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Second Evaluation Round

Compliance Report on Poland

Adopted by GRECO
at its 29th Plenary Meeting
(Strasbourg, 19-23 June 2006)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Poland at its 18th Plenary Meeting (10-14 May 2004). This report (Greco Eval II Rep (2003) 6E) was made public by GRECO, following authorisation by the authorities of Poland, on 18 May 2004.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Poland submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 28 March 2006.
3. At its 26th Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Bulgaria and Germany to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Georgi RUPCHEV on behalf of Bulgaria and Ms Birgit LAITENBERGER on behalf of Germany. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Poland, to comply with the recommendations contained in the evaluation report.

II. ANALYSIS

5. It was recalled that GRECO in its evaluation report addressed nine recommendations to Poland. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended 1) that the prosecution authorities be rapidly provided - during their investigative work - with coordinated and up-to-date financial and economical information and 2) to continue giving to prosecutors and police officers specific training and provide them with adequate means in order to make better use of legal provisions on seizure and confiscation.*
7. The authorities of Poland have reported that an important issue in the Country's accession to the European Union has been to speed up the pace of criminal proceedings. One aspect of this has been to enable judicial authorities to be rapidly provided with information such as bank details (accounts, transactions etc). The Banking Act was amended in April 2004 to make it possible for prosecutors to obtain any data on bank accounts covered by banking secrecy. Through a court order, prosecutors may now request from banks and other financial entities any information they need, even before any charges have been pronounced. The financial entities are obliged to pass on the required information without delay. The only problem that may occur in practice is consequential to the internal organisation of data bases of the requested institution. But as their data bases are constantly being improved, such problems are rare and the co-operation between investigative authorities and financial institutions has improved. Requests are normally answered in a precise and prompt manner. The authorities have also reported that there is closer cooperation between the Financial Information Unit (FIU) and the Prosecution Service, in particular, and that regular sharing of information has been established. Cooperation with tax authorities has also improved and such information may be received by prosecutors without delay. Cooperation with the police authorities has also improved and the police have for their investigations either direct access to financial information or via the order of a prosecutor. Required information is normally stored by the respective authorities concerned; however, the police are, additionally, in the process of developing their own information systems.

8. The Polish authorities have also reported that irrespective of the legal, technical and organisational efforts made, the police, prosecutors and judges have been offered training focused on the fight against corruption as well as on money laundering and other financial crimes, including matters relating to access to financial and economic information. The authorities have listed a large number of seminars and training comprising several hundred police and prosecutors as well as judges in the years 2004-2006. Awareness material has also been elaborated and distributed, such as the brochure entitled "Information on the access of the Police to data covered by banking secrecy" and a similar brochure on access to other information necessary for combating economic crime.
9. GRECO takes note of the information provided. It realises that recommendation I, which deals with the specific problem of bringing financial/economic information into an investigation without delay, has not and cannot be dealt with as a separate matter. Therefore, GRECO is pleased to learn that Poland has been addressing the problem of a slow information flow between authorities and from financial institutions from several angles. The legislation has been improved and the organisation of authorities as well as their co-operation have also been developed. Moreover, GRECO welcomes the reported efforts with regard to training of the officials concerned.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. *GRECO recommended to intensify efforts to establish, within prosecutors' offices, multidisciplinary teams of experts in the field of combating economic and financial crime.*
12. The authorities of Poland have reported that multidisciplinary teams of experts have been created and are now operational in all Appellate Prosecution Offices, covering the whole territory of Poland. These teams, which are used for complex criminal cases (fraud, money laundering, etc) are composed of experts in the economic and financial fields. They analyse the files and draw up expert opinions for the purpose of ongoing investigations. In cases of money laundering, prosecutors co-operate closely with analysts from the Department of Financial Information of the Ministry of Finance. Moreover, in certain types of cases, mainly those linked to particular financial interests of the State, such as oil, alcohol and tobacco, task forces are composed of prosecutors, fiscal control authorities and fiscal intelligence. The authorities have added that the task forces have proven to be very effective in the fight against organised economic crime.
13. GRECO takes note of the information provided, in particular, that this process which had already started at the time of the adoption of the evaluation report, has been completed. Consequently, it is now possible to establish multidisciplinary task forces to investigate economic and financial crime in all prosecutorial regions of Poland.
14. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

