation techniques in the detection of corruption offences, and the detection of bribery offences on the basis of information from individuals, civil society, and state bodies; c) the third training Seminar on **Joint activity of control (inspection) and investigation bodies in detection of corruption offences and the fight against money laundering** was held on 3-4 December 2007; it involved members from various departments of the Prosecutor General’s Office, the Ministry of internal affairs, the Tax administration, the justice administration, finance bodies, the Chambers of Auditors, the Chamber of Accounts, the National Bank, the State Customs Committee, US Federal Investigation Bureau, NGOs specialised in the fight against corruption and various international organisations (UNDP, Council of Europe, OSCE, EBRD and World bank). The seminar addressed such topics as the detection of corruption offences during budgetary controls, banking and tax inspections, problems arising in the course of detection of corruption during inspection in financial institutions and the handing over of this information to investigative and prosecuting authorities.

courts, the courts of Appeal and the Supreme Court. The General Prosecutor's Office is currently liaising with the Ministry of Justice and the Judicial Legal Council to have a similar requirement introduced also for judges.

37. GRECO takes 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 information provided, however, does not make it clear whether a core number of prosecutors and judges was designated and has received sufficiently systematic and specialised training. Measures have been introduced to ensure that only prosecutors who have received specialist training should handle corruption cases in court, and similar plans are reportedly discussed in respect of judges.
38. GRECO concludes that recommendation viii has been partly implemented

#### **Recommendation ix.**

39. *GRECO recommended to consider reducing the categories of persons enjoying immunity from prosecution, including the immunity provided for election candidates.*
40. The authorities report that the Commission on Combating Corruption addressed official letters to the relevant authorities to receive their views on the possibilities for reducing the categories of persons enjoying immunity. Most of these immunities are regulated by the Constitution (for the President of the Republic, the Prime Minister, judges, parliamentarians, and the Ombudsman). The responses received from the state bodies justified their position on different grounds such as requirements of the national legislation, international experience etc. Some have proposed that the debate on this issue should continue, including with the public, and depending on the outcome, more concrete steps may be taken in the coming years. The aforementioned responses received from state bodies were examined and discussed by the Commission on Combating Corruption, comprising currently 15 members representing the executive, legislative and judicial branches. As far as election candidates are concerned, their immunity is regulated by the Election Code, which was prepared in cooperation with international organisations such as the Council of Europe and the OSCE. According to the authorities, since the immunity of election candidates had been introduced at the request of experts commissioned by these organisations, it was felt more appropriate not to remove this kind immunity. There is no information indicating that the authorities have examined the system of authorisations required for instituting criminal proceedings against prosecutors and high ranking police officers<sup>11</sup>.
41. Although GRECO does not share the reasoning underlying the decision not to abolish the immunity of election candidates, especially since Azerbaijan has reportedly received at times contradictory opinions on the issue of immunities<sup>12</sup>, it would appear that appropriate consideration was given to this matter.
42. GRECO concludes that recommendation ix has been implemented satisfactorily.

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<sup>11</sup> As indicated at para. 60 of the Evaluation Report, "criminal proceedings against prosecutors may only be instituted by the Prosecutor-General, with the consent of the Chairperson of the Supreme Court. The investigation into crimes committed by prosecutors falls within the exclusive competence of the Prosecutor-General's Office. Criminal proceedings against high-ranking police officers may be instituted only with the consent of the Prosecutor-General's Office and notification of the Minister of Internal Affairs (except for cases where a police officer has been caught in the act of a crime)".

<sup>12</sup> See paragraph 62 of the evaluation report



### **Recommendation x.**

43. *GRECO recommended to draw up guidelines containing criteria to be applied when deciding on requests for lifting of immunities, ensuring that decisions are based on the merits of the request submitted by the Prosecutor General.*
44. The authorities report that they consulted the parliament on this matter and it appears that the lifting of immunity is regulated in a more detailed manner than it appeared during the on site visit. Article 22 of the Internal Rules of the Milli Majlis (parliament) provides for the following:

#### **Article 22. The procedure of termination of the immunity of a deputy of the Milli Majlis**

In accordance with Article 90 Part II of the Constitution of the Republic of Azerbaijan, the immunity of a deputy (member) of the Milli Majlis may be terminated only by the decision of the Milli Majlis, based on a recommendation of the Prosecutor General of the Republic of Azerbaijan. The Milli Majlis reviews the recommendation on this issue within 7 days after receipt.

The Chairman of the Milli Majlis, as a rule, refers the recommendation to the Disciplinary Commission of the Milli Majlis. The Disciplinary Commission examines the recommendation and issues an opinion. The opinion expresses the decision of the Disciplinary Commission whether or not the immunity of the deputy should be terminated.

The Milli Majlis, as a rule, examines the matter in the presence of the Deputy concerned. The Members of the Parliament do not look into the merits of the charges against the Deputy concerned. Instead, they decide on whether there are sufficient grounds in the Prosecutor General's recommendation. During the session, deputies of the Parliament are entitled to address questions to the Prosecutor General of the Republic of Azerbaijan and to express their position in favour of, or against the termination of the Deputy's immunity. The Milli Majlis may terminate the immunity of a deputy with the required majority of votes.

45. GRECO takes note of the content of Article 22 of the Internal Rules of Parliament, which is aimed at specifying the procedure applicable to the lifting of the immunity and the scope of control exerted by Parliament when deciding on such matters. This provision makes it clear that the control is of a formal nature and meant to ensure that the Prosecutor General's request for lifting the immunity is sufficiently grounded. Although Article 22 of the Internal Rules of Parliament cannot be assimilated to a set of guidelines as referred to in the recommendation, GRECO accepts that the article – if properly applied in practice – comes a long way in fulfilling the purpose of this recommendation. It would appear that the practice has not been too problematic until now<sup>13</sup>.
46. GRECO concludes that recommendation x has been dealt with in a satisfactory manner.

### **Recommendation xi.**

47. *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.*
48. The authorities report that the introduction of provisions on value-confiscation in May 2006 has made the work of law enforcement bodies and courts more effective. In a major, recent criminal case in respect of the former Minister of Health and the former Minister of the Economical Development, which resulted in long-term conviction of both and a number of their accomplices

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<sup>13</sup> As indicated in the Evaluation Report, since 1995, there have been 3 requests to lift the immunity of a Member of Parliament; the immunity was lifted in each of these.

for such crimes as bribery, abuse of power, embezzlement, etc, property obtained through corruption offences, as well as monies and other precious commodities in an amount equivalent to the value of embezzled property worth of AZN 18 million (about EUR 16 million) were confiscated. Criminal assets in excess of AZN 5,5 million (about EUR 5 million) were also confiscated from various third parties on the basis of civil law provisions (according to which all transactions conducted for illegal purposes are void). Following GRECO's recommendations, a Joint Working Group was established in July 2006 at the Supreme Court and tasked with the drafting of a new version of the Penal Code. Under the new provisions on confiscation, all proceeds derived from any criminal act will be subject to mandatory and automatic confiscation, and it will become possible to apply those measures, as a general rule also in respect of criminal assets held by third parties. The Working Group has worked closely with the experts of the Council of Europe taking note of their recommendations. The draft will be submitted to the Parliament this fall.

