



Strasbourg, 1 July 2005

Public
Greco RC-I (2003) 5E
Addendum

First Evaluation Round

Addendum to the Compliance Report on Luxembourg

Adopted by GRECO
at its 24th Plenary Meeting
(Strasbourg, 27 June – 1 July 2005)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Luxembourg at its 5th Plenary Meeting (11-15 June 2001). This report (Greco Eval I Rep (2001) 2E) was made public by GRECO, following authorisation by the authorities of Luxembourg on 22 June 2001.
2. Luxembourg submitted the situation report on the implementation of recommendations, in accordance with the compliance procedure, on 27 March 2003. On the basis of these reports and a Plenary debate, GRECO adopted the First Round Compliance Report (RC-Report) on Luxembourg at its 14th Plenary Meeting (7-11 July 2003). This report was made public on 5 August 2003. The RC Report (Greco RC-I (2003) 5E) concluded that four of the twelve recommendations (ii, iii, x and xii) had been implemented satisfactorily, three (v, vi and ix) had been partly implemented, and five (i, iv, vii, viii and xi) had not been implemented. GRECO therefore asked the Luxembourg authorities to provide additional information on the measures taken to comply with recommendations which have not been implemented or have been partly implemented. This additional information was sent on 4 January 2005.
3. In accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, the purpose of this Addendum to the RC Report on Luxembourg is to assess the measures taken by its authorities to implement recommendations i, iv, v, vi, vii, viii, ix and xi, in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation i.

4. *GRECO recommended awareness-raising among public officials, especially those most likely to come into contact with corrupt practices, about the need to remain vigilant, report serious suspicions in accordance with agreed procedures and contribute to the efforts of law-enforcement authorities to detect corruption offences; a particular effort should be made to convince tax authorities that they have a very important role to play in this connection and encourage them to cooperate in full with the prosecutors' offices.*
5. In the compliance report, GRECO maintained that no special attention had been paid to staff already in place and those working in vulnerable sectors, particularly the tax authorities.
6. The Luxembourg authorities have stated that an interministerial working group (of senior officials from the justice, public service and finance ministries, the tax authorities and the inspectorate general of police, and prosecutors) have drawn up proposals for the government. These proposals have led to the following measures: (i) the 2005 in-service training courses of the Ministry for the Civil Service and Administrative Reform include a course on corruption lasting some nine hours; (ii) the initial training course for police and the training programme for the police promotion examination include courses on corruption; (iii) police officers can attend seminars on corruption; (iv) senior officials (for example from the Ministry of Public Works) attend international conferences; (v) the director of the registration department has drawn up a code of good conduct for his staff (collection of VAT and other duties payable to the state, indirect taxes); (vi) a draft regulation on a code of ethics for the Luxembourg police was submitted to the Council of State for approval, though the latter considered that these rules were already embodied in various legal texts and that a simple departmental memorandum was therefore sufficient to draw attention to them; and (vii) on 1.3.2005, the Director of Taxes issued an internal memorandum forwarding within his service an "awareness-raising handbook on detecting bribes paid to public officials" based on the OECD handbook and adapted to the needs of the tax administration.

7. Based on the information supplied, GRECO welcomes the measures taken and concludes that recommendation i has been implemented satisfactorily.

Recommendation iv.

8. *GRECO recommended further regulation of the use of undercover agents to facilitate co-operation with foreign police forces in the field.*
9. In the compliance report, GRECO concluded that the recommendation had not been implemented because discussions on the introduction of specific provisions into the Code of Criminal Procedure had not yet led to any practical measures.
10. The Luxembourg authorities have announced their intention of ratifying the European Union Convention on Mutual Assistance in Criminal Matters of 29 May 2000 and of modifying their national legislation accordingly. In particular, Article 14 of the Convention reads: "The requesting and the requested Member State may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations)." An expert working party is drawing up preliminary draft legislation. The provisions on undercover agents are finalised. They would add certain general provisions to the Code of Criminal Procedure governing the use of Luxembourg or foreign undercover agents. The draft legislation could be tabled in 2005. The working Party is considering going even further with the introduction of the possibility to perform "all banks searches".
11. Based on the information supplied, GRECO welcomes the measures taken by the Luxembourg authorities to implement this recommendation and encourages the smooth adoption of the draft law prepared by the Working Party mentioned above. It notes that to date, the absence of a regulation concerning the use of undercover agents was never considered as a problem neither in domestic cases nor in cases of judicial assistance. Pending enactment of the proposed legislation, GRECO therefore concludes that recommendation iv has been partly implemented.

