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Second Evaluation Round

Compliance Report on "the former Yugoslav Republic of Macedonia"

Adopted by GRECO
at its 34th Plenary Meeting
(Strasbourg, 16-19 October 2007)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on “the former Yugoslav Republic of Macedonia” at its 25th Plenary Meeting (10-14 October 2005). This report (Greco Eval II Rep (2004) 11E) was made public by GRECO, following authorisation by the authorities of “the former Yugoslav Republic of Macedonia”, on 2 December 2005.
2. In accordance with Rule 30.2 of GRECO’s Rules of Procedure, the authorities submitted their Situation Report (RS-report) on the measures taken to implement the recommendations on 3 May 2007.
3. At its 26th Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Bosnia and Herzegovina and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Sead TEMIM on behalf of Bosnia and Herzegovina and Mr Tom BARNES on behalf of the United Kingdom. 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 to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its Evaluation Report addressed fourteen recommendations to “the former Yugoslav Republic of Macedonia”. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended to prepare a project for the implementation of the new proceeds of crime legislation on confiscation and seizure and connected issues, including the establishment of guidelines and thorough training for the officials concerned and to collect detailed information on the use, and failure to use, confiscation and interim measures in order to be able to evaluate how the system operates in practice.*
7. The authorities report on the implementation of the CARPO project on organised crime (CARDS Regional Police Project), during the period 2004 - 2007, including, *inter alia*, the elaboration of a manual on financial investigations and confiscation of proceeds of crime in February 2005, which was distributed to the law enforcement institutions, as well as two training activities on financial investigation. Moreover, they report that further training activities on corruption-related investigations for staff of the Public Prosecution Office started in December 2006, as part of a CARDS twinning project with Italy for the fight against organised crime. The authorities add that need for additional training has been expressed and that the Police Academy as well as the newly established Academy for Judges and Prosecutors have integrated modules on financial investigation and confiscation in their teaching programmes. Furthermore, the authorities make reference to various measures taken in view of the implementation of the new legal regulation for money laundering prevention, particularly in the framework of the MOLI – MK project, a joint project of the Council of Europe and the European Agency of Reconstruction, during the period 2005/2006, including a number of training events for the employees of the Directorate for the Prevention of Money Laundering and the competent prosecution authorities, but also for

representatives of the private sector. Finally, the authorities state that, at a donor coordination meeting with representatives of the EU on the subject "Fight Against Corruption" in January 2007, they expressed the need to support measures to enhance the practical application of the legal provisions on proceeds of crime seizure and confiscation, including an evaluation.

8. GRECO notes that measures to promote financial investigations, *inter alia*, the distribution of a manual on financial investigations and confiscation of proceeds of crime as well as some training activities have been reported, but that there seems to be a need for further training and for additional efforts to enhance the practical application of the new legal provisions on seizure and confiscation of proceeds of crime. Moreover, the practical application of these provisions should be subject to evaluation, in line with the recommendation.
9. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

10. *GRECO recommended that the Government formally adopts the State Programme for the Prevention and Suppression of Corruption.*
11. The authorities report that on 19 December 2006 the Government adopted the State Programme for the Prevention and Suppression of Corruption and made an explicit commitment to ensure its implementation.
12. Moreover, the authorities indicate that the State Commission for the Prevention of Corruption has prepared a new Programme for the Prevention and Suppression of Corruption supplementing the existing State Programme with regard to the measurement of the risks of corruption and of the efficiency of the institutions engaged in the fight against corruption, as well as an action plan.
13. GRECO takes note of the information provided and concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

14. *GRECO recommended to include anti-corruption measures concerning local authorities as a specific subject of the State Programme against Corruption and to see to it that they are implemented in practice.*
15. The authorities report that on 21 June 2005 the State Commission for the Prevention of Corruption adopted an Annex to the State Programme for the Prevention and Suppression of corruption in the field of local authorities. This Annex is specifically intended for situations where state functions are transferred from the central administration to the local level, in particular in respect of legitimacy, transparency, professional skills, effectiveness, decentralisation, transformation and privatisation. It aims at enhancing the implementation of relevant legislation and contains an action plan defining the objectives, main characteristics, recommendations and measures as well as a method for their implementation, the competent bodies and a time frame. The implementation of these measures was evaluated in the framework of the Standing Annual Conference of the State Commission in November 2006, in which mayors of a number of municipalities also took part. Furthermore, the authorities mention that a Code of Ethics for elected officials at local level, following international cooperation activities, was adopted by the

Union of the Units of Local Self-government (ZELS), along with a recommendation to all municipalities to approve the Code.

