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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Luxembourg

Adopted by GRECO
at its 38th Plenary Meeting
(Strasbourg, 9-13 June 2008)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Luxembourg at its 18th Plenary Meeting (14 May 2004). This report (Greco Eval II Rep (2003) 5E), which contains 13 recommendations addressed to Luxembourg, was made public on 30 June 2004.
2. Luxembourg submitted the Situation Report required under the GRECO compliance procedure on 4 April 2006. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC-Report) on Luxembourg at its 28th Plenary Meeting (12 May 2006). The latter report was made public on 24 May 2006. The Compliance Report (Greco RC-II (2006) 7E) concluded that recommendations vi and x have been implemented satisfactorily. Recommendation iv has been dealt with in a satisfactory manner. Recommendations i, ii, iii, v, vii, viii, ix, xii and xiii have been partly implemented, and recommendation xi has not been implemented; GRECO requested additional information on their implementation. This information was provided on 17 December 2007.
3. The purpose of this Addendum to the Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations i, ii, iii, v, vii, viii, ix, xi, xii and xiii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendations i and ii.

4. *GRECO recommended that the law be changed to permit, where appropriate, the confiscation of assets of an equivalent value to the proceeds of any corruption offence, including private corruption, and that this be encouraged in judicial practice. (i)*
5. *GRECO recommended that the law be changed to permit, where appropriate, the seizure of assets of an equivalent value to the proceeds of corruption and that this be encouraged in judicial practice. (ii)*
6. In the compliance report, GRECO concluded that recommendations i and ii have been partly implemented because the confiscation and seizure of assets of an equivalent value to the proceeds of any corruption offence, notably private corruption, was not yet expressly provided for in national law, and Bill Nos. 5019 on confiscation and 5527 on the procedure for seizure of immovable assets had not yet been enacted.
7. The Luxembourg authorities now point out that following Parliamentary enactment of Bill No. 5019, the Confiscation Act (1 August 2007) was published in Mémorial A No. 136 (Official Gazette of Luxembourg), coming into force on 13 August 2007. According to the authorities, this Law amended Articles 31 and 32-1 of the Penal Code so that Article 31 of the Code, viz the legal provision on confiscation applicable to any offence classified as a crime or minor offence, now, unless otherwise provided, extends the powers of confiscation to the proportion of the convicted person's assets corresponding to the value of the object or the direct or indirect proceeds of the offence, or constituting any kind of pecuniary advantage deriving from the offence, including income from these assets, where the latter cannot be traced for confiscation (paragraph 4); the inclusion of this

provision in the General Section of the Penal Code – Book I, means that it is generally applicable, and so it will be implemented in respect of the offences set out in the new Articles 310 and 310-1 of the Penal Code (active and passive bribery offences in the private sector).

8. Where seizure of assets is concerned, the authorities recall that under Article 31 of the Code of Criminal Procedure if something can be confiscated it can also be seized. They point out that in view of the aforementioned entry into force of the Confiscation Act, the seizure of assets of an equivalent value to the proceeds of a corruption offence is now possible. Furthermore, they explain that further to the enactment of Bill No. 5527 by Parliament, the 13 December 2007 Act governing the procedure for seizure of immovable assets also entered into force on 20 December 2007, when it was also published in the *Mémorial A 227*.
9. Lastly, the authorities point out that when the Confiscation Act came into force on 1 August 2007, the Public Prosecutor's Office, which is responsible for training magistrates, incorporated the new and future legal provisions into its programme for young judicial assistants (and future magistrates) in the form of a presentation. The Grand Ducal Police Academy also runs an annual three-day training course for between 150 and 170 participants (police inspectors working in the *Service de Police Judiciaire* (SPJ), members of the *Service de Recherche et d'Enquête Criminelle* (SREC – criminal investigation department) and the *Service Régional de Police Spéciale* (SRPS)- regional special branch); the 2008 training course will deal with the question of seizures, concentrating on the new 1 August 2007 Confiscation Act, which adds a new dimension in this field (Articles 31 and 32-1 of the Penal Code) relating to special confiscation procedures (Article 31-3 of the Code of Criminal Procedure).
10. GRECO takes note of the information provided and welcomes the entry into force of the 1 August 2007 Act on confiscation and the 13 December 2007 Act on the procedure for the seizure of immovable assets facilitating the confiscation and seizure of assets of an equivalent value to the proceeds of any corruption offence, particularly private corruption. GRECO also notes that a number of training courses are dispensed on these new legal provisions, and invites the authorities to step up their efforts to provide even more training in this field.
11. GRECO concludes that recommendations i and ii have been implemented satisfactorily.

