



Groupe d'Etats contre la corruption
Group of States against corruption



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS

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First Evaluation Round

Compliance Report on Portugal

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 Portugal at its 14th Plenary Meeting (7-11 July 2003). This Report (Greco Eval I Rep (2003) 4E) was made public by GRECO, following authorisation by the authorities of Portugal, on 25 July 2003.
2. In accordance with Rule 30.2 of Greco's Rules of Procedure, the authorities of Portugal submitted their Situation Report (RS-Report) on the measures taken to follow the recommendations on 21 January 2005.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure Bosnia and Herzegovina and Denmark to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Sead TEMIM (Federal Prosecutor) on behalf of Bosnia and Herzegovina and Mr Flemming DENKER (Public Prosecutor) on behalf of Denmark. 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 24th Plenary Meeting (Strasbourg, 27 June – 1 July 2005).
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 Portugal 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 Portugal. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to establish a general review system (regular interdepartmental meetings, etc.) for the purpose of conducting research and developing a comprehensive strategy to combat complex forms of crime, including corruption. Technical authorities, such as the Court of Auditors or the General Finance Inspectorate (IGF), might usefully be involved.*
8. The authorities of Portugal have reported that, pursuant to Section 7 of the Organisation of Criminal Investigations Act, No. 21/2000 of 10 August 2000, a Co-ordinating Council of Criminal Police Bodies has been set up. The Council comprises the Ministers of Justice and the Interior, the National Police Director, the General Commander of the Republican National Guard and the National Director of the Public Security Police. The Council lays down guidelines on communication between the different criminal police bodies and establishes working methods and management approaches aimed at improving co-ordination between and the effectiveness of these bodies at the various hierarchical levels. The powers of the Council extend to corruption-related issues.
9. The co-ordination at national level, related to corruption offences, is also pursued by the Central Criminal Investigation and Prosecution Department (DCIAP) of the Public Prosecutor's Office. The DCIAP promotes the diffusion and the sharing of information about inquiries and procedures

in different judicial districts, in order to promote more structured strategy to combat and to prevent corruption. The DCIAP organises regular meetings with its regional counterparts to ensure effective co-ordination throughout the country.

10. In October 2004, a Strategic Analysis Unit has been established within the Judicial Police's Central Directorate for Combating Corruption, Fraud and Economic and Financial Crime (DCICCEF) with the objective to identify potential at-risk areas and to prescribe the types of action necessary for effective intervention in cases of economic and financial crime, including corruption. To improve the detection and prevention of these offences, the DCICCEF is extensively co-operating with bodies such as the IGF, the Local and Regional Government Inspectorate, the Court of Auditors and the Public Prosecutor's Office.
11. Moreover, the Criminal Investigation and Prosecution Department (DIAP) of the Lisbon Judicial Region set up the 9th Section to investigate corruption and other related offences, as well as to develop *inter alia* various approaches to implementing GRECO recommendations. Since 2003, the Section has intensified its relations with the Judicial Police (especially the DCICCEF) regarding the adoption of procedures and strategies to optimise inquiries into economic and financial offences, including corruption, and to encourage the discussion of new and/or complex legal issues arising from current cases. In conjunction with the Securities Commission, the Directorate General of Regional Development and the IGF, the Section has organised training courses for judges to enhance their knowledge of offences with securities, the management and supervision of companies' accounts and of the EC funds. The Section currently works on more active involvement of officials at intermediate positions in the above activities as they are closer to investigators and have a more practical approach to conducting inquiries.
12. GRECO took note of the information provided by the Portuguese authorities. It was satisfied that the general framework has been put in place to ensure permanent co-ordination between various departments in the field of corruption and that specialised units/sections carrying out research and conducting analysis on complex forms of crime, such as corruption, have been established within existing bodies.
13. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