16. GRECO takes note of the information provided and concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

17. *GRECO recommended to urgently adopt basic legislation on access to public information and to develop modern principles and routines for “e-governance”.*
18. The authorities report that the Law on Free Access to Information was adopted by Parliament on 25 January 2006 and came into force in September 2006. The law regulates the terms and the procedure for exercising the right to free access to public information provided by governmental and other bodies, including municipal administrations. Its implementation is supervised by the Commission for the Protection of the Right of Free Access to Public Information whose president and other members are appointed by and responsible to Parliament.
19. The authorities further report on several new tools for “e-governance”, including the preparing and holding of Government sessions by means of an integrated information technology system, the establishment of an internet portal by the General Secretariat of the Government, including a monitoring system on the implementation of the Government’s Annual Programme and its decisions. Moreover, the Government’s information portal www.uslugi.gov.mk permits online interactions between citizens and the Government and contains modules for granting licenses as well as public procurement proceedings.
20. GRECO has repeatedly stated that access to public information is a cornerstone of a modern administration and a crucial requirement for the prevention as well as the detection of corruption. Therefore, GRECO welcomes the important achievement of the adoption of the Law on Free Access to Information. Furthermore, the development of new tools for “e-governance” appears promising.
21. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

22. *GRECO recommended to increase public awareness of the Ombudsman as a potential mechanism for processing complaints concerning corruption in the public administration.*
23. The authorities report that complaints related to corruption in the public administration are submitted to the State Commission for the Prevention of Corruption, since its establishment at the end of 2002.¹ Therefore, no specific measures have been taken to raise the public’s awareness of the Ombudsman as a potential mechanism for processing requests in this field. The authorities state that during the period 2005/2006, the State Commission has conducted an active campaign in order to inform the public about its competences, including the processing of corruption-related complaints, in the frame of the PACO Impact project funded by the Council of Europe. Finally, they indicate that the Ombudsman – who also carried out an information campaign about his own

¹ According to the statistics delivered by the authorities, 767 corruption-related complaints were submitted to the State Commission during the period 2003 to 2006 (2003: 170; 2004: 190; 2005: 177; 2006: 230), 62 of which proved to be credible suspicions of corruption.

competences in 2005 and processes an increasing number of complaints – submits corruption-related cases to the State Commission as the competent body.

24. GRECO notes that according to the explanations provided by the authorities, the State Commission for the Prevention of Corruption is the competent body for processing complaints concerning corruption in the public administration; this has been communicated to the public. Although recommendation v was related to the public's awareness of the Ombudsman as a potential mechanism in this field, GRECO considers that the objective to encourage citizens to report suspicions of corruption to an independent body has been reached.
25. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

26. *GRECO recommended to consider the introduction of specialised courts - or departments of existing courts – only focusing on administrative law and complaints.*
27. The authorities indicate that by virtue of Article 25 of the Law on the Courts, an Administrative Court of the Republic was established with authority for the whole territory of the Republic. The law was adopted by Parliament on 5 May 2006 and came into force on 1 January 2007 as part of the Strategy for the reform of the judiciary. According to Article 4 of the Law on Administrative Disputes which was adopted by Parliament on 12 May 2006, administrative disputes are to be settled by the Administrative Court as a first instance court and by the Supreme Court as a second instance court.
28. GRECO takes note of the information provided and concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

29. *GRECO recommended to encourage law enforcement and prosecutorial bodies to enhance their communication with other state bodies, in particular those with an obligation to report suspicions of corruption or similar activities.*
30. The authorities report that there is communication between various bodies of the State Administration in the field of prevention and repression of corruption. They refer to the establishment of an interdepartmental body for the coordination of activities against corruption, including, *inter alia*, representatives of several ministries and of the Public Prosecution Office. They furthermore state that the Memorandum of Cooperation on pre-investigative procedure which had been signed in March 2005 has been implemented by the competent agencies, namely the State Commission for the Prevention of Corruption, the Public Prosecution Office, the Ministry of the Interior, the Directorate for Prevention of Money Laundering, the Financial Police and the Courts. Moreover, they report that the State Audit Office continuously submits audit reports to the Public Prosecution Office and to the State Commission for the Prevention of Corruption and in return receives reports on measures undertaken on this basis. They also indicate that cooperation between the various competent bodies, especially between the State Audit Office and the Public Prosecution Office, will be further enhanced and more clearly defined, and that a working group composed of members of the State Commission for the Prevention of Corruption was established in September 2007 in order to prepare a Memorandum of Cooperation for the various competent bodies.