49. GRECO takes note that the country has managed recently to apply successfully the principle of value confiscation in a major case of embezzlement and hopes that it will set a positive precedent for other future corruption cases. Azerbaijan has also initiated work to introduce third party confiscation as a general rule, without the need to obtain a conviction of the third party for receiving and independently from the amount of criminal assets. GRECO encourages the authorities to fully implement this recommendation by adopting the amendment relating to third party confiscation.

50. GRECO concludes that recommendation xi has been partly implemented.

#### **Recommendation xii.**

51. *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.*

52. The authorities indicate that the General Prosecutor's Office (GPO) has included the topic of confiscation measures in the training curriculum of all the employees of the Prosecutor's Office, including new recruits as of 2007 and training in this area, with the inclusion of interim measures, is continuing in 2008.<sup>14</sup> Confiscation was sometimes a topic addressed in the framework of the series of seminars on Prosecuting Corruption Offences, referred to earlier in this report (see paragraph 28); for instance, the seminar entitled "Collection of evidence and detection, arrest and confiscation of crime proceeds" of 25-27 September 2007 gathered members of the GPO, police, tax, custom and ministry of justice; it covered foreign experience in combating corruption, including the confiscation of illegally obtained property and assets, proof of the origin of illegally obtained property. Special courses were included in the training organised for candidate judges; these included the detection, seizure and confiscation of proceeds of crime, the application of punishments and penalties, aggravating and mitigating circumstances of corruption offences. In the period of 12-23 May 2008, within the framework of a course on "Features of court hearing in criminal process" organised by the Judicial Legal Council for judges and prosecutors, the topic of "Interim measures and confiscation of property" was presented and discussed.

53. GRECO takes note of the information provided and recalls that the ability of the authorities of Azerbaijan to target proceeds from corruption had been seriously questioned, as at the time of

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<sup>14</sup> The Training Center of the Personnel Department of the GPO holds regular trainings for staff at various levels, including district prosecutors, investigators, etc.

the on-site visit, none of the GET's interlocutors was in a position to give examples of confiscation of the proceeds from corruption. In this context, GRECO welcomes the training opportunities referred to above, but notes that in respect of judges already appointed and the police, similar training remains very limited or not provided at all. Up until now, these training efforts have not been complemented by further, more sustainable, measures such as appropriate guidelines.

54. GRECO concludes that recommendation xii has been partly implemented.

**Recommendation xiii.**

55. *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.*
56. The authorities indicate that following the Penal Code amendments in respect of the provisions on confiscation (see recommendation xi above), the Department for Combating Corruption carried out an assessment and analysed the implementation of the new legislation in April 2006. The assessment and analysis cover not only the activities of the prosecution officers, but also bodies participating in preliminary investigation of corruption-related offences. The results of the analysis reportedly showed positive trends for the seizure and deprivation of proceeds of corruption offences, but a precise assessment is nearly impossible since the current reporting system between agencies does not allow to reveal loopholes and shortcomings in the application of the new legislation. Since the beginning of October 2008, the Integrated Database of Corruption Offences (IDBCO) – see also recommendation iii – includes a special section on temporary measures and confiscation; this will likely make it easier to assess whether the new measures introduced are appropriate for the seizure and deprivation of the proceeds of corruption offences. For the time being, the Department for Combating Corruption is carrying out its own regular service reviews of the application of seizure and confiscation measures in practice. Whereas the new confiscation measures cannot be fully used yet (they do not apply retroactively and most cases adjudicated in the last two years concern criminal acts committed before the amendments of May 2006), interim measures are, reportedly, implemented quite effectively. Also, these matters are discussed on the occasion of seminars organised by the Department.
57. GRECO takes note of the practical difficulties for carrying out a detailed assessment of the mechanisms in place for the confiscation and seizure of proceeds from corruption and despite the confident attitude of the authorities, no concrete information is provided as to the real results of the assessment by the Department for Combating Corruption. GRECO also observes that this assessment was in fact conducted before the amendments introducing value confiscation and the possibility to apply confiscation to all corruption offences came into force (in May 2006, according to paragraph 81, and footnotes 48 and 49 of the Evaluation Report). Under these circumstances, it is doubtful that the research carried out in April 2006 by the Department for Combating Corruption could have had any meaningful content. However, GRECO is pleased to learn that the Department is carrying out some form of service review on an ongoing basis and that it is intended to use the future Integrated Database of Corruption Offences to carry out analytical work along the lines of recommendation xiii. As indicated earlier, this issue is all the more important since at the time of the on-site visit, none of the GET's interlocutors was in a position to give examples of confiscation of the proceeds from corruption, although it is acknowledged in Azerbaijan that corruption is a serious problem. GRECO strongly believes that the country must

proceed further – and with the necessary determination – with “collecting detailed information on the use, and failure to use, confiscation and interim measures”, as it was recommended.

58. GRECO concludes that recommendation xiii has been partly implemented.

**Recommendation xiv.**

59. *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.*
60. The authorities provide a list of various measures adopted since 2003 (i.e. 3 years before the adoption of the evaluation report) in the area of the fight against money laundering and corruption. The most recent developments include, for instance: the introduction in July 2006 of stricter customer identification requirements to the effect that customers wishing to transfer money or other valuables without opening an account have to be identified, the adoption in November 2006 by the National Bank of a new anti-money laundering and terrorist financing guidance document for the banking sector. For the time being, the draft law for the introduction of a general anti-money laundering mechanism, including the creation of a Financial Intelligence Unit, is still in Parliament. The lack of a general anti-money laundering prevention system leads, for instance, to the fact that only banks and to a lesser extent the Customs, report (to a division of the National Bank) suspicions of money laundering<sup>15</sup>, the State Committee on Securities receiving reports on all securities transactions above the USD 10,000 (EUR 8,000) threshold. In the area of training, a seminar was held in Baku in October 2006 “On establishing an FIU and implementing the relevant legislation” (organised in cooperation with the US Embassy, the US Department of Justice, the Council of Europe and the Government). A three-day seminar on various aspects of the fight against money laundering and terrorist financing was organised in 2007 for the commercial banks (in cooperation with the Financial Technology Transfer Agency - ATTF, Luxembourg). The Justice Academy included in the curriculum of newly recruited judges special training programmes on combating money laundering, and on the detection, seizure and confiscation of assets gained through money laundering offences; these programmes were mostly run by foreign experts.
61. GRECO takes note of the information provided, which was to a large extent already available at the time of the on-site visit. The situation has not changed in any significant manner ever since, and pending the entering into force of a general law on the prevention of money laundering (which is still in the adoption process), the money laundering prevention system remains rudimentary. Some interesting awareness-raising and training activities have been reported by the authorities, but they do not apply, as yet, to the many financial institutions and non-financial businesses / professions which are expected to be included in the future anti-money laundering law. Overall, it is therefore not possible to conclude that this recommendation has been addressed in a meaningful manner.
62. GRECO concludes that recommendation xiv has not been implemented.

