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First Evaluation Round

Compliance Report on Luxembourg

Adopted by GRECO
at its 14th Plenary Meeting
(Strasbourg, 7-11 July 2003)

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. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Luxembourg submitted their Situation Report (RS-report) on the measures taken to follow the recommendations on 27 March 2003.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Denmark and Lithuania to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were M. Flemming DENKER (Deputy Director of the Public Prosecutor for Serious Economic Crime) on behalf of Denmark and Mr Jurgis JURGELIS (Advisor to the Director General of the State Security Department) on behalf of Lithuania. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 14th Plenary Meeting (7-11 July 2003)
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of Luxembourg and, wherever possible, their effectiveness in order to comply with the Recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 12 recommendations to Luxembourg. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *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;*
8. The authorities of Luxembourg indicated that the National Institute of Public Administration (INAP) provides public service trainees with information about the implications of the existing anti-corruption provisions stemming from the statute applicable to civil servants, the need to comply with these provisions, the possible disciplinary proceedings in case of non compliance etc. It was also indicated that the Ministry for the Civil Service also intends to include in the INAP courses a special topic concerned with penal aspects of corruption, including corrupt practices and the obligation to report them, as laid down in Article 23 of the Code of Criminal Procedure. Additional information provided upon request of the rapporteurs indicates that the INAP itself is currently examining the possibility of offering in the future, specific courses dealing with "administration and corruption" as part of the in-house training programme.

9. GRECO took note of the information provided by Luxembourg and observed that, for the time being, no special attention has been paid to staff already in place and those working in vulnerable sectors. GRECO welcomed the current projects which are at an early stage and encouraged the authorities to finalise such projects. As regards the second part of the recommendation, GRECO observed that no initiatives have been taken as to specific measures targeting tax authorities.
10. GRECO concluded that recommendation i. has not been implemented.

Recommendation ii.

11. *GRECO recommended the compilation of detailed statistics on crime detection, prosecution and punishment, which will assist in a proper evaluation of the response of the law-enforcement and criminal-justice mechanism to the threat of corruption.*
12. The authorities of Luxembourg indicated that the Ministry of Justice has invited the General State Prosecutor to draw up annual statistics on the types of offences covered by Articles 245 to 253 of the Criminal Code, starting in 2002, in accordance with the criteria in the GRECO recommendation.
13. GRECO took note of the information provided by the authorities of Luxembourg and noted that most corruption-related offences would be included in the statistics (Articles 240 on misappropriation and 243 on *concussion* would, however, not be included). Additional information indicates that the "invitation" of the Ministry is of a mandatory nature.
14. GRECO concluded that recommendation ii. has been implemented satisfactorily.

Recommendation iii.

15. *GRECO recommended to allow for the surveillance of communications in all inquiries into corruption offences*
16. The authorities of Luxembourg provided the following information: the Act of 15 January 2001 approving the Convention of 21 November 1997 of the OECD on combating bribery of foreign public officials in international business transactions and relating to misappropriation, destruction of documents and securities, dishonest receipt of money by a public officer (*concussion*), unlawful taking of interests and bribery, and amending other legal provisions has made corruption a criminal offence. The applicable sanctions have been increased so that special surveillance methods (including the surveillance of communications) are now applicable to all those offences since the level of sanction they carry meets the requirements for authorising the use of such methods (maximum penalty of at least 2 years imprisonment).
17. GRECO concluded that recommendation iii. has been implemented satisfactorily.

Recommendation iv.

18. *GRECO recommended to further regulate the use of undercover agents to facilitate co-operation with foreign police forces in the field.*

19. The authorities of Luxembourg indicated that there are still no special rules governing the use of undercover agents in the legislation, but that despite this, the prosecutor's department may authorise their use as appropriate. They also indicated that there is no reason to believe that further legislation on this subject would constitute an improvement on existing practice. It was stressed, however, that consideration was being given to the opportunity of introducing specific provisions in the Code of Criminal Procedure to solve this problem.
20. GRECO took note of the information provided and welcomed that some consideration is currently being given to the issue.
21. In the absence of more concrete undertakings, GRECO concluded that recommendation iv. has not been implemented.

Recommendation v.