31. GRECO takes note of the information about various forms of existing cooperation. It notes that communication between different bodies of the State Administration concerned by the fight against corruption does exist, and that initiatives to further strengthen the cooperation especially between the Public Prosecution Office and bodies which report suspicions of crime, like the State Audit Office, are under way.
32. GRECO concludes that recommendation vii has been dealt with in a satisfactory manner.

Recommendation viii.

33. *GRECO recommended to consider establishing a regulatory framework of modern administrative principles for the large number of public officials who are not civil servants, which correspond, to the extent possible, to the regulations applicable to civil servants.*
34. The authorities report that on 13 April 2006 the Government adopted a "Review of the achieved improvement and the future priorities in the reform of the public administration", in which it was concluded, *inter alia*, that the status and terms of employment in public administration had not been finalised. For this reason, the Ministry of Justice, in cooperation with the Ministry of Labour and Social Policy, the Ministry of Health, the Ministry of Education and Science and the Ministry of Culture, was analysing the need for a Law on Public Officials regulating their status.
35. GRECO takes note of the information provided. It appears that some consideration has been given to the establishment of a regulatory framework for the status and terms of employment of public officials. That said, no substantial progress has been reported in this respect.
36. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

37. *GRECO recommended to introduce codes of conduct for all public officials including clear rules for reporting suspicions of corruption and to provide training on such matters as well as the risks of corruption, preventive measures and public awareness raising.*
38. The authorities state that the Civil Servants' Agency is currently preparing a supplement to the Code of Ethics for Civil Servants ("Official Gazette of the Republic of Macedonia" no. 9 / 2004 and 16 / 2004) introducing a formal obligation for civil servants to report suspicions of corruption. They further indicate that pursuant to Art. 7 of the Law on Institutions, the Code of Ethics for Civil Servants also applies to public officials in the public institutions for social protection.
39. The authorities also report that in 2007 the Agency of Civil Servants provides some training on the prevention and repression of corruption in the Government and Local Administration as well as on public awareness raising.
40. GRECO takes note of the information provided and welcomes the planned preparation of a rule for reporting suspicions of corruption which is to become an integral part of the Code of Ethics for Civil Servants. However, it reiterates that codes of conduct containing such a rule should be introduced not only for civil servants and for employees in certain sectors, but for all categories of public officials. This also applies *mutatis mutandis* to training activities regarding the reporting of suspicions of corruption.

41. GRECO concludes that recommendation ix has been partly implemented.

Recommendations x and xi.

42. *GRECO recommended to strengthen the controlling functions of the courts in charge of the registration of legal persons with regard to the identity of the founders of legal persons as well as other pertinent information necessary for registration. (x)*

43. *GRECO recommended to establish a centralised registry for legal persons and to improve the material possibilities for the public to accede to information contained in the registry/ies. (xi)*

44. The authorities report on a project called “One-Window System” establishing a single electronic registry for legal persons. They report that the first phase of the project, concerning the registration of commercial companies, has been completed and that the system has been working since January 2006. The second phase will, *inter alia*, consist of the establishment of a single electronic registry for other legal entities (e.g. notaries, lawyers or associations). The authorities explain that the “One-Window System” allows companies to register at the Central Registry’s office (instead of the three courts for registration in Skopje, Stip and Bitola) which reduces the cost and duration of proceedings (3 working days instead of 48). The control of the registration procedure is no longer exercised by the courts but by the Central Registry. According to the authorities, the concentration of the data bases at the Central Registry (personal data registry, address registry and trade companies registry) will increase the validity and the integrity of the data compiled.

45. The authorities furthermore report that the public may access all the information contained in the Central Registry via the Internet, including the history of and recent changes to the data as well as scanned forms of the registered entities. As for financial reports, access can only be obtained with authorisation of the entity concerned.