14. *GRECO recommended to give powers of inspection to the disciplinary department of the Judicial Police and introduce mechanisms to monitor the integrity of officers working in certain fields (organised crime, etc.).*
15. The authorities of Portugal have reported that, at the end of 2003, the Judicial Police has established the Internal Disciplinary and Supervisory Department to monitor the integrity of staff, with specific emphasis on investigating corruption offences. The Department is headed by a prosecution service judge and is staffed with experienced officials. Two new assistants were placed in the Department to proceed with internal inspection actions. Between the end of 2003 and the first semester of 2005, three internal inspections were already concluded, regarding, namely, corruption prevention.
16. Measures to strengthen the professional responsibility and ethical conduct among its personnel have also been taken by the Republican National Guard. They include increasing the number of inspections of operational and administrative staff, introducing a new procedure for processing

and assessing complaints (including anonymous ones), improving operational command and control structures, and providing for more effective supervisory mechanisms, with specific attention to reports on road traffic offences.

17. GRECO concludes therefore that recommendation ii has been implemented satisfactorily.

Recommendation iii.

18. *GRECO recommended to complete interconnection of the various police databases and examine the specific characteristics of Judicial Police work in order to adjust working methods accordingly.*

19. The authorities of Portugal have reported that, in order to facilitate access to and exchange of information, in 2003 the Judicial Police set up the Financial Intelligence Unit.¹ Operating on a national scale, the Unit plays a key role in co-ordinating inquiries from available data banks and other information sources with a view to identifying interrelated or potentially interrelated situations to assist the decision-making. The Unit, moreover, accumulates and disseminates information on money laundering and tax fraud offences, which are often related to corruption. It includes a permanent liaison group providing a link with the Directorate General of Taxes (DGCI) and the Directorate General for Customs and Consumption Taxes (DGAIEC), thus allowing for continuous exchange of information and reciprocal access to data banks.²

20. As regards access to criminal information held in the data banks of various criminal police agencies, considerable improvements have been made to the police integrated independent communication system (SIIC), which has now been extended to other criminal police bodies. Also, with respect to economic and financial crime, a Financial Intelligence Unit provides access by the Judicial Police to tax data bases, which signifies a new approach to investigating criminal offences in this area. Recently, the Ministry of Justice, the Judicial Police and the Ministry of Finance finalised a proposal concerning real time access to data banks of the DGAIEC and the DGCI. The proposal has been approved by the National Data Protection Commission and submitted to Parliament for adoption.

21. As far as the second part of the recommendation is concerned, the authorities of Portugal have reported that the establishment of the Financial Intelligence Unit and of the SIIC have led to real changes in the working methods of the police (and more specifically of the judicial police) in the field of corruption. Working methods have been reorganised particularly regarding access to information in criminal investigations.

22. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

23. *GRECO recommended to enhance the human, material and other means necessary for the police to carry out, to the full, their functions in the fight against corruption.*

24. The authorities of Portugal have reported that the National Directorate of the Judicial Police has proclaimed the fight against economic and financial crime as one of its priority areas. In order to

¹ By legislative decree No. 304/2002 of 13 December 2002.

² The initial authorisation to consult the DGCI's and the DGAIEC's data banks granted to the Judicial Police (by legislative decree No. 93/2003 of 30 April 2003) was greatly extended by signing a special Protocol between the three parties (No. 22/2003, Official Journal of 4 July 2003).

match resources with the objectives, some one hundred new inspectors, graduates of the Institute of Judicial Police and Criminal Sciences, were recruited in October 2004. Another competitive recruitment of inspectors was completed in December 2004, and the admitted candidates are undergoing training since January 2005. The authorities have stated that this represents a significant increase in DCICCEF's human resources, particularly in the area of corruption prevention, with more than one third of new recruits being integrated in the Corruption Activities Investigation Section. This reinforcement allowed for the creation of a new investigation brigade within the mentioned Section.

