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Addendum

First Evaluation Round

Addendum to the Compliance Report on Poland

Adopted by GRECO
at its 30th Plenary Meeting
(Strasbourg, 9-13 October 2006)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Poland at its 8th Plenary Meeting (4-8 March 2002). The report (Greco Eval I Rep (2001) 11E), which contains 17 recommendations addressed to Poland, was made public on 12 April 2002.
2. Poland submitted the Situation Report required by GRECO's compliance procedure on 9 January 2004. On the basis of this report and a Plenary debate, GRECO adopted the First Round Compliance Report (RC-report) on Poland at its 19th Plenary meeting (2 July 2004) which was made public on 13 September 2004. The Compliance Report (Greco RC-I (2004) 5E) concluded that recommendations i, ii, iii, iv, vi, vii, viii, ix, x, xi, xii, xiii and xvi have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations v, xiv, xv and xvii have been partly implemented; GRECO requested additional information on their implementation. The additional information requested was submitted on 13 September 2006.
3. Pursuant to Rule 31, paragraph 9.1 of GRECO's Rules of Procedure the objective of the present Addendum to the First Round Compliance Report is to appraise the implementation of recommendations v, xiv, xv and xvii in the light of the additional information referred to in paragraph 2.
4. The Addendum also contains further additional information which the Polish authorities supplied on recommendations iv, ix and xiii which, already at the time of the adoption of the First Round Compliance Report, had been implemented satisfactorily or dealt with in a satisfactory manner. GRECO is grateful to the Polish authorities for having provided this information which is detailed in Section IV.

II. ANALYSIS

Recommendation v.

5. *GRECO recommended to undertake steps towards progressively reducing the scope of discretionary powers of administrative officers, enhancing transparent procedures and abolishing, whenever possible, licensing and authorisation procedures.*
6. GRECO recalls that in the RC-report it acknowledged that steps had been taken to restrain and control the discretionary power of administrative officers. GRECO noted, however, that a number of legal measures were still to be adopted and concluded that the recommendation had only been partly implemented.
7. The Polish authorities now report that the Law on the Freedom of Business Activity was enacted on 2 July 2004. It limits the scope of business activities requiring concessions and permits (a reduction from over 100 to 30). In addition, amendments to the Act on Public Procurement were adopted on 25 May 2006, with a view to simplifying tendering mechanisms and to providing for greater transparency (e.g., "electronic auction" for tenders and bids not exceeding 60,000 EUR, detailed invitations to tender, standard electronic forms for bidding, etc). Amendments to the Basic Tax Law were introduced on 1 January 2005 to reduce the scope of discretionary powers of tax officers. In this context, any taxpayer can now apply to the Head of the relevant Tax Office for a written interpretation of legal provisions concerning public dues. If the taxpayer acts upon such interpretation, tax authorities cannot subsequently change the interpretation of these tax provisions to the detriment of the taxpayer. Finally, the Ministry of the Interior and Administration

has adopted over the last two years a number of legislative measures to limit the discretionary powers of officials in different areas of public administration (e.g., road transport, privatisation, healthcare system, etc).

8. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation xiv.

9. *GRECO recommended to analyse the functioning of existing earmarked funds in the context of creating opportunities for corruption and to liquidate those funds whose tasks could be achieved in the framework of the general State budget and ensure, especially by way of monitoring, that the functioning funds do not create opportunities for corruption.*
10. GRECO recalls that pending liquidation of the earmarked funds whose tasks could be achieved in the framework of the general State budget, the recommendation was only partly implemented.
11. The Polish authorities now state that, following a thorough survey on the functioning of earmarked funds and State Treasury agencies, the “Report on the implementation of the Low-Budget Strategy” and the “Implementation Paper of the National Programme of Reforms for the period 2005-2008 to fulfil the Lisbon Strategy” envisage the liquidation of around 30 State Treasury agencies and earmarked funds, including: the Military Housing Agency, the State Fund for Rehabilitation of Disabled People, the Agricultural Property Agency, the Agency for Restructuring and Modernising Agriculture, the Privatisation Fund, and the National Fund for Environmental Protection and Water Supplies. The tasks and means of the funds and agencies are to be transferred to the budgets of the respective ministries and self-government bodies. In this context, the Government is currently preparing a legislative and organisational package to progressively accomplish liquidation and transfer of resources. A new Law on State Finances is being drafted; it envisages that the general budget plan will encompass all the income and expenditure of the remaining funds and agencies.
12. GRECO takes note of the information provided by the Polish authorities and welcomes the progress reported; however, it cannot change its previous conclusion until liquidation of the aforementioned Treasury agencies and earmarked funds is effectively completed.
13. GRECO concludes that recommendation xiv has been partly implemented.