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<sup>15</sup> In 2007, the division has received 250 suspicious transaction reports from the banks and 20 reports from the customs authorities. Out of these, 24 cases were sent to the law enforcement authorities for further investigation.

## Recommendation xv.

63. GRECO recommended to clearly identify in legislation how violations of the law 'On combating corruption' are made subject to sanctions, in order to ensure that officials fully understand their rights and obligations under this law.
64. The authorities indicate that the Law "On changes and amendments to some legislative acts of the Republic of Azerbaijan in connection with combating corruption" was adopted on 7 April 2006<sup>16</sup>. The law amended the Penal Code, the Code of Criminal Procedure, and the Law "on Rules of reviewing the citizens' applications": the offence of active and passive bribery was amended (inclusion of the request for a bribe and immaterial advantages, broader definition of "officials", increase of sanctions for passive bribery), trading in influence has become a criminal offence, the money laundering offence is at present based on the all-crime approach (and not just drug trafficking and terrorist financing), value-based confiscation was introduced, a shorter time frame for the examination of applications on corruption related violations was included.
65. On 10 October 2006, a further law was adopted, namely the law "On some amendments to the legislative acts of the Republic of Azerbaijan". It amended a series of seven other laws<sup>17</sup>, by including a new, standard provision which reads as follows: "failure to comply with the requirements of Article 5.1 [annual declaration of assets and income] and committing of the violations indicated in article 9 of the Law on Combating Corruption [corruption related offences including bribery, trading in influence, abuse of official position, certain forms of conflicts of interest etc.] may lead to disciplinary measures (if it does not create criminal or administrative liability)". Further similar amendments (for instance the law of 23 October 2007 "On some amendments to the legislative acts of the Republic of Azerbaijan for reinforcing the fight against corruption") included the same kind of provision into other pieces of legislation<sup>18</sup>. As an example, article 25 of the law "On civil service" reads as follows after the amendments:

### Article 25. Liability of Civil Servants

25.1. Non-performance or unduly performance of duties assigned to a civil servant, also non-compliance with the restrictions set forth in this Law shall be subject to disciplinary proceedings, unless otherwise provided in the law.

25.2. The following disciplinary measures may be applied to civil servants who infringe the requirements provided in article 18 of this Law:

25.2.1. reprimand;

25.2.2. reduction in salary from 5% to 30% for a period of one year;

25.2.3. transfer to the same grade but less paid position;

25.2.4. demotion;

25.2.5. downgrading;

25.2.6. deprivation of a qualification rank;

25.2.7. dismissal from civil service.

...

25.7. A civil servant shall be called to disciplinary liability (if it does not create criminal or administrative liability), if he/she fails to comply with the requirements of article 5.1 and commits one of the violations indicated in article 9 of the Law on Combating Corruption.

<sup>16</sup> The text is available on-line ([link to the document](#)).

<sup>17</sup> Law "On Police" of 28.10.1999; Law "On the Prosecutor's Office" of 07.12.1999; Law "On Civil Service" of 21.07.2000; Law "On service in state taxes bodies" of 12.06.2001; Law "On service in the prosecutor's office" of 29.06.2001; Law "On service in the ministry of internal affairs bodies" 29.06.2001; Law "On service in state courier bodies" of 08.07.2004.

<sup>18</sup> "Internal Rules of the Milli Majlis (Parliament) of the Republic of Azerbaijan" of 17.05.1996; Law "On the status of the members of the municipality" of 18.04.2000; Law "On Internal Rules of the Accounting Chamber of the Republic of Azerbaijan" of 05.03.2002; law "On service in the Ministry of Justice bodies" of 26.05.2006; law "On courts and judges".

66. The same provisions were introduced into a series of other laws (specifically applicable to other sectors of the administration)<sup>19</sup>. According to the authorities of Azerbaijan, all categories of public officials are at present covered by the same requirements.
67. GRECO takes note of the new measures adopted to clarify the relations between the law “On combating corruption” and the various other laws which provide normally for a system of (disciplinary and criminal) sanctions in case of a breach of duty. The authorities of Azerbaijan have reportedly managed to amend every law regulating a given administration/state body in order to cover all the officials of Azerbaijan<sup>20</sup>. In this regard, GRECO also takes note of the information provided that violation of the other requirements in the law ‘On combating corruption’ are subject to criminal or other sanctions, including those on gifts (article 8) which gives rise to criminal liability for passive bribery (see the explanations relating to recommendations xvii below). Although GRECO has serious doubts whether the violations of this article would in practice lead to criminal sanctions (*inter alia*, as it would be difficult to establish criminal intent and to ascertain that the public official concerned was required to act or refrain from acting in the exercise of his/her duties in return for this gift), it accepts that violations of the law ‘On combating corruption’ are now made subject to sanctions and very much hopes that this fact will ensure that officials fully understand their rights and obligations under this law.
68. GRECO concludes that recommendation xv has been dealt with in a satisfactory manner.

#### **Recommendation xvi.**

69. *GRECO recommended to (i) set up the ‘Authorized 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.*
70. As regards element (i) of the recommendation, the authorities of Azerbaijan indicated that the “Authorized Agency on Information Matters”, as provided for in the law “On the Right to Obtain Information” [which is also referred to as the Law on Access to Information], has not been established yet. As regards element (ii) and (iv), the Commission on Combating Corruption decided on 27 December 2005 (shortly after the GET’s on-site visit), that “central and local executive powers and municipalities shall organise respective trainings and courses for their employees in order to introduce requirements and objectives arising from the new law on Access to Information” and “shall improve the work of their public relations services according to the Law

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<sup>19</sup> The law of 23 October 2007 “On some amendments to the legislative acts of the Republic of Azerbaijan for the reinforcement of the fight against corruption” has included the new provisions in 1. the “Internal Rules of the Milli Majlis (Parliament) of the Republic of Azerbaijan” of 17.05.1996; 2. the Law “On the status of the members of the municipality” of 18.04.2000; 3. the Law “On Internal Rules of the Accounting Chamber of the Republic of Azerbaijan” of 05.03.2002.