Recommendation iii.

12. *GRECO recommended that appropriate training programmes be established for the relevant authorities on the identification, seizure and confiscation of the instruments and proceeds of corruption or of assets of equivalent value.*
13. GRECO recalls that according to the compliance report the recommendation has only been partly implemented because there has been no real improvement in the training dispensed to the competent authorities in matters of identification, seizure and confiscation of proceeds of corruption since the adoption of the Second Round Evaluation Report, whereas this field of crime and the financial arrangements used to conceal its profits are becoming increasingly complex, the existing training courses were still very sporadic and attendance was mostly optional.

14. The authorities now state that civil servants and State officials are reminded of their obligations in terms of fighting corruption via training courses dispensed by the National Institute of Public Administration (INAP), including a course on civil service regulations which comprises a special section on the civil servant's general duties and anti-corruption provisions, as part of the further training dispensed to civil servants and State officials; seminars on the ethics and integrity of civil servants as part of the initial training programme; and a special course on the corruption phenomenon and the national and international legal framework for combating corruption. Furthermore, the authorities point out that some departments, especially Government Buildings, have expressed the desire in 2008 to give their departmental staff (architects, engineers, technicians and administrative staff) access to the INAP training on the corruption phenomenon. This facility is now to be provided, and the new Committee for the Prevention of Corruption ("COPRECO") will be discussing the introduction of special training courses at its meetings.
15. GRECO notes that the training activities reported by the authorities do not specifically relate to the identification, seizure or confiscation of the instruments and proceeds of corruption or assets of an equivalent value, but instead deal with the civil servant's duties and obligations in combating corruption in general. Even so, GRECO recalls that in connection with recommendations i and ii the authorities pointed to training activities which include the new legal provisions on confiscation and seizure of assets of an equivalent values to the proceeds of corruption. GRECO considers that these measures represent a step in the right direction but that they fail to cover the whole issue of identification, seizure and confiscation of the instruments and proceeds of corruption or of assets of an equivalent value to such proceeds. Consequently, GRECO cannot conclude that recommendation iii has been completely implemented. GRECO invites the authorities to organise additional training activities under an appropriate, complete and effective training programme in this field.
16. GRECO concludes that recommendation iii has been partly implemented.

Recommendation v.

17. *GRECO recommended that explicit references to the risk of corruption be added, in an appropriate manner, to the civil service statute and that codes of conduct concerning the risks of corruption be introduced, at least in potentially vulnerable areas of government.*
18. In the Compliance Report, GRECO concluded that recommendation v had only been partly implemented because many public officials were not yet subject to appropriate rules of ethics. Accordingly, it strongly recommended active pursuit of the work being done by the Ministry for the Civil Service and Administrative Reform and welcomed this new overall policy of ensuring that all public officials (not just civil servants), including those employed in public utilities and public sector companies, are governed by appropriate ethical standards highlighting the risks of corruption and providing practical guidance regarding the conduct expected of staff in the light of such risks.
19. The authorities now state that the COPRECO, which is responsible for implementing the Criminal Law Convention on Corruption and GRECO's recommendations, is intending to focus its forthcoming work on the fact that many public officials are not yet subject to appropriate rules of ethics. They specify that at its 10 April 2008 meeting COPRECO examined a Code of Integrity geared to alerting its officials both in Luxembourg and abroad to the problems of corruption. Moreover, the authorities point out that the Ministry for the Civil Service and Administrative Reform has prepared a circular and

a draft Code of Ethics which also cover the subject of corruption, but that the Ministry is proposing broad consultation of the departments most exposed to ethical issues before the final adoption of the Code of Ethics by the Government. The authorities add that the Ministry for Public Works is planning to draw up its own Code of Ethics on public procurement in the near future.

20. GRECO takes note of the information supplied on the work being carried out by the Ministry for the Civil Service and Administrative Reform on a circular and a draft Code of Ethics and the work to be conducted by COPRECO and the Ministry for Public Works in this field. Nevertheless, GRECO notes that none of these projects have yet been completed and that consequently many public officials are still not covered by appropriate ethical rules.
21. GRECO concludes that recommendation v has been partly implemented.

Recommendation vii.