25. As far as the Republican National Guard is concerned, after undergoing special training, more than one thousand new recruits have been allocated to its criminal investigation units. The material resources, in terms of vehicles, specific investigation equipment and facilities for gathering, processing and analysing information have also been improved.
26. Finally, the Aliens and Frontier Service was reinforced through the recruitment in May 2004 of 170 assistant inspectors with responsibility for investigation and surveillance. Two additional entry competitions for the recruitment of 25 specialists and 180 assistant specialists to support investigation and surveillance activities are in their final stage. A one-year training course is organised for assistant inspectors aimed *inter alia* at developing skills to identify corruption and at introducing anti-corruption measures, including the ones relevant to Portugal in the light of GRECO recommendations.
27. GRECO concludes therefore that recommendation iv has been implemented satisfactorily.

Recommendation v.

28. *GRECO recommended to review the investigation procedure for serious offences, including corruption offences, and:*
 - *examining the best possible way of remedying the problems associated with the possibility of challenging every individual decision of the investigating judge during the investigation phase by providing, for example, for the exercise of the right to appeal at the end of the investigating phase,*
 - *reconsidering the non-suspensive nature, for purposes of statutory limitations, of appeals filed before the Constitutional Court, in order to avoid procedural abuses aimed at preventing sensitive cases from going to trial.*
29. As far as review of the investigation procedure is concerned, the authorities of Portugal have reported that, as part of its responsibilities to study the nature, extent and trends of crime, as well as the results obtained in terms of prevention, detection and enforcement³, the Central Criminal Investigations Department (DCIAP) of the Public Prosecutor's Office had signed an agreement with the Centre for Judicial Studies to conduct a sociological study. The objective of the study, which was completed in November 2004, is to describe and to profile crimes, for which the DCIAP has either partial or exclusive competence, and to examine the inter-departmental and inter-agency co-ordination in order to streamline the procedures. Analysis of the phenomenon of corruption formed an important part of the study.
30. The Republican National Guard, for its part, has also adopted new strategies and investigation methods for corruption related offences (e.g. investigation method based on the idea of

³ Under Sections 9, 46 and 47 of Act No. 60/98 of 27 August (Statute of the Public Prosecutor's Department).

"proximities" and extensive networking) and has improved co-operation with other European police forces through conducting joint trainings in scientific and technical fields.

31. The authorities of Portugal have also stated that the current legislation provides for a possibility to challenge individual decisions of investigating judges to impose or maintain coercive measures.⁴ An appeal shall be brought immediately before a higher court, which shall decide on it within a thirty-day period from the moment of it being recorded in the register. The appeals, however, do not have a suspensive effect either on proceedings or on the decision⁵ and therefore, according to the authorities, are not conducive to creating procedural delays.
32. GRECO was satisfied with the steps taken by the authorities of Portugal to review the investigation procedure for serious offences, including corruption. GRECO also accepted that the possibility of challenging individual decisions of investigative judges did not constitute an obstacle to the carrying out of a criminal investigation procedure. No information, however, was provided on attempts to eliminate procedural abuses resulting from the non-suspensive nature, for purposes of statutory limitation, of appeals filed before the Constitutional Court and aimed at preventing sensitive cases from going to trial.
33. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

34. *GRECO recommended to consider the advisability of setting up specialist chambers for economic and financial offences (including corruption) within the ordinary courts.*
35. The authorities of Portugal have reported that they deemed it essential for judges in ordinary courts to maintain a multidisciplinary perspective on criminal offences, as corruption may cover a wide range of activities and is often linked to other types of crime. By contrast, the authorities considered the growing specialisation of investigating bodies to be more in the spirit of this recommendation. Therefore, the aforementioned 9th Section within the Criminal Investigation and Prosecution Department (DIAP) of the Lisbon Judicial Region has been specifically designated to investigate corruption and other related offences. In exercising its functions, the Section collaborates extensively with the Judicial Police.
36. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

Recommendation vii.