The same provisions were also included in the laws “On service in the Ministry of Justice bodies” of 26.05.2006 and by the amendments of 31.12.2006 to the law “On courts and judges”.

<sup>20</sup> The scope of (art. 2 of) the “Law on combating corruption” is quite broad: « 2.1.1. persons elected or appointed to the State bodies within the procedure laid down in the Constitution and laws of the Republic of Azerbaijan ; 2.1.2. persons who represent the State bodies on the basis of special powers; 2.1.3. public servants who hold administrative office; 2.1.4. persons who exercise management or administrative functions in appropriate structural units of the State bodies, in State-owned institutions, enterprises and organizations as well as in enterprises in which the control package of shares is owned by the State; (...) 2.1.6. persons elected to municipal bodies within the procedure laid down in the legislation of the Republic of Azerbaijan; 2.1.7. persons who exercise management or administrative functions in municipal bodies”.

on Access to Information and regularly provide the public with information regarding their activities” (items 51 and 5.2). No information was made available as regards the impact in practice of this requirement. The NGO “Citizen’s Labour Rights Protection League” ([www.clrpl.org](http://www.clrpl.org)), with the administrative support of the Commission on Combating Corruption, carried out in 2006-2007 a project entitled “Promote the better implementation of Access to Information Laws”: training-seminars in 8 regions of the country were organised for local civil society structures, media and officials from local self governing and administrative bodies (about 200 persons attended). Furthermore, the Commission on Combating Corruption allocated in December 2007, following a tender, a grant of 9.000 AZN (8500 euros) to this NGO for it to implement a programme entitled “Support for the improvement of freedom of access to information”, which started in January 2008. As a result, seminars were organised in four cities (Baku, Ganja, Sumgait, Shirvan) on the rights and duties of information holders; 150 persons were involved, including representatives of state institutions, local law enforcement bodies and civil society and a handbook was prepared and distributed to the participants, together with other material. After a decision taken in September 2006, a series of training seminars were held in the Police Academy on the implementation and specificities of the provisions of the Law on Access to Information in service (members from the Prosecutor’s Office and the Ministry of Taxes also attended).

71. As regards element (iii) of the recommendation, following the adoption, on 20 October 2006, of the law “On amendments to some legislative acts of the Republic of Azerbaijan for the implementation of the law on Access to Information”, 25 laws were reportedly amended with the inclusion of specific duties for state bodies and municipalities to ensure the effective implementation of the Law “On Access to Information”<sup>21</sup>. The Law of 20 October 2006 also provides for a system of liability for non compliance with the requirements, by incorporating an additional article 181-3 in the “Code of Administrative Violations” which makes it possible to impose a fine up to 90 conventional units<sup>22</sup> on public officials, up to 25 on natural persons who are not officials, and up to 300 on legal persons i.a. for refusing to disclose “open” information, for providing deliberately false information, for refusing to process a written request for information, and for non-compliance with the rules on storage and protection of information<sup>23</sup>. It is the courts of first instance which have jurisdiction to examine complaints in this area.
72. GRECO regrets that the “Authorized Agency on Information Matters” has not been established yet and that no further information is available as to when this would be done. The information made available in respect of training of officials and awareness raising initiatives for the public at large do not allow to gain a full picture of the various actions taken to date to inform the population and the administration about the implications of the Law on Access to Information, especially as regards initiatives from the central and local public authorities themselves. Furthermore, GRECO takes note of the introduction of legal provisions dealing with the

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<sup>21</sup> For example, the amendments added the following article to the Law “On the status of the municipalities”: Article 52-1. The duty of municipalities to disclose information: Municipalities guarantee free, unrestricted and equal realization of the right to obtain information as provided by the article 50 of the Constitution of the Republic of Azerbaijan in accordance with the law on “Access to Information”. Likewise, the Law “On normative legal acts” was amended as follows: Article 18. Disclosure of the drafts of the normative legal acts: As soon as the draft normative legal act is submitted for agreement or adoption it is disclosed in the internet information resources of the drafting body. Normative legal acts may also be disclosed in mass media, official publications, libraries, public information centres, other places of public attendance where proper conditions exist for such purpose and by other means as provided by the legislation. Article 36.3. Beginning from the day of its adoption normative legal act should be disclosed in the internet information resources of the adopting body.

<sup>22</sup> 1 conventional financial unit amounts approximately to 0,9 Euro.

<sup>23</sup> The Council of Ministers by a Decision of 7 February 2006, adopted a decision on “Rules for the conservation, treatment and protection of documents” and on “Rules on the establishment of a registry, and on the conservation and updating of documents”.

accountability of officials and the administration in case of non compliance with the requirements of the Law on access to information but it remains unclear whether the system has the potential to be effective (in the absence of the “Authorized Agency on Information Matters”). GRECO can at this point only conclude that the recommendation has not been fully complied with.