Recommendation v.

12. *GRECO recommended a relaxation of the restrictions on the use of anonymous witnesses to the extent permitted by Luxembourg's international human rights obligations.*
13. In the compliance report, GRECO concluded that the recommendation had been partly implemented because the relevant legislation had been submitted by the Ministry of Justice to Parliament on 20 May 2003, but the latter had not yet examined and enacted it. The draft legislation authorises investigating judges and courts to allow witnesses to give evidence fully or partially anonymously in corruption cases.
14. The Luxembourg authorities have informed GRECO that the Minister of Justice has partly withdrawn the draft legislation before parliament (regarding the provisions on anonymous witnesses) following numerous criticisms and protests, particularly from representatives of civil society. The part of the draft dealing with the protection of victims has been submitted to the State Council for opinion. It extends rights of victims, in particular with regard to access to information on the state of the procedure and on decisions of nolle prosequi. However, the authorities of Luxembourg continue to consider this matter, in particular in the context of ratification of the Criminal Law Convention on Corruption and the implementation of its Article 22 on the effective and appropriate protection of collaborators of justice and witnesses.

15. The partial withdrawal of this legislation is regrettable, as it could discourage the reporting of corruption and make it more difficult to adduce evidence of such practices. Nevertheless, GRECO welcomes the fact that consideration of this subject continues (in the context of the ratification of the Criminal Law Convention on Corruption and/or within the working group responsible for redrafting the criminal code).

16. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

17. *GRECO recommended the development of a witness-protection programme.*

18. In the compliance report, GRECO concluded that the recommendation had only been partly implemented because the legislation referred to under Recommendation v, which also provided for witness protection measures, had not yet been enacted by Parliament.

19. The Luxembourg authorities have informed GRECO that the Minister of Justice has withdrawn the draft legislation from Parliament because of civil society opposition. As mentioned before (under Recommendation v), the part of the draft dealing with the protection of victims has been submitted to the State Council for opinion and the authorities of Luxembourg continue to consider this matter, in particular in the context of ratification of the Criminal Law Convention on Corruption and the implementation of its Article 22 on the effective and appropriate protection of collaborators of justice and witnesses.

20. Based on the information at its disposal, and similarly to Recommendation v, GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

21. *GRECO recommended the creation of further incentives for persons involved in criminal offences who wish to collaborate with the judicial authorities.*

22. In the compliance report, GRECO concluded that recommendation vii had not been implemented because the working group responsible for redrafting the criminal code and examining additional incentives for those wishing to collaborate with the judicial authorities had not completed its work.

23. The Luxembourg authorities have indicated that the various working groups considering this issue (as mentioned before under Recommendation v) should make known their conclusions in 2005.

24. Based on this information, GRECO notes that the practical measures recommended have not yet been taken. However, it considers that the findings of the interministerial working group referred to in paragraph 6 and the continued discussions in the justice ministry should contribute to a favourable outcome to this recommendation.

25. Based on the information at its disposal, and similarly to Recommendation v, GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

26. *GRECO recommended improving co-operation between the tax and the prosecuting authorities by allowing tax officials to assist prosecutors in a more active manner in the case of corruption offences.*

27. In the compliance report, GRECO concluded that recommendation viii had not yet been implemented.
28. The Luxembourg authorities have indicated that they have no reservations about allowing tax officials to assist prosecutors in corruption cases in a more active manner (see recommendation i). However they acknowledge that more needs to be done in practice to encourage co-operation between tax and judicial authorities. They also state that the ombudsman, set up under legislation of 22 August 2003, has recommended that the government prepare draft legislation to reform paragraph 22 of the general tax law, setting out precisely which offences justify disclosure to the judicial authorities of information covered by tax confidentiality.
29. Based on the information available, GRECO welcomes the positive steps to allow tax officials to assist prosecutors in corruption cases. It notes that the objectives in the recommendation have been taken into account but additional practical measures are still possible, particularly through a continuation of the discussions taking place in government. GRECO also welcomes the ombudsman's recommendation, which if implemented could help to clarify the tax authorities' role in and contribution to combating corruption.
30. Based on the information at its disposal, GRECO concludes that recommendation viii has been dealt with in satisfactory manner.

