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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Malta

Adopted by GRECO
at its 43rd Plenary Meeting
(Strasbourg, 29 June – 2 July 2009)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Malta at its 24th Plenary Meeting (1st July 2005). This report (Greco Eval II Rep (2004) 14E) was made public by GRECO, following authorisation by the authorities of Malta, on 23 August 2005.
2. Malta submitted the Situation Report required under the GRECO compliance procedure on 4 May 2007. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Malta at its 33rd Plenary Meeting (1 June 2007). This last report was made public on 17 July 2007. The Compliance Report (Greco RC-II (2007) 6E) concluded that recommendation i had been implemented satisfactorily, recommendations v and vii had been dealt with in a satisfactory manner and recommendations ii, iii, iv and vi had been partly implemented; GRECO requested additional information on their implementation. This information was provided on 8 June 2009.
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, iv and vi in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation ii.

4. *GRECO recommended to introduce clear rules/guidelines for situations where public officials move to the private sector in order to avoid situations of conflict of interest.*
5. GRECO recalls that in the Compliance Report it was noted that comprehensive measures were underway in Malta in order to establish a Public Administration Act as a common instrument for the public sector, *inter alia*, defining the term "public official" and introducing rules/guidelines aiming at regulating situations where public officials move to the private sector. However, since the Act - supplemented with ethical guidelines - had not been adopted at the time of examination of the Compliance Report, GRECO concluded that the recommendation had only been partly implemented.
6. The authorities of Malta now report that the Bill for the enactment of an Act on Public Administration (Bill No. 97 of 2007) was presented in Parliament on 27 March 2007 and enacted into law by Act I of 2009, Cap. 497 of the Laws of Malta ("*Public Administration Act*"). It was published on 3 February 2009. Article 1(2) of the Act stipulates: "*This Act shall come into force on such a date as the Prime Minister may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Act: Provided that articles 21 to 26 inclusive, 28 and 31 to 34 inclusive may only be brought into force after the necessary instruments of delegation have been issued in terms of article 110 of the Constitution.*" The authorities explain that this provision is meant to ensure that sufficient time is given to Governmental Authorities to make the necessary administrative arrangements in order to implement the provisions of the Act.
7. The authorities stress that to the *Public Administration Act* is appended a Code of Ethics for all Government Employees (First Schedule of the Act) and an obligation on all public employees to comply with the Code (Art. 5(3) of the Act). Moreover, the Code contains provisions concerning

conflicts of interest (Section B); acceptance of gifts or benefits (Section C); prohibition of employment in the public sector which might lead to the use of "insider information" (Article 24); and provisions on outside employment and termination of employment (Articles 27, 28 and 29). Furthermore, the authorities submit that the *Public Administration Act* is to be seen in the light of the various rules and guidelines that have been prepared in anticipation of the entering into force of this Act; i.e. a revised *Code of Ethics for Board Directors in the Public Sector*, issued by the Office of the Prime Minister, which complements a second document, issued by the same office, entitled *Corporate Governance Framework for Public Sector Entities*. The latter document sets out the roles, duties and responsibility of Board Directors in the Public Sector. These documents were issued in 2008.

8. With regard to the particular issue addressed in recommendation ii, i.e. situations where public officials move to the private sector, the authorities refer to Article 24 of the Code of Ethics, annexed to the *Public Administration Act*, which reads: "A public employee¹ as defined in article 2 of the *Public Administration Act* shall not accept employment in the private sector if he will be placed in a position to make use of "insider information" if such information came to his knowledge as a direct result of his public employment". Moreover, the same Code of Ethics stipulates in respect of outside employment that prior approval² of the Chief Executive Officer is required before public employees may engage in any form of business or employment outside their official duties (Article 27) and that in all cases when outside employment is considered, public employees shall give their public sector employment first consideration and avoid situations which could give rise to, or appear to be, a conflict of interest; in particular, they should consider whether the organisation concerned has a contractual or lobbying relationship with the Government (Article 28). Moreover, former public employees shall ensure that they do not accept employment or engage in activities which may cast doubt on their own integrity or that of the organisation in which they were previously employed or that of the Public Service in general (Article 29).
9. GRECO welcomes the information provided by the Maltese authorities concerning the adoption of a *Public Administration Act* and the Code of Ethics appended to the Act. GRECO notes, *inter alia*, that Malta has succeeded in creating a comprehensive legal framework for its public administration. GRECO takes the view that, with the adoption of detailed rules for situations where public officials move to the private sector, Malta has established a model for good practice that might prove useful to other GRECO members which are in the process of considering such regulations.
10. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

11. *GRECO recommended to introduce clear rules/guidelines and training for public officials concerning the reporting of suspicions of corruption and to enhance protection for whistle-blowers who report in good faith.*
12. GRECO recalls that in the Compliance Report, GRECO noted that Malta at the time was in the process of establishing rules for public officials on reporting unethical behaviour, that whistleblower protection had been enhanced and that comprehensive training for public officials

¹ Public employee" includes public officers and employees of government agencies and government entities.