73. GRECO concludes that recommendation xvi has been partly implemented.

**Recommendation xvii.**

74. *GRECO recommended to amend the provision on gifts, by lowering the value and frequency of any gifts that may be accepted by civil servants and other officials, so that they clearly do not raise concerns regarding bribes and other forms of undue advantage and to include appropriate sanctions for violations of the (amended) provision on gifts.*
75. The authorities report that the law of 7 December 2007 “On some amendments to legislative acts of the Republic of Azerbaijan” (which entered into force on 31 December 2007) has amended article 8 of the Law on Combating corruption, which applies to civil servants and elected/appointed officials, and provides for the basic regulations on gifts. According to the new provisions, gifts which may influence or appear to influence the objectivity and impartiality with which the official carries out his/her service duties, or may appear as a reward relating to his/her duties are prohibited. “Conventional hospitality” and minor gifts may be accepted, the latter only insofar as the aggregated value of gifts received repeatedly from “any natural or legal persons” during 12 consecutive months does not exceed AZN 55 (approx. 50 euros). Gifts received above this limit must be transferred into the ownership of the State authority or municipal body employing the official. Where doubts arise as to whether a gift can be accepted, the official must seek guidance from his/her supervisor or the relevant state body. The amended provisions also require that when entering into or executing civil contracts with physical and legal persons, officials are prohibited from obtaining any privileges or advantages relating to their service activity. “Illegal” material and non-material gifts, privileges or concessions are to be refused. If such an advantage is given for reasons independent from the official’s will, s/he has to inform his/her supervisor, and the advantage in question must be transferred into the ownership of the employing state body. Any violation of this article gives rise to criminal liability for the offence of receiving a bribe, as defined under Article 311, paragraph 1 of the Penal Code (as amended in May 2006).
76. GRECO takes note of the revised regulations on gifts. In particular, although Azerbaijan has not – as such – lowered the value of gifts that can be accepted (the threshold of approx. € 50 has remained unchanged), limits have been introduced to the effect that the total aggregated value of gifts acceptable over a period of 12 months does not exceed this limit. The end result goes in the direction intended by the recommendation and the limit seems at present compatible with the average salary in the public sector (€200 to € 500 at the time of the Evaluation Report). Furthermore, given the economic growth of the country (30% in 2007 alone), the amount of € 50 for the threshold represents, in practice, a lower amount today.
77. Regarding the issue of sanctions, the authorities stress that gifts which are accepted contrary to the provisions – for instance on thresholds – of the Law on combating Corruption are systematically to be considered as bribes. As already indicated before (see under recommendation xv above), GRECO has doubts whether violation of the regulations on gifts could in practice lead to criminal sanctions being imposed for a corruption offence (*inter alia*, as it would be difficult to establish criminal intent and to ascertain that the public official concerned was



required to act or refrain from acting in the exercise of his/her duties in return for this gift). In this context, it would have appreciated further information on any cases in which this has been done. Nevertheless, it accepts that sanctions have now been introduced for violations of the regulations on gifts.

78. GRECO concludes that recommendation xvii has been dealt with in a satisfactory manner.

#### **Recommendation xviii.**

79. *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.*
80. The authorities report that a draft law “On the prevention of conflicts of interest in the activities of public officials” was prepared in 2007<sup>24</sup>; it is said to cover all civil servants who fall within the scope of the Law on Combating Corruption<sup>25</sup> (however, GRECO noted that the draft specifies that it does not apply to parliamentarians, judges and employees of the Prosecutor’s office, who shall all be subject to sector specific regulations since they are not civil servants but public officials subject to special laws.). It comprises provisions with regard to situations where officials move to the private sector (art.16), including the duty not to use information acquired during the official functions (art.17). A mechanism to enforce the law is provided for, in particular the designation of a so called “Enforcement Agency”<sup>26</sup> that would be responsible for receiving reports of possible infringements, conducting enquiries in respect of officials who would not comply with the law, monitoring and assessing the overall implementation of the law and imposing sanctions (which will need to be regulated in separate, new legislation or amendments to existing laws and codes, according to art.27 of the draft law). The draft also provides for any contractual situation affected by corruption to be void and for the confiscation of illegally obtained advantages (the confiscation under the Civil Procedure Code shall be applicable, unless the proceedings reveal criminal acts in which case the procedure shall continue under the Criminal Procedure Code).
81. Following comments on the draft received from experts of the Council of Europe and the US Department of Justice, it was submitted in autumn 2007 to public consultation. The draft law is expected to be presented to the parliament during the autumn session of the parliament.

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<sup>24</sup> The text is available on-line ([link to the document](#)); the text addresses a number of issues and imposes a large variety of restrictions: “Use of official powers for private interests” (art.4), “Management of Interest in entrepreneurship (business) entity” (art.9), “Restrictions on activities that may result in conflicts of interest” (art.5); “on representing natural and legal persons” (art.6), “on public officials holding additional positions” (art.7), “on accepting additional payments” (art.8), “on the receipt of gifts” (art.10), “on business and financial relationships” (art.11), “on aids to state institutions or municipal bodies” (art.12), “on participation in state and municipal procurements as well as sales of state and municipal property” (art.13), “on the use of the resources of state institutions and municipal bodies” (art.14), “on political activities” (art.15), “after ceasing the service duties in a state institution or municipal body” (art.16), “on the use of information” (art.17).

<sup>25</sup> « 2.1.1. persons elected or appointed to the State bodies within the procedure laid down in the Constitution and laws of the Republic of Azerbaijan ; 2.1.2. persons who represent the State bodies on the basis of special powers; 2.1.3. public servants who hold administrative office; 2.1.4. persons who exercise management or administrative functions in appropriate structural units of the State bodies, in State-owned institutions, enterprises and organizations as well as in enterprises in which the control package of shares is owned by the State; (...) 2.1.6. persons elected to municipal bodies within the procedure laid down in the legislation of the Republic of Azerbaijan ; 2.1.7. persons who exercise management or administrative functions in municipal bodies”.

<sup>26</sup> Different options are envisaged: **Option 1**: the Commission on Combating Corruption under the State Council on Management of the Civil Service; **Option 2**: a newly formed independent entity; **Option 3**: an existing executive body (for instance the Commission on the issues of civil service under the President of the Republic of Azerbaijan [or “Civil Service Commission” in the present report])

82. GRECO takes note of the preparation of a draft law on conflicts of interest, which apparently includes restrictions applicable to officials' migration to the private sector. It is also intended to introduce a control mechanism. For the time being, the type of sanctions that will be applicable in case of breaches to the future law needs to be determined. The same applies to the coverage of parliamentarians, judges and employees of the Prosecutor's office who will be subject to specific regulations. This is a particularly critical matter.
83. GRECO concludes that recommendation xviii has been partly implemented.

**Recommendation xix.**

84. *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.*
85. The information provided by the authorities does not refer to new developments that would meet the requirements of this recommendation. They indicate that forms and procedures for the financial declarations are still in the adoption process and a draft, prepared by the Cabinet of Ministers, is in the final stage of approval. The information provided also suggests that for certain categories of officials, the entities responsible for receiving, and above all verifying, these declarations have not been designated or created yet.
86. GRECO notes that the system of financial declarations seems to be at an even earlier stage of development than it was assumed in the Evaluation Report (declaration forms and further implementing rules do not exist, bodies in charge of centralising the financial declarations for the respective categories of officials have not all been appointed yet). The information supplied clearly does not give an update of the current situation. It appears obvious that there have been no sizeable initiatives taken to remedy the problems identified in paragraph 116 of the report, and to implement recommendation xix.
87. GRECO concludes that recommendation xix has not been implemented.