15. *GRECO recommended to promote the use in practice of the legal measures on international legal assistance concerning provisional measures in relation to corruption offences.*
16. The authorities of Poland have reported that by 7 July 2005, Poland had implemented and started to make practical use of the provisions derived from the Council Framework Decision

2003/577/JHA on the execution in the European Union of orders freezing property or evidence. The new relevant provisions of the Polish Code of Criminal Procedure envisage “fast track seizure” in relation to objects and evidence in all criminal cases, including corruption. The introduction of the new legislation has been followed by a set of training activities, such as a workshop for 60 prosecutors organised by the Circuit Prosecutor’s Office on 20-22 April 2005, a seminar for about 50 prosecutors from Poznań Appellate Prosecutor’s Office on 4 October 2005, in-house training for 40 prosecutors from Gdańsk Appellate Prosecutor’s Office in December 2005 and a seminar for 101 prosecutors on 15 – 17 March 2006, on the deprivation of proceeds of crime and mutual legal assistance in this respect. Moreover, central training was organised by the National Prosecutor’s Office for some 70 prosecutors from all the units of the Country, on the practical implementation of the new provisions on freezing (10-12 April 2006). Training activities also cover “traditional” seizure and other provisional measures applied in the context of mutual legal assistance with the countries from outside the EU (based mainly on the European Convention on mutual legal assistance in criminal matters. Such a central training session was organised for 83 prosecutors on 30 March – 1 April 2005 by the National Prosecutor’s Office. The Ministry of Justice organised, on 5-7 April 2006, a training session for some 100 judges on the subject of mutual assistance in criminal matters in the European Union.

17. The authorities have also reported that the National Prosecutor’s Office issued, in February 2005, a new version of the “Instruction on the mutual assistance in criminal matters” where matters, such as seizure and confiscation, are mentioned and their practical aspects described. The instruction, which is a binding instrument, has been disseminated to all the Circuit Prosecutors.
18. GRECO takes note of the information provided. It was pleased to learn that so many training events had been organised. The situation - as described in the Evaluation Report - where the competent authorities had not made use of measures, such as seizure, could hopefully be improved in the future. The Polish authorities should be commended for the activities reported.
19. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

20. *GRECO recommended to set up a specialised body with the tasks of following up on the implementation of the anti-corruption programme, by organising the gathering and analysis of data, assessing the quality of these data and making them public, together with recommendations to the Government concerning the prevention of corruption.*
21. The authorities of Poland have reported that – as a result of this recommendation - the *Body for Co-ordination of the Anti-Corruption Strategy* was established on 29 September 2003, in accordance with Decision No. 36 of the Director General of the Ministry of Interior and Administration. This Body, located in the Department of Public Administration - headed by the Deputy Director of the Department - has the following areas of concern:
 - co-ordination and monitoring¹ of actions taken by state administration in the implementation of the Anti-Corruption Strategy;
 - analysis and assessment of the corruption phenomena in the public sector and submission of opinions and conclusions in this respect;
 - elaboration of opinions on draft legislation and other documents concerning corruption;

¹ The monitoring is conducted on the basis of quarterly reports prepared by the ministries, offices and institutions engaged in the implementation of the Strategy.

