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Joint First and Second Evaluation Round

Second Addendum to the Compliance Report on Ukraine

Adopted by GRECO
at its 54th Plenary Meeting
(Strasbourg, 20-23 March 2012)

I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Ukraine at its 32nd Plenary Meeting (19-23 March 2007). This report (Greco Eval I/II Rep (2006) 2E) addressed 25 recommendations to Ukraine; it was made public on 29 October 2007.
2. Ukraine submitted the Situation Report required under the GRECO compliance procedure on 30 September 2008. On the basis of this report, and after a plenary debate, GRECO adopted the Joint First and Second Round Compliance Report (RC Report) on Ukraine at its 42nd Plenary Meeting (11-13 May 2009). The Compliance Report (Greco RC-I/II (2009) 1E), which was made public on 9 June 2009, concluded that recommendations viii, xvi and xvii had been implemented satisfactorily, recommendations iv, ix, x, xiii and xxiii had been dealt with in a satisfactory manner and that recommendations i-iii, v-vii, xi, xii, xiv, xv, xviii-xxii, xxiv and xxv had been partly implemented. GRECO requested additional information on their implementation, which was provided on 6 December 2010, 3 February 2011 and 12 May 2011. In its Addendum to the Compliance Report (Greco RC-I/II (2009) 2E), which was made public on 30 June 2011, GRECO concluded that recommendations i, ii, xi, xii, xiv, xviii and xxii remained partly implemented and recommendations iii, v and xxiv had not been implemented. In view of the lack of substantial progress, GRECO urged the Ukrainian authorities to take determined action to address the outstanding recommendations and requested the authorities to submit additional information on these recommendations. The additional information was provided on 4 January, 23 February, 13 and 20 March 2012.
3. The purpose of this Second Addendum to the Joint First and 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 i-iii, v, xi, xii, xiv, xviii-xxii and xxiv in the light of the most recent information submitted by the authorities of Ukraine.

II. ANALYSIS

Recommendation i.

4. *GRECO recommended to establish a body, distinct from the law enforcement functions, with the responsibility of overseeing the implementation of the national anti-corruption strategies and related action plans as well as proposing new strategies and measures against corruption. Such a body should represent public institutions as well as civil society and be given the necessary level of independence to perform an effective monitoring function.*
5. GRECO recalls that in the Compliance Report, it welcomed the establishment of the Government Agent for Anti-corruption Policy. However, pending the implementation of the Resolution establishing this authority, notably as regards its co-operation with civil society and its level of independence in the exercise of its monitoring functions, GRECO assessed recommendation i as partly implemented. Subsequently, in the Addendum to the Compliance Report, GRECO noted that a new National Anti-Corruption Committee had been created by a Presidential Decree (No. 275/2010) under the authority of the President of Ukraine - and with the Minister of Justice as its Executive Secretary - to analyse the corruption situation in Ukraine, to develop strategies against this phenomenon and to monitor their implementation. The Government Agent for Anti-corruption Policy had still not been appointed, awaiting the President's decision concerning which body was to be entrusted with the implementation of the National Strategy on Prevention and Counteraction to Corruption. GRECO concluded that the recommendation remained partly

implemented as the institutional arrangements in this area were not finally decided; GRECO also questioned whether the National Anti-Corruption Committee was sufficiently independent in its monitoring function.