22. *GRECO recommended to relax the restrictions on the use of anonymous witnesses to the extent permitted by Luxembourg's international human-rights obligations.*
23. The authorities of Luxembourg reported that preliminary draft legislation to strengthen the rights of the victims of criminal offences and improve witness protection was about to be approved by the Government and will then be submitted to Parliament. In particular, under certain conditions and for certain types of offence, including corruption offences, it will authorise investigating judges and courts to allow witnesses to give evidence fully or partially anonymously. Additional information provided indicates that the text was submitted by the Ministry of Justice to Parliament on 20 May 2003.
24. GRECO took note of the information provided and concluded that recommendation v. has been partly implemented.

Recommendation vi.

25. *GRECO recommended to develop a witness-protection programme.*
26. The authorities of Luxembourg reported that as well as authorising the full or partial anonymity of certain witnesses, the aforementioned draft legislation (see recommendation v.) also offers witnesses certain alternatives when giving evidence; under certain conditions witnesses could be authorised to give evidence from remote locations. The authorities of Luxembourg underlined that the country's geographical situation would make it unrealistic to envisage a national witness protection programme such as it exists in some other countries, involving changes of residence or identity. The provisions were therefore considered to offer an adequate arsenal of protection measures, taking into account that witnesses may also benefit from close police surveillance.
27. GRECO took note of the information provided, in particular that the legislation (including the programme) had not yet been adopted by Parliament.
28. GRECO concluded that recommendation vi. has been partly implemented.

Recommendation vii.

29. *GRECO recommended to create further incentives for persons involved in criminal offences who wish to collaborate with justice.*
30. The authorities of Luxembourg indicated that a working group that is reviewing the Criminal Code has been asked to study relevant incentives that might be authorised.
31. GRECO took note of the on-going consideration to possible incentives for collaborators of justice. The discussions are still at an early stage and pending the communication of more concrete information as to the outcome of the working group's conclusions and proposals.
32. GRECO concluded that recommendation vii. has not yet been implemented.

Recommendation viii.

33. *GRECO recommended to improve the 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.*
34. The authorities of Luxembourg reported that the Government attaches great importance to the strict application of Article 23 of the Code of Criminal Procedure, under which any holders of official office or civil servants who become aware in the course of their duties that a criminal offence has been committed are required to inform the state prosecutor immediately and pass on any relevant information, reports or other documentation. Tax officials and the prosecutor's department already co-operate through the transfer of files to the latter whenever a tax official considers that a criminal offence has been committed.
35. GRECO took note of the information provided. It appears that the findings reflected in the evaluation report as regards the need to review the role of the tax authorities and to achieve greater involvement on their side and support in the detection and evidencing of non-fiscal offences, has received little echo so far (see also recommendation i). GRECO was of the opinion that this issue should be reconsidered.
36. GRECO concluded that recommendation viii. has not been implemented.

Recommendation ix.

37. *GRECO recommended to study 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 to adopt guidelines for the application of the opportunity-of-prosecution principle in corruption-related cases.*
38. The authorities of Luxembourg indicated the following:
 - the Chamber of Deputies - which has the right of inquiry - recently established a Parliamentary committee of inquiry into alleged malfunctioning of the international transport system, based on certain facts that had come to light following requests from abroad for judicial assistance in criminal cases. This led to the reopening of proceedings in a corruption case against a senior

official concerning the awarding of international transport licences. Judgment was recently handed down;

- the courts are perfectly aware of the serious nature of corruption and under the formerly applicable legislation, corruption was liable to relatively light penalties, in contrast to the system introduced by the January 2001 Act;
- a recent case has been the subject of extensive media comment and is being closely monitored, in view of the public interest and its political implications.
- the General State Prosecutor's Office has been asked to look at the question of guidelines for the application of the opportunity-of-prosecution (i.e. discretionary) principle in corruption-related cases. However the General Prosecutor does not consider it necessary to issue a directive aimed at harmonising prosecution and discontinuance of proceedings policies as there is only a limited number of corruption cases and there have not been any significant divergences in prosecuting departments' policies in this area in the past. It should be noted that in corruption cases, as in any others, when it is decided to apply the opportunity-of-prosecution, or discretionary, principle this has to be officially recorded in the case file, with the reasons for the decision. The General State Prosecutor's Office considers that the application of the discretionary prosecution principle would only need to be clarified if the number of corruption cases increased significantly;
- draft legislation is currently under consideration to amend press law to strengthen the right to protection of sources, as demanded by the press;
- a Parliamentary bill that may shortly be voted into legislation provides for the introduction of a mediator.