37. *GRECO recommended to take at least some steps to increase specialisation of judges and improve human resources/expertise in the field of complex offences such as corruption.*
38. The authorities of Portugal have reported that the aforementioned 9th Section of the Lisbon Judicial District conducts training courses for judges from the Public Prosecutor's Office, with contributions from experts specialising in various subjects relevant to the Section, particularly in the field of corruption. In 2003 and 2004, special training on organised crime and corruption for judges and prosecutors was organised by the Judicial Studies Centre.

⁴ Article 407, par. 1c of the Criminal Procedure Code.

⁵ Article 408, Criminal Procedure Code.

39. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

40. *GRECO recommended to strengthen the means (material, human, access to information and others) put at the disposal of judges and prosecutors with a view to ensuring their effective functional independence.*

41. The authorities of Portugal have reported that amendments to Order 264/99 of 12 April 1999, aimed at increasing from 7 to 14 the number of judicial officials providing support to judges, had been endorsed by the Ministry of Justice in September 2003. Requests have also been submitted to the relevant police bodies to increase the number of criminal police officers attached to the DCIAP, to assist in investigations, co-ordination and prevention.

42. Furthermore, since 2003, 208 new judges have been recruited, and numerous meetings and training activities were organised by the Judicial Service Commission for them. Bearing in mind the exponential growth in the number of cases requiring co-ordination, it is also planned to hold additional training sessions on topics such as executive reform and judicial confidentiality.

43. GRECO welcomed the steps taken by the authorities of Portugal to ensure the efficiency of judges and prosecutors, in particular by increasing their number and by providing appropriate training.

44. GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

45. *GRECO recommended to raise the awareness of public officials about their obligation to report criminal offences (Article 386 of the Criminal Code and Article 242 of the Code of Criminal Procedure), drawing their attention to the procedures and mechanisms in place to comply with this obligation.*

46. The authorities of Portugal have reported that, in January 2002, the General Inspectorate of Judicial Departments (IGSJ) under the Ministry of Justice issued the Service Order No. 2/IG/2002 on offences detected by its Inspection Department. The Order, supplemented and clarified by Order No. 6/IG/2002, laid down practical arrangements on the obligation to report offences contained in Articles 242.1.b of the Criminal Procedure Code and Article 46.2 of the Disciplinary Statute for central, regional and local government civil servants and other officials.

47. Also, in February 2005, the Ministry of Internal Administration issued a circular⁶ addressed to all relevant departments, agencies and training institutions with a general description of procedures to be followed when reporting criminal offences. In particular, it contains information on bodies empowered to receive complaints, on relevant forms for the presentation of a complaint and the status of anonymous complaints, as well as on legal arrangements for protecting witnesses in criminal proceeding (pursuant to Act No. 93/99).

48. Furthermore most recently a Guide was prepared and published by the Judicial Police aimed at alerting public officials to possible risks of corruption, to which they may be subjected while exercising their everyday duties.

⁶ Order No. 7/IG/2005 of 9 February 2005.

49. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation x.

50. *GRECO recommended to include discussion and awareness-building in the "Internal Control System" with regard to the risks and handling of corruption.*

51. The authorities of Portugal have reported that, in 2003, the Co-ordinating Council of the State Internal Financial Control System (SCI) adopted a recommendation on strategic guidelines for 2004, identifying major risk areas to be taken into account by the Court of Auditors while preparing its annual action programme. This was the first time that the Co-ordinating Council collaborated in a systematic manner with the Court of Auditors and that co-ordinated financial control objectives were laid down in the annual plan of a specific body.

52. Moreover, as part of a strategy to offer a common and coherent training, the Co-ordinating Council has organised a series of courses on "introduction to financial control". Five such courses were held between October 2002 and July 2004, each offering 156 hours of training to a total of 109 trainee inspectors. During the same period, five additional courses focused on the theme of responsibility, and one training module treated the subject of professional ethics and codes of conduct, covering the whole area of public administration with particular emphasis on audit and the ethical relations between the auditor and the audited.

