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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Portugal

Adopted by GRECO
at its 48th Plenary Meeting
(Strasbourg, 27 September – 1 October 2010)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Portugal at its 28th Plenary Meeting (12 May 2006). This report (Greco Eval II Rep (2005) 11E) addressed 10 recommendations to Portugal and was made public on 24 May 2006.
2. Portugal submitted the Situation Report required under the GRECO compliance procedure on 29 November 2007. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Portugal at its 39th Plenary Meeting (10 October 2008). This last report was made public on 4 December 2008. The Compliance Report (Greco RC-II (2008) 2E) concluded that recommendations vii and x had been implemented satisfactorily and recommendations i, iv, v and ix had been dealt with in a satisfactory manner. Recommendations ii, iii, vi and viii had been partly implemented; GRECO requested additional information on their implementation. This information was provided on 30 April 2010.
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 ii, iii, vi and viii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation ii.

4. *GRECO recommended that existing provisions on the identification, seizure and confiscation of the proceeds of corruption and trading in influence be reviewed and, if necessary, guidelines be drawn up and additional training organised to facilitate their application.*
5. GRECO recalls that the first part of this recommendation was considered adequately dealt with as legislation (Act 5/2002) concerning confiscation had been amended to extend the possibility of using confiscation in relation to a wider range of corruption offences. In respect of the second half of the recommendation – relating to additional training – GRECO considered the measures reported inadequate and concluded that the recommendation had only been partly implemented.
6. The Portuguese authorities now report that additional measures have been taken in respect of the first as well as the second part of the recommendation. They refer to the new Law no. 25/2009 on the execution in the European Union of orders to freeze property or evidence and Law no. 88/2009 on the execution of confiscation orders in the European Union. Moreover, the authorities submit that further measures have been taken for the purpose of improving the fight against corruption. The National Unit Against Corruption within the Criminal Police is being reinforced with more budgetary means and new staff specialised in economic crime¹. Moreover, the authorities highlight the adoption of Law no. 38/2009, which defines the objectives and priorities for the fight against corruption (2009-2011), and stress that the process aiming at the ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 199) was completed by a Resolution of Parliament no. 82/2009 of 3 July 2009 (official Gazette no. 166, I Serie, of 27 August 2009). Furthermore, a Resolution was adopted by Parliament on 1 March 2010 (no. 18/2010) according to which further national measures to strengthen the fight against

¹ By June 2010, 40 new police inspectors on economic crime and, subsequently, some 100 further such positions to be filled.

corruption are recommended. The authorities also indicate that the use of seizure mechanisms by the Criminal Police has increased and that between 2008 and 2010 property at a value of some 15 million Euros was subject to such measures within the framework of the fight against economic crime, including corruption.

7. The authorities report in respect of the second half of the recommendation (training of staff) that the High Institute for the Criminal Police and Criminal Science (“Criminal Police School”) has provided specific training on confiscation of proceeds from crime and recovery of assets for criminal investigation officers. The training was devoted to substantial issues (Articles 109 and 111 of the Criminal Code), procedural questions (Article 178 etc of the Code of Criminal Procedure) and executorial matters (Law 88/2008 on the Execution of Confiscation Orders) as well as a comparative study of European systems, including the “CARIN network”. Furthermore, the Financial Intelligence Unit (FIU) has disseminated information on typologies, methods of action, and practical cases relating to economic crime, including corruption, and has thus increased its training. For example, training courses were provided by the Criminal police and the FIU on topics such as seizure, confiscation and asset recovery in 2008, 2009 and 2010. The Criminal Police School carried out a “theme-week” on corruption and related issues in April 2010. Several members of the Criminal Police have participated in international meetings and conferences (in particular the Council of Europe and the EU between 2008 and 2010). The authorities also state that the Judicial Training Centre (CEJ), which is responsible for the training of judges and prosecutors, has carried out a number of training activities since 2008, for example on organised crime and assets from such crime (Rome, October 2008) and on judicial cooperation (Lisbon, February 2010). The CEJ was also involved in a training module on asset recovery and confiscation of proceeds from corruption in March 2010. Corruption is included in the CEJ training programmes and these programmes are available on the CEJ website.
8. GRECO takes note of the information provided. It welcomes the fact that Portugal continues to develop its legislation in the area of seizure and confiscation of proceeds from crime, including from offences of corruption. GRECO notes that this process aims at providing legislation in this area which is coherent and harmonised with EU norms and standards. In the past, measures such as seizure and confiscation were not often applied and in view of the new legislation in place, GRECO believes that the second part of the recommendation is now of particular importance. The implementation of a new system for these measures calls for massive education and training, in particular within the law enforcement and the judiciary. To this should be added that Portugal is employing a considerable number of new staff within the Criminal Police to deal with such measures. In view of the current situation, GRECO takes the view that – despite the efforts taken by the Portuguese authorities – much more could be done in order to make sure that the new legal system concerning seizure and confiscation of proceeds from corruption is implemented as intended. What has been reported in terms of specific training is largely about *ad hoc* seminars at the domestic level and some international conferences. GRECO therefore maintains its previous conclusion and calls for comprehensive efforts in the area of training, preferably as permanent features in the pertinent training curricula for law enforcement staff.
9. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