² Extended to persons who have been employed by the mentioned entities for a period of three years from the date of termination of their employment.

was about to be established. However, full implementation of these measures was linked to the adoption of the Public Administration Act, a matter that was pending before Parliament. As a consequence, this recommendation was considered partly implemented.

13. The authorities of Malta now report that with the adoption of the *Public Administration Act*, to which the Code of Ethics is appended, public employees have a duty to report to a senior employee any unethical behaviour or wrongdoing by any other public employee during the course of his or her duties (Article 20 of the Code of Ethics). As regards the protection of whistleblowers, Malta reiterates that such protection existed in the Employment and Industrial Relations Act (Article 28 of Chapter 452 of the Laws of Malta) as acknowledged in the Compliance Report. It is to be recalled that this provision makes it a criminal offence to victimise any other person for having made a complaint to the lawful authorities, for having initiated or participated in proceedings for redress on the grounds of an alleged violation of the law or for having disclosed any information to a public authority on illegal or corrupt activities. In addition, Article 31 of the *Public Administration Act* stipulates that no person shall be victimised on the basis of making any report to his/her superior and, if such a person is victimised, the Public Service Commission is to take the necessary corrective steps.
14. Concerning training, the authorities report that the Ministry of Finance's Financial Management Monitoring Unit (FMMU), in conjunction with the Internal Audit Investigations Directorate (IAID), has issued a National Anti-Fraud and Corruption Strategy based on four pillars: capacity building, communication, national co-operation and co-ordination and international co-operation. Parts of the Strategy have been implemented through training programmes. Training has been offered to staff at the Customs Department, the Inland Revenue Department and the Value Added Tax Department. Moreover, the Staff Development Organisation within the Office of the Prime Minister has organised a training course in the second quarter of 2008 on "Ethical Norms in the Public Service". The training given consisted of modules in ethics (with special emphasis on anti-fraud and corruption) and was offered to about 800 new entrants at clerical level and newly promoted executive officers, across ministries. The authorities add that this training also included the Code of Ethics, appended to the *Public Administration Act*, including the reasons why corruption should be reported.
15. GRECO takes note of the updated information provided. It welcomes the fact that reporting of unethical behaviour has become a duty under the law of public employees and that the reporting obligation is connected to certain provisions aimed at protecting those who make such reports ("whistleblowers") from retaliation. GRECO is furthermore pleased that training concerning these matters has been carried out across the public administration. GRECO encourages the Maltese authorities to continue these efforts with a view to providing such training on a regular basis.
16. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

17. *GRECO recommended that existing rules on freedom of information be extended, involving in particular, access to official documents, and that the implementation of the rules be properly monitored.*
18. GRECO recalls that it was concluded in the Compliance Report that this recommendation was partly implemented as a draft Freedom of Information Act was subject to a pre-Parliamentary consultation process.

19. The authorities of Malta now report that the draft Freedom of Information Act, which was presented as Bill No. 7 of 2008, has been adopted and become law by Act XVI of 2008, Cap. 496 of the Laws of Malta (*The Freedom of Information Act*), published on 19 December 2008. Article 1(2) of the Act stipulates that “*This Act shall come into force on such a date as the Minister may by notice in the Gazette appoint, and different dates may be so appointed for different provisions or different purposes of this Act*”. The authorities explain that this provision allows the Government to put into place the various structures, as discussed below, necessary for the implementation of the Act before it enters into force.
20. The authorities submit that the *Freedom of Information Act* is based on the principle that information of public authorities is subject to disclosure unless there are justifiable reasons, in terms of specific criteria established by law, for withholding it. The Act further provides for an independent mechanism capable of enforcing the law and offering citizens an avenue of appeal against decisions to withhold information. The Commissioner for Data Protection³ is to be responsible for promoting the observance of the Act by relevant public authorities. Currently, discussions are being held concerning the implementation of rules of procedure that need to be in place in order to implement effectively the provisions of the *Freedom of Information Act*. Discussions are also being held on organisational matters, such as staffing within the Office of the Data Protection Commissioner and within the various Governmental Departments and entities which will be directly affected by this Act. This also includes the design of an awareness-raising strategy amongst the general public as well as within the public administration. Moreover, a Code of Practice providing guidance to public authorities on the discharge of their functions under the Act, as well as training courses for public officials, are planned.
21. GRECO takes note of the substantial progress reported. It welcomes the adoption by Parliament of the *Freedom of Information Act in 2008*, which must be regarded as a major step ahead in order to provide for more transparency and openness of the public administration in Malta. However, as this Act has not yet entered into force, GRECO cannot change its previous conclusion contained in the Compliance Report.
22. GRECO concludes that recommendation iv remains partly implemented.