Recommendation xv.

14. *GRECO recommended to enhance and develop the work of financial controllers controlling public administrations and public enterprises increasing, whenever necessary, their number and ensure that their findings are made public as far as possible.*
15. The recommendation was only partly implemented, in particular because it was not clear from the reply of the Polish authorities whether the number of financial controllers had been increased since the adoption of GRECO’s First Round Evaluation Report.
16. The Polish authorities have now informed GRECO that regarding the first part of the recommendation, the work of financial controllers from the Supreme Chamber of Control and the Fiscal Control Offices continues to be enhanced through constant improvements in financial control methodologies, application of IT tools and effective systems for recruitment and training.

The number of financial controllers (1,260 auditors employed by the SCC) is considered adequate to carry out comprehensive and thorough financial controls of public administrations and public enterprises.

17. Insofar as the financial controllers' findings can be made public, audits of the SCC are publicised through press conferences, the SCC's website and the Public Information Bulletin. Furthermore, in June 2006, the Government submitted to Parliament a new draft law amending the Fiscal Control Act, which includes certain exceptions to fiscal secrecy. In particular, the General Inspector of Fiscal Control will be empowered to authorise the disclosure of data collected and processed in connection with fiscal control in certain, justified cases, e.g., for reasons of public interest. The General Inspector will also prescribe the way the information should be disclosed and further utilised.
18. Based on this information, GRECO welcomes the ongoing progress reported to enhance and develop the work of financial controllers. GRECO notes with satisfaction that further attention has been paid to the issue of secrecy of the information gathered and processed for the purpose of fiscal control and encourages Poland to pursue the adoption of the proposed amendments to the Fiscal Control Act which would allow for certain exceptions to fiscal secrecy, including when the public interest is at stake.
19. GRECO concludes that recommendation xv has been dealt with in a satisfactory manner.

Recommendation xvii.

20. *GRECO recommended to reduce categories of the holders of public office benefiting from immunities and the scope of these immunities and to simplify the procedure for lifting the immunity of State officials*
21. GRECO recalls that this recommendation was considered partly implemented as the categories of the holders of public office benefiting from immunities had not been reduced.
22. The Polish authorities have reported that no concrete action or activities have been undertaken to address the first part of the recommendation concerning the number of persons benefiting from immunities, given that its implementation would require changing the Constitution. In this regard, the Polish authorities are of the opinion that the concerns raised by the recommendation would be addressed by amending the existing procedure for lifting immunity. In this connection, the Ministry of Justice has prepared an amendment to the Act on the Structure of Common Courts and some other relevant laws, which is expected to allow for a substantial simplification of the procedure for lifting the immunities of judges and prosecutors. The draft amendment has already undergone interministerial consultation and is about to be passed on to Parliament.
23. GRECO welcomes the fact that consideration of the issue of amending legislation with regard to simplification of the procedure for lifting the immunity of judges and prosecutors has commenced. GRECO nevertheless notes that the recommendation addresses a larger number of State officials; it therefore urges the Polish authorities to give further consideration to reducing the categories of holders of public office, who currently enjoy immunities preventing them from being charged or accused of a criminal offence.
24. GRECO concludes that recommendation xvii has been partly implemented.

III. CONCLUSION

25. In addition to the conclusions contained in the First Round Compliance Report on Poland and in view of the above, GRECO concludes that recommendation v has been implemented satisfactorily and recommendation xv has been dealt with in a satisfactory manner. Recommendations xiv and xvii remain partly implemented. GRECO is pleased to note that the liquidation of Treasury agencies and earmarked funds is in the process of being dealt with and encourages Poland to ensure that it will be completed as soon as possible. GRECO earnestly hopes that additional measures will be taken in order to restrict the number of persons benefiting from immunities.
26. The adoption of the present Addendum to the Compliance Report terminates the First Evaluation Round compliance procedure in respect of Poland.

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IV. FURTHER ADDITIONAL INFORMATION

Recommendation iv.