10. *GRECO recommended that the anti-money laundering arrangements make a greater contribution to combating corruption, particularly by ensuring that bodies involved in combating money laundering, and institutions and professions required to declare suspicious transactions, receive directives and training to assist the identification and reporting of acts of corruption.*
11. GRECO recalls that this recommendation was considered partly implemented in the Compliance report. GRECO concluded that Portugal's newly established anti-money laundering legislation, needed to be accompanied by guidelines, training and awareness raising initiatives in order to offer those responsible for identifying suspicious transactions a better understanding of how money laundering, including when it is linked to corruption, operates and how to apply new legislation in this area. GRECO called for a more active approach in particular regarding training and recommended that various institutions be involved, in addition to in-service training within individual institutions.
12. The Portuguese authorities now indicate that in order to cope with the training needs identified and bearing in mind, in particular, this recommendation, the Financial Intelligence Unit (FIU) has extended the training on economic and financial issues to entities and staff required to declare suspicious transactions in accordance with Law no. 25/2008. The authorities have submitted an extensive list of training sessions organised by the FIU in the area of money laundering. More than 10 seminars were organised for various banks and financial institutions in 2008/2009. In addition, training on money laundering was provided at the Oporto Faculty of Economics and at the Institute for High Military Studies. Also in 2008/2009, the FIU participated in a study on money laundering and financing of terrorism in association with KPMG (auditing) and with several banks.
13. The authorities also refer to other means than training to further the fight against money laundering and related offences. The FIU is represented at the Permanent Technical Group on Money Laundering and Financing of Terrorism, set up at the initiative of the Bank of Portugal, where seven financial institutes are represented. The purpose of this group is to promote the cooperation between several entities involved in the prevention of money laundering/financing of terrorism and related offences. Moreover, the FIU provides monthly information on data related to the communications received, comprising the number of reports (financial and non-financial); the type of suspicious transactions reported; and the number of communications where the suspicions have been confirmed, its final outcome and, whenever possible, the predicate offence at stake. The FIU provides feedback every three months, as well as on a case by case basis, to the entities that report suspicious transactions and an annual report containing statistical data and an analysis of the cases.
14. The authorities furthermore refer to legal texts and guidelines, most notably, the Decree-Law no. 93/2003 concerning the identification of undue benefits and the guidelines on the application of Law no. 25/2008, through Order no. 104/2009 of the President of the Registries and Notaries Institute, regarding the duties entrusted to the registrars and notaries in matters related to the prevention of money laundering and to the financing of terrorism and related offences. Finally, the Portuguese authorities highlight that the Statutory Audit Order, besides the training activities given to their associates, has approved a Circular Letter where attention is given to the problem of corruption and to the need to make, in the course of audits, the necessary checks and to report suspicious transactions to the competent authorities.