- co-operation with NGOs and the EU in the implementation of the Anti-Corruption strategy;
 - preparation of quarterly reports on the implementation of Anti-Corruption Strategy for the Government;
 - supervision of twinning projects strengthening the implementation of the Strategy (financed by the EU/Council of Europe programmes (PHARE, etc).
22. Moreover, it is envisaged (in the Anti-Corruption Strategy) to establish a *monitoring committee* (by the end of 2006) comprising representatives of the ministries, institutions and non-governmental organisations involved in fighting and preventing corruption. The creation of such a body will be preceded by the establishment of a set of objective indicators allowing for the proper evaluation of the intended aims' completion. The indicators are to be prepared by the *Body for Co-ordination of the Anti-Corruption Strategy* in co-operation with the Governmental Centre for Strategic Studies.
23. It has also been reported that all reports on the implementation of the First and Second Phases of the Anti-Corruption Strategy are being made public on the official website of the Ministry of the Interior and Administration: www.mswia.gov.pl. These documents may also be obtained in paper version upon request.
24. Another body, the Central Anti-Corruption Bureau (CBA) will be operational during the second half of 2006. The CBA is established by law as a specialised investigation authority and will not have any links to the monitoring of the implementation of the Strategy.
25. GRECO welcomes that the implementation of the Anti-Corruption Strategy has been formalised with the establishment of the *Body for Co-ordination of the Anti-Corruption Strategy*. This body has been charged with the tasks requested in the recommendation. The additional monitoring mechanism consisting of representatives of the Government and NGOs will add further value to this work, provided that there will be a clear demarcation with regard to the various tasks of these two bodies. Moreover, the Polish authorities have shown that public access to the Anti-Corruption Strategy and its implementation has improved.
26. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

27. *GRECO recommended to gear ethics training seminars for civil servants to the resolving of practical, specific cases.*
28. The authorities of Poland have reported that ethical issues have remained an essential component of the training system in the civil service since the Civil Service Law entered into force in 1999. The Civil Service Office is responsible for these activities. A training strategy of the Civil Service has been identified for the years 2004-2007 focusing, *inter alia*, on the fight against corruption and on strengthening the "Ethos" of the Civil Service. This priority covers a number of activities aimed at preserving and promoting ethical behaviour and creating measures for the elimination of undesirable attitudes.
29. The training on ethical issues deals with both theoretical (legal) and practical aspects, and real life examples are included. All ethics training seminars are designed to deal with resolving practical, specific cases with which civil servants can be confronted. Moreover, in order to meet different demands from different categories of civil servants, the courses are often targeted at particular levels of the civil service. Furthermore, the Civil Service Office selects and educates

ethical consultants. These are often employed in the government administration and are supposed to provide professional advice to their colleagues in other departments on various ethical problems. This approach is reflected in a great number of training and development activities.

30. The authorities have also reported that, since 2004, the Civil Service Office participates in the implementation of an operational programme on human resources development (co-financed by the European Social Fund), in order to develop an ethos for the civil service, to improve loyalty with the civil service and its principles, to make officials familiar with methods which prevent the breaching of professional ethics, including corruption prevention, conflicts of interest etc. and to promote the Civil Service Code.
31. The Civil Service Office is also involved in the preparation of several training programmes (with EU assistance) for civil servants of various ministries and administrations. The authorities have reported a variety of means used for this purpose; films, CD roms, ethical advisors, seminars, distance training etc. Several thousand civil servants have undergone training on ethical issues during 2004-2006.
32. GRECO takes note of the information provided. Poland should be commended for its efforts to establish ethics training on such a broad scale as reported. GRECO understands that the training in ethics is planned as a continuing measure in the public administration.
33. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

34. *GRECO recommended to extend the scope of application of the Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions and of the Act on Civil Service aimed at prohibiting "pantouflage" (i.e. the improper movement of a public official to the private sector).*
35. The authorities of Poland have reported that it was foreseen in the Anti-Corruption Strategy (2002-2009) to change the legislation with regard to public officials' possibilities to conduct economic activities in conflict with their public position. Several draft laws were submitted to Parliament on this matter, *inter alia*, to extend the limitation period for public officials to indulge in related business from one year (as stipulated in *the Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions*) to three years. However, following the rejection of the proposals by the Parliamentary Committees for Administration and Home Affairs and for Justice and Human Rights, this matter was no longer being pursued. But the new Government has decided to draft new legislation on this matter.
36. GRECO takes note of the information provided. It recalls that it is stated in the Evaluation Report (paragraph 41) that *the Act on Restricting Pursuit of Business Activity of Persons Performing Public Functions* and *the Act on Civil Service* aimed at prohibiting "pantouflage" do not sufficiently cover all situations which can give rise to conflicts of interest i.e. that the restrictions were limited in scope as well as in time (one year). The authorities have reported that an attempt to change this situation was unsuccessful but that the present Government has decided to pursue this matter. Nevertheless, the identified shortcomings remain at present.
37. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