**Recommendation xx.**

88. *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.*
89. The authorities indicate that in the draft law on "Prevention of conflict of interests in the activities of public officials", rules have been included that require civil servants to report suspicions of violations of this law. According to article 23 paragraph 4 of the draft, "Every public official shall have the obligation to report, directly, and without undue delay, to the direct superior or to the Enforcement Agency any information concerning a conduct which he/she knows or should reasonably know to involve a violation of this Law and related laws<sup>[27]</sup>. The intentional failure of a public official to make this required report shall constitute a cause for disciplinary penalty." As indicated earlier, the draft will apply to a variety of officials and different options are being

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<sup>27</sup> Article 1.1.8 of the draft law defines "Related laws" as the Law on "Code of Ethics and Conduct of Civil Servants" of the Republic of Azerbaijan and articles 7-13 of the Law "On Combating Corruption" of the Republic of Azerbaijan.

considered as to which body will act as the “Enforcement Agency” (see paragraph 80 and the corresponding footnotes). Reports of suspected violations of this Law are to be made in writing (article 23 paragraph 1) to the Enforcement Agency and where a report of suspicions is received (internally) by a public institution, this institution is required to submit the information to the Enforcement Agency unless it is a matter left to its own discretion (Article 23, paragraph 5). Reports made anonymously can only be used for general evaluation purposes (Article 23, paragraph 3). The processing and outcome of reports received by the Agency is regulated under Article 23 paragraph 2, and where the report appears to be sufficiently grounded and the offence is not a minor offence, the Agency must refer it within 10 days to the investigative authority. The draft law also enables the Enforcement Agency to recommend the management of the employing administration or the official’s superior to take any appropriate action to protect the official and reverse any act of retaliation against him/her (Article 23, paragraph 6).

90. GRECO takes note of the intention of Azerbaijan to introduce a system of indirect reporting of suspicions, via a body that will act as a filter. Needless to say, such a body will need to be granted an adequate level of independence in order to prevent undue influences on its work. GRECO notes with interest that the duty to report suspicions of infringements is quite broad since it applies to the various violations of the (administrative) corruption-prevention requirements provided for in the draft law on “Prevention of conflicts of interests in the activities of public officials”, and also to violations of “related laws”. However, despite the clarification provided under Article 1.1.8 of the draft law as regards the expression “related laws”, it is questionable whether it requires to report suspicions of criminal corruption-related offences (and which ones), and whether this is clear enough. It also remains unclear to what extent discretion is left to the administrative bodies not to forward a file to the Enforcement Agency. These aspects need clarification. GRECO is pleased to learn that a mechanism for the protection of whistleblowers is envisaged, and it hopes that the body that will finally be appointed to act as the Enforcement Agency, will have enough authority to ensure its recommendations are implemented. For the time being, the various measures contemplated are in the drafting process.
91. GRECO concludes that recommendation xx has been partly implemented.

**Recommendation xxi.**

92. *GRECO recommended to adopt a Code of Ethics for all civil servants, both at state and local level.*
93. The authorities report that a new Law on Rules of ethics for civil servants was adopted on 31 May 2007<sup>28</sup>. It deals with such matters as good behaviour, professionalism, loyalty, respect, impartiality, restrictions on the acceptance of advantages and gifts, conflicts of interest etc. It applies to all civil servants both at state and local level (Article 1). By virtue of Article 21.2.8, the head of each state body is required “to adopt normative acts within his/her authority specifying the rules of honest official conduct determined by the new law and their observance provisions, and approve them”; the authorities underline that by virtue of this provision, most of the state bodies<sup>29</sup> have adopted specific rules of conduct for their administration. However, since the Law on Rules of ethics is self-executing, its principles apply to all civil servants at local and central

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<sup>28</sup> The new law is available on-line ([link to the document](#))

<sup>29</sup> Including the State Committee For Securities, the State Committee for administration of State property, the Ministry of Finance, the Ministry of Tourism, the Ministry of Justice, the General Prosecutor’s Office, the Ministry of Ecology and Natural Resources, the Ministry of Economic development, the Ministry of Taxes, the State Customs Committee, the Ministry of Internal Affairs etc.

level even when no sector-specific code has been adopted yet. Where specific codes have been adopted, civil servants are subject both to the respective code and the general rules of ethics of 2007.

94. By virtue of the Presidential Decree of 16 August, 2007 “On the implementation of the Law on Rules of ethics for civil servants”, the Civil Service Commission to the President of the Republic of Azerbaijan ([www.dqmk.gov.az](http://www.dqmk.gov.az)) is responsible for ensuring the implementation of the Law.
95. GRECO welcomes the final adoption, through the law of 31 May 2007, of a set of ethical rules for civil servants, which include principles aimed at preserving integrity and preventing situations of corruption. Despite the requirement for the head of each state body to implement these rules through the adoption of sector-specific standards, the authorities of Azerbaijan have given assurances that the law of 2007 is self executing, and does apply to all civil servants, as the recommendation requires. In any event, a majority of administrations have reportedly implemented the new law through sector specific provisions which would reflect its content, in addition to any further requirements specifically needed for their own sector of activity.
96. GRECO concludes that recommendation xxi has been implemented satisfactorily

#### **Recommendation xxii.**

97. *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.*
98. The authorities report that until now, some training activities taking into account the issue of ethics have been organised mostly by the ministry of internal affairs: a) the ministry, in cooperation with the Council of Europe, organised in October 2006 special training seminars on ethics for the police officers in Ganja and Guba cities of Azerbaijan; b) decrees were adopted on 19 March and 4 December 2007 “On training in the education premises and other structures of the MIA”, by virtue of which the programmes of the Police Academy and the Police School for junior and low ranking officers were modified to include systematic ethics training; over 400 officers from Baku and the regions have already received training in ethics. The authorities also report that in 2007, in the Transparency International Chapter of Azerbaijan conducted training programmes with almost all the ministries. Among these, 14 training seminars organised in cooperation with the Baku Police Office and 8 seminars organised for school teachers included special courses on ethics issues. The TI chapter is pursuing these efforts in 2008 for a variety of beneficiary institutions, including ministries, courts, prosecutor’s office etc.
99. The Commission for Civil Service has, reportedly, planned to conduct continuous training programmes on the new Law on rules of ethics for civil servants. A first set of training activities will be organised (on such topics as the prevention of corruption in general, integrity issues, conflicts of interest, reporting corruption, gifts) for members from central administrative bodies and law enforcement personnel etc. Training will also be provided in the framework of a new cooperation programme called “Support to the Anti-corruption Strategy of Azerbaijan” (AZPAC)<sup>30</sup>,

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<sup>30</sup> In the framework of AZPAC, the Commission for Combating Corruption held training seminars on the Rules of ethics of civil servants on 31 January, 11 and 15-16 April 2008 for the heads of administration and human resources departments of state bodies. 60 officials from 38 state bodies took part in each seminar. On 7-8 May and 15-16 September 2008, the Commission for the Civil Service together with the Council of Europe and USAID held training seminars for human resource

launched in September 2007 by the Council of Europe (with funding from the United States Agency for International Development - USAID), which is aimed at assisting in the implementation of recommendations issued by GRECO.