15. GRECO takes note of the information provided which indicates that Portugal, following the adoption of new anti-money laundering legislation, has adopted a rather active approach in order to implement the legislation in practice. This approach, which is built on the issuing of guidelines, training, institutional cooperation and communication between authorities, is commendable. Even if the link between corruption and money laundering could be further emphasised in future efforts, GRECO is pleased with the actions taken so far.
16. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation vi.

17. *GRECO recommended that existing codes of conduct be expanded to include explicit references to ethical issues and risks of corruption (such as the issue of gifts) for all public officials and prescribe appropriate sanctions for non-compliance with these codes. Training programmes on these topics should be modified to include practical examples of potential conflicts of interest and provided to all public officials (civil servants and others).*
18. GRECO recalls that the Compliance report welcomed some positive steps taken by the Portuguese authorities in order to improve codes of conduct/ethical codes, *inter alia*, to revise the public administration ethical charter and to place more emphasis on preventing corruption. GRECO also welcomed the elaboration of the January 2007 “Explanatory guide to corruption and related offences – preventing corruption”. However, it was concluded that these measures could not replace the need for the establishment of a new ethical code and that nothing significant in the area of training had occurred. The recommendation was considered partly implemented.
19. The Portuguese authorities now report that a Commission - established in January 2010 - currently entrusted with the elaboration of a “Reference framework” for codes of conduct and ethical issues of the public sector (including central, regional and local levels as well as to publicly owned companies). This document is to serve as a guideline for the entities concerned when drawing up or amending their particular ethical codes and rules of conduct and accompanying sanctions. The Commission is presided over by the Justice Secretary of State and is composed of representatives of the Presidency of the Council of Ministers, the Ministries of Finance and Public Administration and Justice and by the Secretary-General of the Council for the Prevention of Corruption. The Commission has, in accordance with its mandate (Order no. 376/2010²), prepared a draft text for the “Reference Framework”, which currently is being considered by various ministries, including the Ministry of Justice, prior to its submission to Parliament for approval.
20. The authorities also refer to “Management plans on risks of corruption and related offences” to be established by the various entities concerned, also to serve as a basis for the elaboration of codes of conduct and ethics in various institutions at different levels of administration and in the public companies. The elaboration of such plans is aimed at identifying the situation in terms of risks of corruption and, thus, to assist in defining not only preventive and corrective measures, but also to prepare follow-up measures, including training needs and awareness-raising.
21. GRECO takes note of the information provided which indicates that Portugal is now in an advanced preparatory stage of the elaboration and revision of codes of ethics/conduct on a wide scale and it appears that risks of corruption will be duly addressed in this work. However, concrete results in terms of new or amended codes or the establishment of related training have

² Established by the Presidency of the Council of Ministers and the Ministries of Finance, Public Administration and Justice.

not yet been achieved. GRECO therefore maintains its previous conclusion as to the implementation of this recommendation.

22. GRECO concludes that recommendation vi remains partly implemented.

Recommendation viii.

23. *GRECO recommended that a) the existing system of professional disqualifications be made better known; b) closer supervision be exercised over private law legal persons – including “irregular” companies – and their managers during and after their registration, particularly concerning their prior judicial records, and c) that priority be given to enacting and implementing the draft legislation to reform the commercial register.*

24. GRECO recalls that the first part of this recommendation (a) had been implemented according to the Compliance Report. Concerning the second part of the recommendation (b), GRECO welcomed that judicial decisions were communicated to the criminal register of legal persons; however, GRECO called for more systematic checks of information concerning both the legal persons themselves and their managers during and after registration of legal persons. GRECO also called for further information as to the reform of the commercial register (c), in particular in respect of the centralisation of that register, which had been deferred at the time of the adoption of the Compliance Report.