6. The Ukrainian authorities now indicate that the *National Committee against Corruption* was established by the adoption on 5 October 2011 (No. 964) of the law “On the Principles of Prevention and Combating Corruption” as the main anti-corruption body in Ukraine. They also indicate that the Government Agent for Anti-corruption Policy was abolished by Decree of the Cabinet of Ministers (No. 86/2011). The President of Ukraine is the Head of the National Committee against Corruption and it is also the President that appoints the other members of the Committee. The members of the Committee are heads of law enforcement bodies, ministers and representatives of Parliament, the judicial branch, scientific circles and two civil society organisations. According to a Presidential Decree (No.454/2010) the Minister of Justice was temporarily the Executive Secretary of the Committee and it was also for the Ministry of Justice to ensure implementation of the activities decided upon by the National Committee against Corruption. The Ministry of Justice was also responsible for elaborating regulations to be considered by the Committee and has drafted the National Anti-corruption Strategy 2011-2015, as well as the State Programme on Prevention and Combating Corruption 2011-2015.
7. The authorities also submit that non-governmental organisations and independent institutions are to be involved in the monitoring function of the National Committee against Corruption. To this end, on 19 January 2012, the Ministry of Justice in cooperation with the public organisation “Ukrainian Special Board of counteraction of corruption and organised crime”, organised a round table discussion on “ways to implement the National Anti-corruption Strategy 2011-2015”. The authorities report that 24 civil society organisations (most with national status) participated and that the discussions were about how to involve the civil society in the implementation of the Strategy and the Programme. Among the suggestions discussed were the elaboration of awareness campaigns against corruption, provision of expertise on draft regulations and the initiation of regional campaigns etc.
8. The authorities add that on 16 March 2012 (Presidential Decree No 201/12), the temporary functions of the Minister of Justice as the Executive Secretary of the National Committee against Corruption were moved to the Secretary of the National Council of Security and Defence of Ukraine¹. This change will also mean changes to the organisation of the work under the National Committee against Corruption. For example, it is planned to establish working groups specialised on various matters (such as law enforcement, public administration etc) which conclusions will be fed into the work of the National Committee. The authorities stress that the National Committee against Corruption will also have a “Civil Society Council” connected to its activities.
9. GRECO notes that the Ukrainian authorities have established a new National Committee against Corruption as the main anti-corruption body under the leadership of the President of Ukraine. The membership of this body shows that important public institutions are represented, including governmental bodies, law enforcement agencies, the Judiciary and Parliament. GRECO also notes that civil society is represented on the Committee to some extent. GRECO notes that the Committee does not only decide on the anti-corruption strategies and plans to be taken, but it will also monitor their implementation. In the light of the foregoing, GRECO is of the opinion that the National Committee against Corruption appears to have been given functions and a composition in line with the requirements of the recommendation.

¹ The members of the National Council of Security and Defence are the President of Ukraine, the Prime Minister and the Ministers of Interior, Defence and Foreign Affairs. The Council is assisted with a secretariat staffed by some 90 persons.

10. That said, GRECO has also received information from a member of the National Committee against Corruption, representing civil society, alleging that civil society currently does not have any real influence over the state anti-corruption policy through the Committee. The Ukrainian authorities insist that civil society has been involved in the progress to establish the strategy against corruption; however, they submit that with the recent transfer of the executive functions of the National Committee to the Secretary of the National Council of Security and Defence, the preparatory work of the National Committee against Corruption will change, *inter alia*, to provide for more substantial input from various public sector authorities as well as from civil society, in the form of a “Civil Society Council”, including various non governmental organisations. GRECO does not take a position concerning the appropriateness of moving the executive functions of the National Committee from the Ministry of Justice to the Secretary of the National Council of Security and Defence; however, it welcomes that further efforts to bring civil society closer to the process of the National Committee are planned. Consequently, some organisational measures are still required before the National Committee against Corruption can operate as intended.

11. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

12. *GRECO recommended to urgently develop a detailed plan of action for the implementation of the national anti-corruption strategy (Concept Paper of the President). The plan of action should preferably be subject to international expertise and, to the extent possible, take into account potential cooperation with and assistance from the international community.*

13. GRECO recalls that at the time of the adoption of the Compliance Report, an Action Plan on the Implementation of the then Concept Paper of the President “*On the Road to Integrity*”, was awaiting its final adoption. Subsequently, at the time of the adoption of the Addendum to the Compliance report, GRECO noted that a revised Action Plan had been adopted in 2009 (No. 1013-p); however, the details of it had not been presented and could not be assessed. GRECO also noted that the authorities were in the process of preparing a new National Anti-corruption Strategy, which at the time was not adopted. As a consequence, GRECO was not in a position to form an opinion about the concrete content of the measures taken and concluded that recommendation ii had only been partly implemented (in the Compliance report as well as in the Addendum thereto).