22. *GRECO recommended that conflicts of interest be subject to stricter regulation, by limiting or, where appropriate, completely withdrawing the right to be engaged in an ancillary occupation, and possibly by organising the rotation of staff who are most exposed to the risk of corruption; that there should also be clearer regulation of gifts to officials, whose statute should draw particular attention to the risks they incur in accepting gifts and the relevant criminal sanctions and, finally, regulate, in order to prohibit, "pantouflage" (i.e. the improper movement of public officials to the private sector).*
23. GRECO recalls that its Compliance Report acknowledged that several new measures had been introduced, including the steps taken by the Luxembourg and Diekirch State Prosecutors with the aim of reminding the heads of certain administrations of the obligations incumbent on their staff in the fields of ethics and the fight against corruption, as well as the study launched by the Ministry for the Civil Service and Administrative Reform with a view to adopting a comprehensive and systematic approach to corruption problems within the civil service. GRECO encouraged the active continuation of the work being done by the Ministry for the Civil Service and Administrative Reform in all the fields mentioned in this recommendation, and concluded that the latter had been partly implemented.
24. The authorities point out first of all that the work of introducing a comprehensive and systematic approach to corruption problems in the civil service is continuing at the Ministry for the Civil Service and Administrative Reform, and secondly that Bill No. 5795 provides for adding a provision to Article 15 of the General Civil Service Regulations (16 April 1979 Act amended establishing the General Civil Service Regulations); they explain that the provisions of this Article already require civil servants who are liable to have an interest in a given case to inform their superior of this situation, and that the Bill requires the superior, in such cases, to transfer the dossier to a different member of staff in his/her department. The authorities specify that the *Conseil d'Etat* has issued a positive opinion on this Bill, which might be enacted and come into force in 2008.
25. GRECO takes note of the information provided on the continued work on a comprehensive and systematic approach to corruption problems within the civil service, complemented with a Bill geared to ensuring that where a civil servant is liable to encounter a conflict of interest in a given case, the latter is transferred to a different staff member in the same department. Nonetheless, GRECO notes that these plans have not yet been completed and that no significant progress has been mentioned in the field of preventing conflicts of interest.

26. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

27. *GRECO recommended that the rules governing the transparency of administrative activities be extended, involving in particular guaranteed access to public documents, and that responsibility for monitoring compliance with these rules be assigned to an appropriate authority.*

28. GRECO recalls that in the Compliance Report it took note of a preliminary draft Bill of the Ministry of State on access to public documents which was currently being discussed internally, and that it concluded that this recommendation had been partly implemented, inviting the authorities to speed up the discussion and adoption of the above-mentioned preliminary draft Bill and reminding them that the recommendation also attached importance to empowering an appropriate authority to supervise compliance with these rules, so as to guarantee their effective application.

29. The authorities point out that the Ministry of State has continued working on the aforementioned preliminary draft Bill, which will be submitted to the Cabinet after the requisite amendments currently being effected further to the opinions issued by the departments involved. They stress that the preliminary draft Bill sets out the principle of general access to all documents held by the administrative authorities, State departments, local authorities and public establishments – subject to specific restrictions based on such fundamental interests as national security, public safety, prevention and investigation of criminal activities, protection of private life, protection of commercial and other economic interests, equality of parties to judicial proceedings, economic policy, confidentiality of deliberations between public authorities and the government vis-à-vis excessive and wrongful demands, on simple written request without the need to prove any specific interest. The authorities also state that the preliminary draft Bill provides for setting up a Commission on access to administrative documents, dealing with complaints prior to judicial appeals as part of a fast, inexpensive procedure for citizens, who will be able to submit their request to the Commission without recourse to a lawyer. Lastly, the authorities explain that the texts of Bills accompanied by an explanatory memorandum and a commentary on the various articles, as well as consultative opinions, notably from the *Conseil d'Etat*, are currently published in hardcopy and on Internet, and that the minutes of statements made in public sitting in Parliament are published in writing and distributed to the public at large.

30. GRECO has often pointed out that transparent administrative functioning, including access to public information, is a vital part of modern governance, which is also deemed decisive in preventing and detecting corruption. Consequently, GRECO welcomes the current finalisation of the preliminary draft Bill on access to public documents, which lays down the principle of general access to all documents held by the public administration and also provides for setting up a Commission on access to administrative documents to deal with complaints prior to judicial appeals. GRECO considers that the finalisation of this Bill is a major step forward, and encourages the authorities to continue their efforts so that the Bill can be enacted as soon as possible.

31. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

32. *GRECO recommended that public officials be provided with information concerning the implications of Article 23 of the Code of Criminal Investigation (obligation to report), which would assist the fight against corruption, and the consequences in cases of non-compliance.*
33. GRECO points out that according to the Compliance Report the measures reported have been taken by the Luxembourg and Diekirch State Prosecutors and by the Director of the *Administration de l'Enregistrement et des Domaines*, and that the Ministry for the Civil Service and Administrative Reform should also distribute information so as to draw the attention of as many public officials as possible to their reporting obligations under Article 23 of the Code of Criminal Procedure. This was why GRECO concluded that the recommendation had only been partly implemented.
34. The authorities refer to the outline reply provided on recommendation iii, viz the training dispensed within the National Institute of Public Administration (INAP) on the General Civil Service Regulations, which comprises a special section on the general duties of the civil servant (including Article 23 of the Code of Criminal Procedure) and anti-corruption provisions, as part of the initial training programme for civil servants and State officials; seminars on the ethics and integrity of civil servants as part of the in-house training programme; and a special course on the corruption phenomenon and the national and international legal framework for combating corruption.
35. The authorities add that on 12 March 2008 a circular on the provisions of Article 23 of the Code of Criminal Procedure was sent to all officials stationed abroad to inform them of the rules to be observed in cases of alleged corruption linked to Luxembourg, and that the recently tabled Bill No. 5757, which is geared to improving co-operation between tax departments (direct contributions and registration for indirect taxation) and judicial authorities, expressly states that Article 23 is applicable to tax departments (Article 15 of the Bill).
36. GRECO notes the information provided on several measures adopted, including the training activities and the transmission of a circular to staff stationed abroad. GRECO encourages the authorities to continue with the information activities in this field and considers that it would be useful to send out a circular not only to staff stationed abroad but to all public officials employed by Luxembourg.
37. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation xi.

38. *GRECO recommended the expansion of the role of the existing administrative inspection services.*
39. GRECO recalls that the recommendation was considered not to have been implemented because the information provided by the authorities did not clarify the extent to which the inspection services and their role had been expanded or the extent to which the existing inspection services contributed to the anti-corruption efforts by detecting, reporting and sanctioning corruption offences or other similar misdeeds.
40. The authorities now point out that Bill No. 5795 provides for creating two posts of deputy to the Government Commissioner in order to guarantee the processing of disciplinary cases within a

reasonable period (with the same powers as the Commissioner), and also to replace the Commissioner where his/her independence is threatened or where (s)he is unavoidably detained. The authorities add that the Commissioner is responsible for examining disciplinary cases involving central and local government civil servants, the local level having been added in 2006.

41. GRECO takes note of the information on the planned creation of two posts of deputy to the Government Commissioner. GRECO considers that this measure could reinforce this institution and help it fulfil its functions, but it also notes, firstly, that this Bill has not yet been enacted and secondly that no legislative measures to expand the role of the Government Commissioner or to assign him/her a genuine power of inspection of the administration, including action against corruption, have been mentioned.
42. GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii.

43. *GRECO recommended that current legislative developments be accompanied by guidelines for accountants and auditors on how to identify signs of corruption and its proceeds as part of their professional activities and to report their findings.*
44. GRECO recalls that its Compliance Report acknowledged that the Luxembourg authorities had introduced several measures and provisions to facilitate supervision of the professions of auditor and accountant. Nevertheless, it regretted that the recommended guidelines have not been issued so as to give auditors and accountants guidance on detecting corruption offences and reporting their findings, and concluded that the recommendation had only been partly implemented.
45. The authorities now state that the entry into force of the Grand Ducal Regulation of 16 March 2005 amending the definition of micro, small and medium-sized companies has improved the supervision of companies, while the supervisory procedures and the elements to be supervised vary in accordance with company size. They also point out that statistics on disciplinary cases conducted by the IRE (*Institut des Réviseurs d'Entreprises* - Institute of Company Auditors) to the effect that this Institute had dealt with ten cases between 1 June 2004 and 31 May 2005 points to intensified relations between the IRE and the public authorities; however, none of these ten cases had concerned corruption offences. Lastly, the authorities point out that the new provisions of the 12 November 2004 Act against Money Laundering fleshing out and standardising the obligations on company auditors and accountants are reflected in the content of the training courses which the professional organisations, including the OEC (*Ordre des Experts Comptables* – Order of Chartered Accountants) provide for their members, as well as in the amendments to the regulations governing these professions as regards their codes of conduct.
46. GRECO takes note of the measures mentioned by the authorities and welcomes the additional progress reported vis-à-vis supervision of the profession of company auditor and accountant. Nevertheless, it regrets that the guidelines recommended in order to provide auditors and accountants with guidance on detecting corruption offences and reporting their findings have still not been drawn up.
47. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiii.