100. GRECO takes note of the training efforts of the government as regards the police, and those of Transparency International as regards a broader target audience. GRECO also takes note of the plans of the Civil Service Commission, which aim at taking largely into account the content of the training addressed in the recommendation. A positive element is that the Ministry of Internal Affairs has made periodic anti-corruption training a requirement, in line with the main purpose of the recommendation (“to establish rules requiring...”). To conclude, the authorities of Azerbaijan must make sure that training in the areas covered by the recommendation becomes a genuine statutory requirement for all civil servants.
101. GRECO concludes that recommendation xxii has been partly implemented.

#### **Recommendation xxiii.**

102. *GRECO recommended to systematically gather and examine (at central level) information on complaints about breaches of ethical rules within the public administration as well as on the outcome of disciplinary proceedings in order to identify shortcomings in concrete areas of the public administration and, based on this evaluation, to take measures to make the necessary changes for improvement.*
103. The authorities report that specific provision was made under article 22 of the Law on Rules of ethics for civil servants, adopted on 31 May 2007, by virtue of which the “control body” (i.e. the Civil Service Commission<sup>31</sup> according to the implementing Presidential Decree of 17 August 2007 – see paragraphs 93 and 94 above) shall monitor the level of observance of the rules and analyse the information gathered in this regard, in order to identify shortcomings and make proposals for improvement of the situation. The Commission, which has become operational, has started to send out questionnaires and to receive reports from the state bodies. The analysis of the documents and the drafting of a first consolidated report is under way, which explains why there are no preliminary results available for the time being (for instance on the number of complaints received by the state bodies).
104. GRECO takes note of the information above. It would appear that the Civil Service Commission has begun in practice to monitor the situation as regards breaches of duty and that it has the means to perform this task effectively. Under these circumstances, GRECO accepts that the monitoring mandate conferred upon the Commission meets the requirements of the recommendation.
105. GRECO concludes that recommendation xxiii has been dealt with in a satisfactory manner.

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staff from various state bodies on “Rules of Ethic and evaluation of activities of civil servants”. The two Commissions intend to organise, in the near future, similar training events at regional level.

<sup>31</sup> The Civil Service Commission was established on 19 January 2005 under the direct authority of the President of the Republic. Its main tasks include the selection, professional development and social protection of civil servants, as well as implementing the human resource policies for civil servants, as defined in legislation.

#### **Recommendation xxiv.**

106. *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.*
107. The authorities of Azerbaijan report that a draft law was prepared by the legislative working group of the Commission on Combating Corruption. The draft provides for the criminal liability of legal persons in respect of various offences, including bribery, trading in influence and money laundering. These amendments are then to be included in the new Penal Code which is, currently, also under preparation. According to the draft prepared by the Commission, the following features of the corporate criminal liability regime are envisaged: legal persons, with the exception of State and municipalities, would be criminally liable for offences committed directly to achieve their criminal objectives or committed on their account by their statutory bodies or by their representatives; corporate liability would not prevent the liability of natural persons who have acted as perpetrators or accomplices; legal persons would be liable even where no individual offender can be called to criminal liability; the sanctions for legal persons would include fines, the dissolution of the entity, its exclusion from engaging in certain activities or participating in public tenders, the publication of the court judgment.
108. GRECO welcomes the intention of Azerbaijan to introduce a corporate criminal liability regime and the preparatory work already undertaken in this area; for the time being, legislation is still in the drafting process and training has consequently not been provided nor designed yet for the authorities referred to in the recommendation.
109. GRECO concludes that recommendation xxiv has been partly implemented.

#### **Recommendation xxv.**

110. *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.*
111. According to the authorities of Azerbaijan, the system for the establishment and registration of commercial legal persons was totally reformed following a series of decisions passed in 2007 which aim at accelerating and simplifying the process<sup>32</sup> (GRECO notes that at the time of the visit, the registration process already required just 5 days in 95% of cases).
112. The authorities recall that under the current legislation, if the sanction disqualifying a person from engaging in certain specific professions and activities is pronounced as a main or additional penalty, the court decision to be enforced is sent to the workplace or to the employer of the person convicted as well as to court officers responsible for the enforcement of sentences; the latter carry out a quarterly check of the convicted person's labour book.

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<sup>32</sup> As from 1 January 2008, procedures are to be accomplished according to the "one stop shop" principle with a unified procedure centralised and implemented under the responsibility of the Ministry of Taxation. Under the new system, the time needed for the registration of business entities was reduced to 3 days after the required documents have been submitted.

113. GRECO takes note of the information submitted, which is not really related to the issue of effectiveness of the measures in place, which is the main concern underlying the recommendation. As mentioned in the Evaluation report (paragraphs 143 and 144), “[a]s regards disqualification, Articles 42 and 46 of the Penal Code provide for the possibility to prohibit persons from holding certain posts or from engaging in certain professions and other activities. The authorities assured the GET that this sanction could also be applied to (managerial) positions within a legal person, including for corruption offences. Nevertheless, various persons interviewed by the GET, both from the Registry and from the private sector, seemed to be unaware that disqualification of persons in a leading position in a company was possible under Azeri law. The GET was told that this sanction had in fact never been imposed on persons in a managerial position in legal persons. The fact is that there is no mechanism in place to enforce a sanction of this kind, and - as already mentioned above - criminal records of the founders, representatives or persons who otherwise have a leading position in a legal person are not checked upon registration or at any moment thereafter.<sup>33</sup>” The authorities of Azerbaijan do not report any new initiative that would address the concern of the recommendation (e.g. a legal amendment that would clarify certain aspects, awareness raising measures etc.). It appears on the contrary that the procedure for the creation and registration of legal persons has been further simplified, without counter-balancing due diligence controls in respect of company founders and managers.
114. GRECO concludes that recommendation xxv has not been implemented.