25. The Portuguese authorities now stress in respect of the second part of the recommendation (b) that the supervision of legal persons has been enhanced due to a number of measures taken. Following the adoption of Law no. 114/2009, aimed at adapting the criminal identification regime to that of criminal liability of legal persons, information on extinction of and mergers between legal persons is now being registered, in addition to information about criminal convictions. Moreover, unless provided otherwise by law, various certificates required for the performance of certain forms of economic activities now comprise a complete transcription of the criminal record of the legal person. The Code for Public Contracts (Decree-Law no. 18/2008) excludes as candidates or competitors the entities whose administrative or managerial staff have been convicted for crimes of corruption. Yet another safeguard is that in accordance with the Decree-Law no. 1/2008, only persons with “integrity” who may guarantee a sound and sensible management, taking into account, in particular, the safeguard of the funds entrusted to the institution, can be part of the administration and supervisory bodies of credit institutions; such “integrity” clearance cannot be attained by somebody who has been convicted for corruption offences. Furthermore, members of the administration and supervisory bodies of private limited companies and of mutual insurance companies must comply with the “integrity criteria”, in accordance with Decree-Law no. 2/2009. Similarly, according to Law no. 49/2009, the constitution of commercial companies which aim at the commerce and industry of military goods and technology and the inclusion of such activities into the statutes of already formed companies, as well as the running of such activities by natural persons, is dependent upon a licence concerning the “integrity” of the candidate, issued by the Minister for National Defence. A conviction for crimes of corruption implies that this condition has not been met.

26. The authorities furthermore report that in the light of the current recommendation, the Directorate-General for Justice Policy, has carried out a comparative study on the control of legal persons in the prevention of corruption (approved by the Minister of Justice’s Order of 02/02/2009) and has come to the conclusion that there is an effective control in Portugal on access to certain activities by entities, in particular, for the activities whose exercise depends upon authorisation by a public

authority; the criminal record of legal persons is being used as an element of evidence for the “integrity” check prior to the formation of a legal person. The authorities also refer to a new project under the Directorate-General of the Justice Administration aiming at merging the Criminal Records of Legal Persons (SIRCRIM) with the Central Register of Legal Persons (FCPC) as well as with the Integrated Commercial Register Information System (SIRCOM). This work is underway, however, the Registries and Notaries Institute has already taken steps to develop the computerisation of SIRCOM in order to obtain an automatic validation of the situation of the criminal record of the management or supervisory bodies of legal persons whenever a sanction, following the commission of a crime, has been applied. The authorities furthermore stress that concerning “irregular companies”, the merge between the FCPC and SIRCOM (Decree-Law No. 247-B/2008), will reduce the possibility for “irregular companies” in the FCPC to stay out of the commercial registration obligations.

27. The Portuguese authorities report in respect of the last part of the recommendation (c), that the modernisation of the commercial register is underway with the inclusion of the Central Register of Legal Persons into the Commercial Register Information System. Currently, all companies registered are recorded in a computer database whereby an automatic and immediate communication of their relevant acts takes place between the Commercial Register, the Tax Administration and the Social Security Administration. Following the entry into force of the Decree-Law no. 122/2009, information relating to the companies is now reported by just one entity, namely, the Register services which then submits, *ex-officio*, such information to the tax and social security services in order to allow for a closer supervision of legal persons.
28. GRECO takes note of the information provided in respect of parts b) and c) of recommendation viii. It welcomes the range of measures taken, in particular the new legislation which has been enacted to create a registration system where information on legal persons and related entities and natural persons is more centralised and thus easier to access. This will, in principle, facilitate the supervision of legal persons during and after registration. GRECO also notes that legislation has been adopted to provide for control and licensing of legal persons as well as connected natural persons before they can enter into specific branches of activities. In conclusion, GRECO is pleased that the reform in the area of commercial and criminal registers of legal persons in order to meet the shortcomings established in the Evaluation report appears to be well underway.
29. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

III. CONCLUSION

30. In addition to the conclusions contained in the Second Round Compliance Report on Portugal and in view of the above, GRECO concludes that recommendations iii and viii have been dealt with in a satisfactory manner. Recommendations ii and vi remain partly implemented.
31. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 10 recommendations issued to Portugal, in total 8 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner. GRECO expects that further positive developments will be signalled in the near future, in particular in respect of the establishment of codes of conduct and training in public administration as a means to prevent risks of corruption. GRECO also stresses the need for further staff training concerning the application of confiscation and seizure of proceeds from corruption.

32. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Portugal. The Portuguese authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations ii and vi.
33. Finally, GRECO invites the Portuguese authorities to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.