27. *GRECO recommended to implement a global training programme aimed at increasing awareness among public officials of all levels.*
28. The Polish authorities report a number of training programmes on ethics in public administration, which are being developed in the framework of several international assistance projects. The project "Ethics and Public Life", which is being implemented by the Office of the Civil Service in the context of the joint EU/OECD SIGMA programme, has prepared a multimedia training toolkit including practical examples for solving ethical dilemmas that may arise in the public service. This toolkit, which is to be distributed among civil servants, could be used for self-education as well as for conventional training purposes. Additional EU assistance has been granted to the Office of the Civil Service with the aim of strengthening the implementation of the Anticorruption Strategy by organising, *inter alia*, targeted training in the prevention of corruption for civil servants at central and local levels. In particular, a twinning programme with the German Government has already trained 60 officials working in ministries and central agencies and 450 officials from nine different voivodships, respectively.
29. The Ministry of the Interior and Administration, with the assistance of British and Dutch twinning partners, has prepared training materials concerning the prevention and fighting of corruption; training sessions for civil servants and other categories of employees in public administration started in early 2006. In particular, training for ethical trainers-advisers has begun in 86 units of public administration, including 30 units of territorial self-government, 16 Voivodship Offices and for 76 officials from the Polish ministries and central bodies engaged in the implementation of the Anti-Corruption Strategy. Moreover, anti-corruption training courses are being conducted for employees of the government administration: a total of 450 persons were trained in the first half of 2006, and further training courses for 300 persons are planned. A competition named "Friendly Office of Local Administration" is being organised to reward units of self-government providing the best quality of administrative services to citizens. In addition, an educational and informational campaign has been launched nationwide to increase awareness on ethical standards within public administration. The campaign is addressed both at citizens and public servants and aims

to create a sense of ownership and joint responsibility in corruption prevention and combat practices.

30. Finally, the Office of the Civil Service has widely distributed the Code of Ethics among civil servants and is engaged in organising training on its contents in central and local administration.

Recommendation ix.

31. *GRECO recommended to draw up and implement a comprehensive specialised training programme for judges and prosecutors dealing with corruption cases.*
32. The Polish authorities further report that a specialised programme for judges and prosecutors, which is organised and supervised by the Department of Continuous Training and Supervision of Initial Training of the Ministry of Justice, has been in operation for a few years. In particular, the following activities took place in 2006:
 - 5-17 March 2006 “Depriving criminals of profits coming from crimes and the international cooperation in this field. Commercial crimes.” (101 participants - public prosecutors);
 - 3-5 April 2006 “Crimes against commercial traffic, acts on the legal responsibility of economic entities” (100 participants, training both for judges and public prosecutors). Issues concerning the conflict of responsibilities of managers who deal with the business of competitive entities were discussed during this training course;
 - 10-12 April 2006: training for judges’ assistants on professional ethics;
 - 26-28 June 2006: “Methods of conducting investigations on criminal commerce cases related to corruption and crimes committed by banks employees”;
 - 28-30 June 2006: “Difficulties with supervising and conducting investigations, taking into account a public prosecutor’s powers, in operational and identification activities performed by Police. Operational phone tap and the way of processing its results. Methods of proceedings in crimes on the traffic of fuels” (training for 82 public prosecutors).
33. Furthermore, the central office of the National Training Centre for the Staff of Common Courts and Public Prosecutor’s Offices (NJTC) started to operate on 1 September 2006; branch offices in Poland’s major cities are to be established in the future. The NJTC is responsible for organising regular training cycles for judges, public prosecutors and other representatives of judicial staff. The training programme of the NJTC will encompass the organisation of conferences and seminars on corruption-related issues. The NJTC will also act as a coordinating entity of courses organised by courts and public prosecutors offices.

Recommendation xiii.

34. *GRECO recommended to treat in the same manner the hindering of the work of a Supreme Chamber of Control controller and the hindering of the work of officials from Agencies with comparable powers.*
35. The Polish authorities have stressed the genuine character of the revision and inspection powers of the Supreme Chamber of Control (SCC), which are not comparable to any other institution in Poland. The phenomenon of hindering the SCC controllers’ work remains marginal: during the period 2003-2005, only six motions out of 9,126 audits were filed requesting sanctions for control evasion or control hindering.

36. Nevertheless, the Polish authorities have now reported that, in view of the different penal treatment provided for the offence of control evasion or hindering depending on whether audits are carried out by SCC controllers (misdemeanour) or by other control and inspection bodies (criminal offence), an amendment to the SCC Act is being drafted by Parliament to toughen the existing sanctions for refusals to grant an SCC controller access to the premises or to the files subjected to an audit procedure.
37. GRECO takes note of the information provided by the Polish authorities concerning new developments connected with the further implementation of recommendations iv, ix and xiii above. GRECO particularly welcomes the legislative initiative to toughen the existing sanctions for control evasion or hindering of the work of the Supreme Chamber of Control controllers.