#### **Recommendation xxvi.**

115. *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.*
116. The authorities provide a comprehensive list of the various recent reforms and initiatives taken to reduce risks of corruption within the tax administration, including the recent reform of the VAT collection system, the computerisation of tax declarations, training on internal inspections and on the “Code of ethics of tax officers”, the creation of hotlines to sort out tax matters but also to report complaints against tax employees<sup>34</sup>, the adoption in November 2007 of a specific action plan for the implementation of the National Strategy for Increasing Transparency and Combating Corruption (2007-2011) in the tax field. It is planned to organise for all tax employees training courses on the topic “Investigation of corruption and bribery cases in the course of tax control” by the first of December 2008.
117. GRECO takes note of the information submitted and acknowledges the efforts accomplished to date to modernise the functioning of the tax administration and to limit risks of internal corruption. However, the clear purpose of the recommendation was for Azerbaijan to increase detection by the tax employees of corruption offences committed externally i.e. kickbacks or bribes (more or less disguised) that could possibly appear in the documentation and financial records of tax payers. No measures appear to have been taken in terms of the dissemination of relevant

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<sup>33</sup> “The GET was informed that criminal records of founders or persons who have a leading position in a legal person would nevertheless be checked when this person would apply for a license under- for example - the law ‘On insurance activity’, the law ‘On banks’ and the law ‘On audits’. The GET however considered that there is a large number of activities for which a person does not need a license as required by these laws and consequently did not find this mechanism effective in practice.”

<sup>34</sup> See <http://www.taxes.gov.az/eng/elaje/index.shtml>; <http://taxes.caspel.com/antikorrupsiya/index.shtml>

guidance documents<sup>35</sup>. The training activities carried out so far do not seem to have addressed the matter either but GRECO is pleased to learn that a new training initiative on the topic addressed by the recommendation is being planned. It will be interesting to look at the results of this initiative and GRECO encourages the authorities of Azerbaijan to complement it as appropriate with other measures (e.g. guidelines).

118. GRECO concludes that recommendation xxvi has been partly implemented.

**Recommendation xxvii.**

119. *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.*
120. The authorities of Azerbaijan indicate that following a first amendment passed on 20 September 2005 (law N° 994-IIQD) with subsequent amendments of 25 December 2007 (law N° 521-IIIQD which entered into force on 16 March 2008), a new Article 247-1 was included in the Code of administrative violations, which provides for penalties in case of infringements to accounting legislation: "Violation by the accounting subject of the regulations for execution, filing the statutory financial accounts and consolidated financial reports, keeping of registration documents, stipulated by the legislation — entails imposition of the penalty on official persons<sup>36</sup> in the amount of 40-60 conventional financial units, legal entities — 100-150 conventional financial units." A draft law is being prepared to increase the sanctions (the new fines would be 10 to 15 times higher); it is expected to be adopted in the autumn session of the parliament.
121. The authorities of Azerbaijan also recall that, as already indicated in the Evaluation Report, the use of false or incomplete information in accounting records and the destruction or hiding of accounting records can entail criminal liability under Article 320 of the Penal Code (on forging, selling or using counterfeit documents) and Article 326 PC (stealing or destroying official documents). If committed by an official, civil servant or employee of a local governmental body, these offences may constitute 'service fraud' (313 PC). If this is done for the purpose of tax evasion, Article 213 PC (on tax evasion) may apply.
122. GRECO takes note of the provisions (as amended) of Article 247- 1 of the Code of Administrative Violations, to deal with possible infringements to the accounting legislation. It is still unclear whether the account offences established in Article 14 of the Criminal Law Convention on corruption (ETS 173) are punishable under the law of Azerbaijan. The Code of administrative violations refers at present in broad terms to certain general infringements defined in other provisions, but without naming them and no explanation is provided as to whether this could possibly cover the offences of Article 14 of ETS 173. It would appear that the relevant provisions are still those of the criminal legislation, since the authorities take the view that Article 320 PC (on forging, selling or using counterfeit documents) may be used to sanction the use of false or incomplete information in accounting records and the destruction or hiding of accounting records. The links between criminal law (Penal Code) and administrative law (the Code of administrative

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<sup>35</sup> Although the Evaluation Report referred, as an example, to the existence of the OECD Bribery Awareness Handbook for Tax examiners

<sup>36</sup> The authorities indicate that the concept of "officials" is quite broad and includes "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).



violations) appear to be complex and in any event, the “unlawful omitting to make a record of a payment” (Article 14 para. b of ETS 173) is still not covered (strictly speaking, the same goes for the creation of an accounting document containing false or incomplete information - Article 14 para. a of ETS 173). As regards the main concern of GRECO, namely the low level of sanctions, GRECO welcomes the intention of Azerbaijan to increase the fines for both natural and legal persons, subject to the applicability of Article 247 paragraph 1 of the Code of Administrative Violations to the account offences of Article 19 ETS 173. That said, the resulting fines will remain quite low as regards the upper maximum. For example, the maximum fine applicable to a legal person would be about the equivalent of EUR 2000; this amount is still likely not to be dissuasive and effective enough with regard to account offences committed in order to dissimulate a corrupt act, especially if committed by an important foreign or domestic company.

123. GRECO concludes that recommendation xxvii has been partly implemented.

### III. CONCLUSIONS

124. **In view of the above, GRECO concludes that Azerbaijan has implemented satisfactorily or dealt with in a satisfactory manner just over one third of the recommendations contained in the Joint First and Second Round Evaluation Report.** Recommendations ii, v, vi, ix and xxi have been implemented satisfactorily. 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. Recommendations xiv, xix and xxv have not been implemented.

125. GRECO is pleased to note that significant progress was achieved as regards such areas as the means and working methods of the anti-corruption bodies, the regulatory framework concerning public officials' rights and duties which are relevant for the prevention of corruption, including the adoption of ethical rules for civil servants in May 2007. Furthermore, there is a series of recommendations for which the implementation is under way. GRECO very much hopes that Azerbaijan will be able to finalise, as soon as possible, the projects and/or draft regulations announced as regards, in particular, the introduction of third party and value confiscation, the setting up of an agency with overall responsibility for the implementation of the law on access to information, the legal framework relating to conflict of interests and situations where public officials move to the private sector. On certain matters, measures have been taken but remain insufficient, for instance cooperation between the various agencies responsible for the investigation and prosecution of corruption offences and research into the characteristics of corruption in Azerbaijan. Finally, GRECO regrets that certain areas have received no or insufficient attention so far. It urges the authorities to persist in their efforts with a view to strengthening the anti-money laundering system and making it effective in practice. The same applies to the system of financial declarations for public officials. Finally, there remains a clear need for the authorities to adopt measures to improve the system of professional disqualifications and to make sure that sanctions in this area are effective in practice.

126. GRECO invites the Head of the delegation of Azerbaijan to submit additional information regarding the implementation of recommendations i, iii, vii, viii, xi, xii, xiii, xiv, xvi, xviii, xix, xx, xxii, xxiv, xxv, xxvi and xxvii by 30 April 2010.

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