46. GRECO takes note of the information provided. It notes that the controlling function is no longer exercised by the courts but by the Central Registry which at the same time will be responsible for the administration of the personal data registry and the address registry of this country. GRECO trusts that this concentration of competences will promote a better control of the registration process.

47. GRECO concludes that recommendation x has been dealt with in a satisfactory manner and that recommendation xi has been implemented satisfactorily.

Recommendation xii and xiii.

48. *GRECO recommended to adopt legislative or other measures to ensure that legal persons can be held liable for the criminal offence of trading in influence, in accordance with Article 18 of the Criminal Law Convention on Corruption (ETS 173).*

49. *GRECO recommended to consider the establishment of a criminal record registry for legal persons.*

50. The authorities state that in accordance with the “Action Plan for European partnership for 2007” as well as the “National Programme for the adoption of the Law of the European Union”, it is

planned to pursue during 2007 the reform of criminal legislation and that the Government has drafted a bill to amend and complete the Criminal Code which will be submitted to Parliament by the end of October 2007. They report that the bill proposes to establish criminal liability of domestic and foreign legal persons for the offence of trading in influence, punishable by imprisonment between 3 months and 3 years or a fine (Article 359 of the amended Criminal Code), as well as a criminal record registry for legal persons (Article 106-a of the amended Criminal Code).

51. GRECO notes that the reported bill to amend and complete the Criminal Code takes into account recommendations xii and xiii and acknowledges that recommendation xiii to consider the establishment of a criminal record registry for legal persons has been properly addressed by this draft legislation. However, as the bill has not been adopted yet, it cannot regard recommendation xii to introduce the liability of legal persons for the criminal offence of trading in influence as implemented. Therefore, GRECO encourages the authorities to make every effort to have the bill adopted as soon as possible.
52. GRECO concludes that recommendation xii has not been implemented and that recommendation xiii has been implemented satisfactorily.

Recommendation xiv.

53. *GRECO recommended to establish extensive training for police, prosecutors and judges on corporate liability of legal persons and the implications of corporate liability legislation for the investigation, prosecution and adjudication of relevant cases.*
54. The authorities report on several training activities with regard to the criminal liability of legal persons, including a training course for police officers of the department for organised crime which started in September 2005 as well as a multidisciplinary course for prosecutors, customs officials, tax officials, officials of the Financial Intelligence Unit (FIU) and of the financial police. They indicate that 128 newly appointed high level police officials have been trained on the recent amendments of the Criminal Code and the Code of Criminal Procedure in this respect, and that the Police Academy as well as the Academy for Judges and Prosecutors have included this topic in their curricula for in-house training. The authorities state, however, that there are no clear indicators that, in practice, criminal investigations have been carried out against legal persons except in the case of tax offences.
55. GRECO notes that a number of training activities with regard to the newly established criminal liability of legal persons have been reported, but that the practical application of this legislation still needs to be encouraged. It invites the authorities to step up their efforts and to provide further training activities for police, prosecutors and judges in this field.
56. GRECO concludes that recommendation xiv has been partly implemented.

III. CONCLUSIONS

57. **In view of the above, GRECO concludes that “the former Yugoslav Republic of Macedonia” has implemented satisfactorily or dealt with in a satisfactory manner two thirds of the recommendations contained in the Second Round Evaluation Report.** Recommendations ii, iii, iv, vi, xi and xiii have been implemented satisfactorily and recommendations v, vii and x have

been dealt with in a satisfactory manner. Recommendations i, viii, ix and xiv have been partly implemented and recommendation xii has not been implemented.

58. Several important achievements, including the adoption of the Law on Free Access to Information and the establishment of an Administrative Court of the Republic, have been reported by the authorities for which they should be commended. However, GRECO notes that a number of recommendations are still under consideration, including those to provide further training on the new legislation on proceeds of crime, seizure and confiscation and on corporate liability of legal persons for the officials concerned, as well as to establish a regulatory framework for public officials who are not civil servants. GRECO encourages the authorities to persist in their efforts to make sure that the outstanding recommendations are dealt with in an expeditious manner.
59. GRECO invites the Head of the delegation to submit additional information regarding the implementation of recommendations i, viii, ix, xii and xiv by 30 April 2009.
60. Finally, GRECO invites the authorities of "the former Yugoslav Republic of Macedonia" to authorise, as soon as possible, the publication of this report; to translate it into the national language and to make this translation public.