14. The authorities of Ukraine report that a “*National Anti-corruption Strategy for 2011-2015*” has been approved by Presidential Decree of 21 October 2011 (No. 1001) and that the modalities for its implementation are provided for in the “*State Programme on Prevention and Counteraction Corruption 2011-2015*”, as approved by the Resolution of the Cabinet of Ministers on 28 November 2011 (No. 1240). These instruments have been submitted to GRECO; however, they are, according to the authorities, currently subject to expert review by the Council of Europe within the framework of the so called “Eastern Partnership Programme” (“Good Governance and Fight against Corruption”).

15. GRECO takes note of the “*National Anti-corruption Strategy for 2011-2015*”, in which it is, *inter alia*, stated that corruption in Ukraine has reached the level of a systemic phenomenon, with negative effects in all spheres of public life. GRECO notes that such a statement is very much in line with the conclusions of GRECO in its Evaluation report adopted in 2007. Furthermore, GRECO notes that the Strategy is a rather general document. The objectives of the Strategy are described as outlining the reasons for corruption, specifying the main directions of state policy

against corruption, increasing the public's trust in public authorities and introducing a monitoring system for the effectiveness of laws and measures implemented. The Strategy also provides some directives on areas to be addressed and expected outcomes. Turning to the "*State Programme on Prevention and Counteraction Corruption 2011-2015*" the objective of which is to provide a plan of action for the implementation of anti-corruption measures in line with the National Anti-corruption Strategy, GRECO notes that this document is fairly detailed. It deals with areas, such as reform of public administration and the civil service at central and local levels, access to public information, political financing, specialisation of law enforcement, improvements to the qualification of judges, prosecutors and law enforcement staff, prevention of corruption within the law enforcement, liability for corruption offences, corruption in the private sector and international cooperation etc. The document indicates which bodies are responsible for the various measures as well as the deadlines for implementation of the various measures, although the timing may appear over-optimistic in respect of a number of measures. GRECO takes the view that the State Programme, in principle, appears to be adequate in order to implement various parts of the Strategy; however, it notes also with concern the allegations from the civil society that the National Strategy as well as the State Programme have been developed without the proper involvement of civil society. GRECO notes in this respect that the Ukrainian authorities have indicated that further input to the State Programme will be channelled through a new structure of working groups, also involving civil society groups, under the authority of the new Executive Secretary of the National Committee against Corruption (see also recommendation i). In spite of the progress reported, GRECO notes that the Action Plan will undergo further adjustments before it is completed.

16. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

17. *GRECO recommended to review the system of administrative liability for corruption in order to clearly establish that cases of corruption are to be treated as criminal offences as a main rule, or, at the very least to establish a clear cut distinction between the requirements for applying these two distinct procedures.*
18. GRECO recalls that in the Addendum to the Compliance report, it was concluded that this recommendation had not been implemented; GRECO took note of the adoption of the Law "*On amendments to several legislative acts concerning liability for corruption offences*" (7 April 2011) which introduces a new chapter 13-A on "administrative corruption offences" (articles 172.2 to 172.9) into the Code of Administrative Offences (CAO), but concluded that this law does not regulate the issue of the current recommendation. GRECO maintained its concerns about the existence of two parallel systems for dealing with corruption offences, i.e. the criminal and the administrative system, which affords opportunities for manipulation, for example, to escape from the justice process. GRECO recalled its position that corruption, as a main rule, should be treated as a criminal offence and was concerned that the application of the CAO in respect of corruption offences may increase as a result of the new legislation. Moreover, GRECO was strongly concerned about explanations given by the authorities that active bribery was to be considered as a criminal offence only if the economic value of the benefit exceeds a certain value.
19. The authorities of Ukraine stress that the issue of two parallel legislative frameworks for corruption offences is a particularity of the Ukrainian legal system which was discussed, on 7 December 2011, in Parliament during a round table debate by the Committee on Organised Crime and Corruption. The authorities submit that it was noted in that discussion that the current