48. *GRECO recommended introducing an adequate system of liability of legal persons for acts of corruption, with adequate sanctions or measures for the associated offences.*
49. GRECO recalls that the Compliance Report stated that the work on a Bill aimed at establishing the criminal responsibility of legal persons in Luxembourg law was still in progress, and that it had also not been given convincing information on the proposed sanctions. Consequently, GRECO concluded that the recommendation had only been partly implemented.
50. The authorities state that Bill No. 5718 introducing the criminal responsibility of legal persons into the Penal Code and Code of Criminal Procedure was tabled in Parliament on 20 April 2007 and is now before the *Conseil d'Etat* – and the Public Prosecutor's Offices – for opinion. They point out that corruption offences would be punished with the penalties set out in Articles 35, 36 and 37 of the Penal Code, as proposed in the Bill, and that Article 35 would incorporate a catalogue of penalties liable to jeopardise the existence of the legal person, e.g. fines, special confiscations, permanent exclusion from public contracts or for a period of five years or more, exclusion from a given benefit, advantage or public assistance, as well as liquidation. They add that the maximum fine applicable to legal persons would, subject to modification, be twice that imposed on natural persons by the provision penalising the respective offence, in accordance with Article 36 (2) of the Penal Code as proposed in Bill No. 5718. This would mean that the following maximum fines would be applicable to convicted legal persons: for the offence of corruption and influence peddling, € 375 000 in the case of Article 246 of the Penal Code, € 375 000 in the case of Article 247 of the Penal Code, € 250 000 in the case of Article 248 of the Penal Code and € 375 000 in the case of Article 249 of the Penal Code; for the offence of bribing members of the judiciary, € 500 000; for the offence of intimidating persons holding public office, € 375 000.
51. GRECO notes that Bill No. 5718 introducing criminal responsibility on the part of legal persons into the Penal Code and Code of Criminal Procedure has been tabled in Parliament, introducing a catalogue of penalties including fines, special confiscation, permanent exclusion from public contracts or for a period of five years or more, exclusion from a benefit, advantage or public assistance, as well as liquidation of the legal person. GRECO considers that this Act would establish an appropriate system of responsibility on the part of legal persons for corruption offences, as well as appropriate sanctions (although the minimum fines should perhaps be heavier). Nevertheless, given that the Bill has not yet been enacted, GRECO cannot conclude that the recommendation has been completely implemented. Consequently, GRECO cannot but encourage the authorities to continue their efforts, enabling the Bill to be enacted as quickly as possible.
52. GRECO concludes that recommendation xiii has been partly implemented.

III. CONCLUSION

53. In addition to the conclusions set out in the Second Round Compliance Report on Luxembourg and in view of the foregoing comments, GRECO concludes that recommendations i, ii and ix have been implemented satisfactorily. Recommendations iii, v, vii, viii, xi, xii and xiii have been partly implemented. GRECO notes that the Luxembourg authorities have mentioned a number of projects initiated, including several Bills, which might help guarantee the complete implementation of the aforementioned recommendations. GRECO acknowledges that the progress of several of these initiatives as reported, including the Bill geared to guaranteeing general access to public documents and that on introducing criminal responsibility on the part of legal persons, constitutes a major step forward as compared with the situation described in the Compliance Report. Nevertheless, GRECO notes that these two Bills have not yet been completed and consequently that over half of the recommendations to Luxembourg remain only partly implemented. It therefore asks Luxembourg to do its utmost to complete the projects mentioned in this report in order to guarantee complete implementation of these recommendations. The authorities may wish to report the subsequent progress to GRECO in due course.
54. The adoption of this Addendum to the Compliance Report concludes the Second Evaluation Round compliance procedure concerning Luxembourg.
55. Lastly, GRECO invites the Luxembourg authorities to authorise, as soon as possible, the publication of this Addendum, to translate it into the other national languages if necessary and to make the translation public.