39. GRECO took note of the information provided as to recent developments (January 2001 Act extending the catalogue of corruption offences and increasing the penalties, some recent events and the reaction of Parliament and media). Whilst recognising the very important role of Parliamentary inquiries and the media (whose role would be enhanced with the possibility to protect their sources), GRECO considered that the overall balance between non-openness of society, confidentiality of police and prosecution files etc. on the one hand, and the control by the (discretionary) prosecution, and by Parliament and the media on the other hand is not satisfactory. Whilst considering that the limited number of corruption cases - in the absence of statistics and in the context of confidential police and prosecution files is an insufficient argument, GRECO observed that some encouraging changes are underway and that these deserve to be supported by additional measures.

40. GRECO concluded that recommendation ix. has been partly implemented.

Recommendation x.

41. *GRECO recommended to give the Court of Auditors adequate staff.*

42. The authorities of Luxembourg indicated that the Act of 1 August 2001 on the organisation of the staffing of the Court of Auditors gives the Court of Auditors the necessary staff, quantitatively and qualitatively, to carry out its duties. Moreover, 9 higher grade staff had been recruited. The authorities of Luxembourg also added that the Court may use external experts and that, as from 1 August 2001, part of the Court's work (*ex ante* controls on payment orders) had been transferred to the Directorate of Financial Control. As a consequence, the Court only carries out sample-based, *ex post* controls at present.

43. GRECO took note of the information provided and concluded that recommendation x. has been implemented satisfactorily.

Recommendation xi.

44. *GRECO recommended to create 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.*
45. The authorities of Luxembourg indicated that the judicial police service was presently being reorganised and that the possibility of giving a central anticorruption competence to one of the existing sections or a newly created section might be considered.
46. GRECO took note of the promising possible specialisation on corruption offences within the judicial police in the future and invited the authorities of Luxembourg to submit additional information on this issue.
47. GRECO concluded that recommendation xi. has not been implemented.

Recommendation xii.

48. *GRECO recommended, pending the creation of such an organ [see recommendation xi above], to ensure that the State Prosecutors' offices, the investigating judges' offices and the judicial-police section have adequate staff (the expected demands of the entry into force of the additional protocol on international assistance need to be taken into account).*
49. The authorities of Luxembourg reported that the Act of 24 July 2001 establishing a multi-annual judicial recruitment programme had led to a significant increase in judicial staffing, including state prosecutors and investigating judges. For example, since its enactment the State Prosecutor's Department had received three additional judges and it was planning to appoint another three before the end of 2004/05. Two more investigating judges had been appointed and one more was scheduled for 2004/05. Internal police directives require investigations into corruption offences to be handled by the general crime section. However as corruption is often associated with organised crime, in practice most of the relevant inquiries are conducted by the organised crime section. The Act of 31 May establishing the Grand Ducal Police Force and the General Police Inspection Department had led to a significant increase in the investigation force - from 100 to 141 - and strengthened the arrangements for investigating and combating organised crime and crime in general.
50. GRECO took note of the information provided and concluded that recommendation xii. has been implemented satisfactorily.

III. CONCLUSIONS

51. GRECO reached the overall conclusion that Luxembourg has implemented, at least partly, most of the recommendations of the First Round Evaluation Report.

52. Recommendations ii., iii., x., xii. have been implemented satisfactorily. Recommendations v., vi. and ix. have been partially implemented. Recommendations i., iv., vii., viii., xi. have not been implemented.
53. GRECO invited the authorities of Luxembourg to submit to it additional information as well as, where appropriate, the supporting legislation relating to the implementation of recommendations i., iv., vii., viii and xi.
54. GRECO invited the Head of the delegation of Luxembourg to submit an additional report concerning the information required by paragraph 53 by 31 December 2004.