Recommendation ix.

31. *GRECO recommended studying ways of reconciling the protection of private life with the need for some public scrutiny over the manner in which closed corruption cases have been dealt with, and the adoption of guidelines for the application of the "opportunity-of-prosecution" principle in corruption-related cases.*
32. In the compliance report, GRECO concluded that recommendation ix had only been partly implemented.
33. The Luxembourg authorities have stated that the laws to protect journalists' sources and to set up an ombudsman's office were passed on 8 June 2004 and 22 August 2003 respectively. These changes contributed to the debate on retrospective public scrutiny of corruption inquiries and on whether guidelines should be introduced on the application of the principle of discretionary prosecution, i.e. leaving the decision to the public prosecutor's discretion. However, the limited number of cases concerned did not currently justify special directives on the application of this principle to the offence of corruption. In a recent case, the prosecution service launched an in-depth investigation due to rumours concerning alleged unlawful links between a politician and a real estate promoter. In the absence of any indication of guilt, the prosecution decided that no further action would be taken and informed the public through a press release.
34. GRECO takes note of the information provided. The debate on public scrutiny of corruption cases could be continued and supervision strengthened due, on the one hand, to the passing of the aforementioned legislation, and on the other hand, to the implementation of a forthcoming more coherent policy and legislation to improve access to information (see the Second Round Evaluation Report on Luxembourg). GRECO notes with satisfaction that the Luxembourg authorities are ready to draw up guidelines on the principle of discretionary prosecution in corruption cases if these are justified in practice, in particular if the number of such cases increases. It considers that, to the extent that decisions to discontinue corruption cases are

recorded in writing, giving reasons, and, as far as possible, this information is open to public scrutiny, the recommendation may be deemed to have been dealt with in a satisfactory manner.

35. In the light of the foregoing, GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

Recommendation xi.

36. *GRECO recommended the establishment of a specialised anti-corruption law-enforcement organ that would centralise and treat in a systematic manner relevant information coming from different sources and would ensure in general that a sufficiently proactive approach is taken towards the detection of corruption.*
37. In the compliance report, GRECO concluded that recommendation ix had not been implemented.
38. The Luxembourg authorities have stated that the justice ministry will ask the interministerial working group referred to in paragraph 6 to meet relevant departments and sectors at least once a year to discuss any problems that might arise concerning corruption, and in particular to follow up any recommendations from international bodies such as GRECO.
39. Concerning the application of the recommendation by the police, they refer to an internal memorandum of the director general of police, which states that *1/ the Luxembourg judicial police section is responsible for centralising information relating to police anti-corruption enforcement activities; 2/ the general criminal section of the judicial police carries out judicial investigations, unless the specific circumstances of the case make it advisable to call on another section such as those responsible for international judicial co-operation, organised crime or anti-laundering, and without prejudice to the judicial authorities' power to assign regional cases of lesser importance to the relevant regional police authorities; 3/ its responsibility for centralising information on corruption enables the judicial police section to monitor and assess the scale of the problem and inform its own ministry and the judicial authorities, as appropriate, of any shortcomings identified.*
40. GRECO takes note of the information provided. It welcomes the fact that the Luxembourg judicial police are specialising more in corruption matters. Moreover, so long as it has sufficient resources, the formalisation of the interministerial working group could assist consideration, in conjunction with relevant departments and sectors, of potential problems linked to corruption and the development and implementation of a determined policy to identify it and root it out.
41. In the light of the foregoing, GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

III. CONCLUSION

42. In addition to the conclusions in the first compliance report on Luxembourg and in the light of the above comments, GRECO concludes that Luxembourg has implemented or dealt with in a satisfactory manner Recommendations i, viii, ix and xi. Recommendations iv, v, vi and vii have been partly implemented. GRECO welcomes the progress made since the adoption of the Compliance Report on Luxembourg but regrets that Recommendations iv, v, vi and vii have not yet been fully implemented. Consequently, GRECO encourages Luxembourg to adopt effective and appropriate legislation with regard to the use of undercover agents, anonymous witnesses and protection of collaborators of justice and witnesses.

43. The adoption of the present Addendum to the Compliance Report terminates the First Evaluation Round compliance procedure in respect of Luxembourg.