distinction relating to the value of the property/benefit to be applied when considering a corruption offence as either a criminal or an administrative offence was not sufficient and that, currently, the distinction between these two offences remains unclear.

20. The authorities also state that the issue of liability for corruption offences is part of *the National Anti-Corruption Strategy 2011-2015* as well as of the complementary *State Programme on Prevention and Counteraction Corruption 2011-2015* and that this issue is also to be dealt with by Ukraine within the context of GRECO's Third Evaluation Round concerning "incriminations".
21. GRECO takes note of the information provided. The issue raised in the current recommendation will apparently be dealt with in the future as part of the *State Programme on Prevention and Counteraction Corruption*. However, to date no substantial results have been achieved in respect of the problems relating to two parallel systems dealing with corruption offences as addressed in this recommendation.
22. GRECO concludes that recommendation iii has not been implemented.

Recommendation v.

23. *GRECO recommended to enhance the independence of the Procuracy from political influence and to provide it with a clearer mandate focused on the leading of pre-trial criminal investigations and prosecutions.*
24. GRECO recalls that following some attempts to legislative reforms which had failed, the Prosecutor's Office operates under the previous version of the Constitution of 1996, according to which it has four main functions: (i) to participate in court prosecutions on behalf of the State; (ii) to represent the interests of citizens or of the State in court; (iii) to supervise all bodies conducting pre-trial investigations and (iv) to supervise the execution of court decisions. A new version of the draft law "*On the Public Prosecutor's Office*" was being prepared by an inter-agency working group, in conformity with an opinion (No. 190) and several Resolutions (No. 1244 (2001), No. 1346 (2003) and No. 1644 (2005)) of the Parliamentary Assembly of the Council of Europe. Moreover, a Working Group on Issues of Criminal Proceedings was established by Presidential Decree No. 820 of 17 August 2010 on issues relating to the reform of the Prosecutor's Office as part of its main task of reforming the Criminal Procedure Code. In the Addendum to the Compliance Report, GRECO acknowledged that fundamental reforms of the prosecution service take time and need to be placed in a wider context than that of corruption fighting. However, it regretted at the same time that no real progress had been made in this area and concluded that the recommendation had not been implemented.
25. The authorities of Ukraine now submit that a *Working Group on Issues of Reforming the Prosecutors' Office and the System of legal Advocacy* was established on 22 November 2011 by a Presidential Decree (No. 362). The Working Group is tasked to draft a new law on the Prosecutor's Office in the light of international standards, in particular, to fulfil what is required by Council of Europe standards. The authorities also refer to on-going reforms of the Code of Criminal Procedure.
26. GRECO takes note of the information provided which indicates that there are some new initiatives taken to comply with this recommendation; however, the measures are still at a very preliminary stage and have not produced any tangible result.

27. GRECO concludes that recommendation v has not been implemented.

Recommendations xi and xii.

28. *GRECO recommended:*

to introduce regulations with respect to confiscation and seizure of proceeds from crime which would make it possible to apply measures with regard to direct as well as indirect (converted) proceeds, the value of the proceeds and in respect of proceeds held by a third party in conformity with the Criminal Law Convention on Corruption (ETS 173) (recommendation xi) and

to introduce regulations on the management of seized property, which can be applied in a flexible way in order to sufficiently preserve the value of such property (recommendation xii).