Recommendation vi.

23. *GRECO recommended to introduce rules/guidelines and training for the staff of Tax authorities concerning the detection of corruption offences.*
24. GRECO recalls that it was concluded in the Compliance Report that recommendation vi was partly implemented as training of Tax authority staff was part of an action plan, which had not materialised at the time.
25. The authorities of Malta now report that the “Tax authorities” are made up of the Customs Office, the Value Added Tax Office and the Department for Inland Revenue. Each of these bodies has its own specific code of ethics/conduct designed for its particular needs.
26. As regards training of staff, the authorities report that the Customs Office has organised a number of training sessions targeting directly the Customs officers and employees. Based on a training needs assessment, a training course entitled “Customs and Integrity” targeting all customs staff

³ The Commissioner for Data Protection is established under Article 36 of the Data Protection Act, Cap. 440 of the Laws of Malta.

was established in 2007. The objective of this course was to raise the awareness of participants about the importance of integrity in customs and to better understand the anti-corruption strategies in order to curb improper conduct of officials and corruption problems. The courses included aspects such as good governance and integrity as a tool to prevent corruption. The training was organised during the first quarter of 2008 and attended by 328 customs officials. Attendance of this course was obligatory to all staff. Furthermore, the topics of integrity, ethics and corruption were also addressed in two other courses offered to the newly appointed officers as a way of prevention of corruption among new appointees. The issue of corruption was addressed in the course "*Training for Newly Appointed Officers*" and in the course "*Induction Training for newly posted clerks at Customs*". Both courses were offered in early 2008.

27. The authorities also report that the Internal Audit and Investigation Directorate (IAID) organised a seminar on Combating Fraud and Corruption in October 2008. This seminar was addressed by officials within the European Anti Fraud Office (OLAF) and a senior prosecuting officer within the Office of the Attorney General, Malta. The detection of corruption offences was addressed by the speakers during this seminar, in particular under the theme "Combating corruption" and "Success stories in combating corruption". A total of 14 organisations attended this seminar, including representatives from the Customs Department, the VAT Department, the Inland Revenue Department, the Benefit Fraud and Investigation Department, the Financial Intelligence Analysis Unit and the Malta Police Force. Moreover, in May 2009, IAID organised another training course as part of an EU Programme on "*Capacity building for the Public Internal Financial Control System*", also including the issues of corruption and fraud at which various tax officers participated.
28. Finally, the authorities submit that the IAID, in collaboration with the Staff Development Organisation (SDO) at the Office of the Prime Minister and the Centre for Policy Research and Training (CPRT), will be organising an "*Anti Fraud and Corruption Course*" as a "train-the-trainer" course, directed towards public employees in finance, accounts and corporate services sections in various ministries, departments and local councils etc. This course, which is to be held in October 2009, will examine various aspects, such as the psychology of fraud and corruption; anti-fraud and corruption legislation; prevention, detection and investigation of fraud and corruption.
29. GRECO welcomes that codes of ethics are in place in respect of all the tax authorities in Malta. These Codes provide in themselves important tools for the training of staff in these sections. GRECO also notes that a number of different training opportunities – some of which also relate to recommendation iii (above) – have been provided to various staff of the tax authorities on an *ad hoc* basis. It believes that induction training of new staff is particularly important and encourages Malta to provide further such training – as well as "train-the-trainer" courses which may also pave the way for in-service training on a regular basis in the future.
30. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

III. CONCLUSION

31. In addition to the conclusions contained in the Second Round Compliance Report on Malta and in view of the above, GRECO concludes that recommendations ii and iii have been implemented satisfactorily, that recommendation vi has been dealt with in a satisfactory manner and that recommendation iv remains partly implemented.

32. With the adoption of the present Addendum to the Compliance Report, Greco concludes that out of the seven recommendations addressed to Malta, in total six have been implemented satisfactorily or dealt with in a satisfactory manner. As regards recommendation iv, which remains partly implemented, Malta has made further progress as the Freedom of Information Act has been adopted by Parliament. GRECO urges the authorities to continue their efforts in order to make this fundamental legislation enter into force as soon as possible.
33. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Malta. The authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendation iv.
34. Finally, GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of the Addendum.