53. The authorities of Portugal have further reported that the Court of Auditors has also taken some awareness-raising measures with regard to diminishing risks of corruption. Thus, a plan adopted by the Court for 2005-2007 includes among its strategic objectives the improved control of public finances, encouraging a culture of responsibility, closer monitoring of compliance with relevant laws and regulations, and co-ordination between external and internal financial control systems.

54. GRECO was satisfied with the steps taken by the Portuguese authorities to promote the discussion and to raise the awareness through the organisation of supplementary training courses. It also welcomed the attempts to enhance the effectiveness of the internal control system by promoting close co-operation between the SCI and the Court of Auditors.

55. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

56. *GRECO recommended to assess what the General Finance Inspectorate (IGF) requires (especially in terms of human resources) for proper performance of its work and adjust its resources accordingly.*

57. The authorities of Portugal have reported that the IGF is aware of concerns underlying the above recommendation, in particular in terms of human resources and their management. Therefore, all plans, activity reports and other documents produced by the IGF systematically underline the need to ensure that it has sufficient resources to maintain its reputation as a high-level state authority in the fields of budgeting, economics, finance, state assets, and technical assistance. The authorities have stated that the main factors governing the IGF's operational activities, particularly from a management point of view, have been identified and that the IGF now has the necessary resources to carry out its duties under its action plan, in the light of the risks analysis policy and priorities laid down by the Ministry of Finance.

58. The authorities have furthermore stated that co-ordinating the action plans of the different elements of the internal financial control system (SCI) and making full use of efficiency savings help to secure a more effective allocation of resources. Similarly, developing and refining risk analysis methods also contribute to better management of human resources and thus cost-effectiveness.
59. GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

Recommendation xii.

60. *GRECO recommended to adopt guidelines on the lifting of immunities.*
61. The authorities of Portugal have stated that some guidelines to Parliament on lifting of immunity have been introduced through amendments to Article 11 of the Statutory rules for members of Parliament⁷. Thus, a new paragraph 4 was inserted into Article 11, which specifies cases where formal charges could be brought against members of Parliament that require the lifting of immunity, even if the maximum sentence might be less than three years' imprisonment; which abolish secret voting for the lifting of immunity; and which specify the time when the limitation period for criminal prosecution is suspended.
62. The authorities have furthermore reported that, in 2004, Parliament published a handbook for its members with a chapter on corruption, with particular regard to immunity. The handbook clarifies such issues as the votes cast and views expressed in the exercise of and in relation to MPs functions. It also makes clear that the parliamentary immunity does not put an end to criminal proceedings, as it is only applicable under certain circumstances and postpones proceedings until the end of a member's term of office (during which the deadline for bringing proceedings is suspended).
63. GRECO took note of the information provided by the Portuguese authorities. However, the measures taken by the authorities do not amount to the issuing of guidelines on the lifting of immunity in cases of corruption.
64. GRECO concludes that recommendation xii has not been implemented.

III. CONCLUSIONS

65. **In view of the above, GRECO concludes that Portugal has implemented satisfactorily or dealt with in a satisfactory manner the vast majority of the recommendations contained in the First Round Evaluation Report.** Recommendations i, ii, iii, iv, vii, viii, ix and x have been implemented satisfactorily. Recommendations vi and xi have been dealt with in a satisfactory manner. Recommendation v has been partly implemented, and recommendation xii has not been implemented.
66. GRECO invites the Head of the delegation of Portugal to submit additional information regarding the implementation of recommendations v and xii by 31 December 2006.

⁷ Approved by Act no. 7/93 of 1 March 1993, as amended by Acts no. 24/95 of 18 August 1995; no. 55/98 of 18 August 1998; no. 8/99 of 10 February 1999; no. 45/99 of 16 June 1999; no. 3/2001 of 23 February 2001 and no. 24/2003 of 4 July 2003.