38. *GRECO recommended to amend the Law on Liability of Collective Entities for Acts Prohibited under Penalty in order to include all relevant corruption offences which may lead to the establishment of corporate liability.*
39. *The authorities of Poland have reported that the Law on Liability of Collective Entities for Acts Prohibited under Penalty of 2002 has been amended by virtue of the Act of 28 July 2005 (published in O.J. of 2005, No 180, item 1492). The scope of Article 16 (1)(3) has been broadened in order to cover all types of penalised forms of corruption for which collective entities (including legal persons) can be held criminally liable. The amendment covers trading in influence (Article 230a of the Penal Code), corruption in elections (Article 250a of the Penal Code), corruption in the private sector (Article 296a of the Penal Code) and corruption in sport (Article 296b of the Penal Code). The amended provisions entered into force on 5 October 2005.*
40. *GRECO recalls that this recommendation was triggered by the fact that corporate liability did not cover certain corruption offences i.e. trading in influence and bribery in the private sector (Evaluation report, paragraph 55). This situation has now been remedied by the Polish authorities.*
41. *GRECO concludes that recommendation vii has been implemented satisfactorily.*

Recommendation viii.

42. *GRECO recommended to establish special training programmes for prosecutors and judges in order to ensure the effective implementation of the Law on Liability of Collective Entities for Acts Prohibited under Penalty.*
43. *The authorities of Poland have reported that on 3 November 2004 substantial parts of the then Law on Liability of Collective Entities for Acts Prohibited under Penalty were annulled by a decision of the Constitutional Court (published in OTK-A 2004/10/103). Since then the whole Law was subject to re-drafting which resulted in the adoption of the amended Act of 28 July 2005, referred to under recommendation vii (above). The amendments, which were in line with the suggestions of the Constitutional Court, entered into force on 5 October 2005. The authorities have informed GRECO of a large number of training sessions for prosecutors and judges on the law on Liability of Collective Entities that were organised from 2004 to date by various prosecutor's offices and courts.*
44. *GRECO takes note of the information provided and is confident that further training on this matter will be organised to the extent necessary in the future, possibly in a more co-ordinated way.*
45. *GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.*

Recommendation ix.

46. *GRECO recommended to establish special training and/or guidelines for the tax authorities concerning the detection of corruption offences and the effective fulfilment of their reporting obligation under the Code of Criminal Procedure.*

47. The authorities of Poland have reported that the tax authorities have been offered five training sessions during the period of 2004-2006, some organised together with the Police and some in the international context (OLAF and Phare programme) on topics such as combating corruption, organised crime, money laundering, undisclosed sources of income, etc. Additionally, as part of the OECD monitoring process, the Ministry of Finance launched a training session for the staff of departments and bureaux of the Ministry, Offices of Fiscal Control, Fiscal Chambers and Customs Chambers in November 2005 on “selected aspects of anti-bribery measures for the protection of international business”.
48. GRECO takes note of the information provided. It recalls that Poland was recommended to establish special training and/or guidelines concerning the detection of corruption offences. The training sessions reported appears to be of a general nature and not devoted precisely to the aspects recommended.
49. GRECO concludes that recommendation ix has been partly implemented.

III. CONCLUSIONS

50. **In view of the above, GRECO concludes that Poland has implemented satisfactorily or dealt with in a satisfactory manner the vast majority of the recommendations contained in the Second Round Evaluation Report.** Recommendations i, ii, iii, v and vii have been implemented satisfactorily, recommendations iv and viii have been dealt with in a satisfactory manner, recommendation ix has been partly implemented and recommendation vi has not been implemented.
51. GRECO invites the Head of the Polish delegation to submit additional information regarding the implementation of recommendations vi and ix by 31 December 2007.