29. GRECO recalls that in the Compliance report, it assessed recommendations xi and xii as partly implemented, as a reform of the criminal process to address the shortcomings raised in the recommendations was at an advanced stage of preparation. In the Addendum to the Compliance Report, the Ukrainian authorities referred to the draft law “*On Amendments to the Criminal and the Criminal Procedure Codes of Ukraine on improvement of confiscation measures*”, which had been prepared by the Ministry of Justice in order to comply with recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL). The draft law was submitted for appraisal by experts appointed by the Council of Europe in July 2010 and was subsequently approved by the *National Anti-corruption Committee* in October 2010 which recommended to submit it to Parliament. GRECO concluded that recommendations xi and xii were partly implemented as the draft had not been adopted and noted, furthermore, that temporary measures, such as seizure did not appear to form part of the draft law.

30. The authorities of Ukraine now report that the draft Law, referred to above, has been subject to a first reading in Parliament and that a second reading of the draft is planned later in 2012. The law aims at improving and harmonising the norms and procedures of confiscation of the proceeds of crime. In respect of recommendation xi, it foresees the possibility to confiscate illegally acquired property, including the proceeds, when attached to legally acquired property or when it was transferred to a third party. As far as recommendation xii is concerned, the draft law intends to amend the management of material evidence with a “short shelf life”, as well as products, the value of which can deteriorate or the storage of which calls for substantial expenditures. The authorities also submit that the Cabinet of Ministers has adopted a Resolution (No 17/2012) concerning storage of seized items in administrative proceedings.

31. GRECO takes note of the information provided that new legislation has still not been adopted. It also notes that some of the elements required by the recommendation, such as temporary measures (seizure), do not appear to have been taken into account.

32. GRECO concludes that recommendations xi and xii remain partly implemented.

Recommendation xiv.

33. *GRECO recommended to adopt a clear set of rules governing the administrative process and decision making as well as clear guidelines with regard to the hierarchy of different legal norms and standards governing public administration.*

34. GRECO recalls that, at the time of the adoption of the Compliance report, a draft Administrative Procedure Code was pending before Parliament and that a law “*On Normative Legal Acts*”, regulating among other things the hierarchy of norms, had been adopted by Parliament on 1 October 2008, but had subsequently been vetoed by the President of Ukraine. At the time of the adoption of the Addendum to the Compliance report, the authorities submitted that another draft Administrative Procedure Code had been elaborated by the Ministry of Justice and sent to the Cabinet of Ministers. The authorities also indicated that a draft law “*On Normative Legal Acts*”, had been submitted to Parliament by an individual MP on 1 December 2010. GRECO regretted that no legislation had been adopted and urged the Ukrainian authorities to devote more vigorous efforts to the important matters raised in this recommendation, which are fundamental for the smooth and efficient functioning of public administration and the certainty of the legal relations between the individuals and legal persons on the one hand and the public administration on the other hand. The recommendation was considered as partly implemented.
35. The Authorities of Ukraine now report that the Ministry of Justice is currently re-working the draft Administrative Procedure Code, referred to above, in order to improve it. The authorities also report that the draft law “*On Normative Legal Acts*” has been through a first reading in Parliament and that it is being prepared for a second reading some time in 2012.
36. GRECO notes that no tangible results have been achieved since the adoption of the Addendum to the Compliance report and concludes that recommendation xiv remains partly implemented.

Recommendation xviii.

37. *GRECO recommended that the external independent audit of local authorities be extended to cover all their activities and that such an audit is built on the same principles of independence, transparency and control which apply to the Accounting Chamber.*
38. GRECO recalls from the Evaluation report that local authorities were subject to auditing by the independent Accounting Chamber only in so far as their state funding was concerned and that the remaining auditing was carried out by bodies of the Ministry of Finance (internal monitoring by the State). The Ukrainian authorities indicated in the Compliance report that an extension of the powers of the Accounting Chamber required changes to Article 98 of the Constitution and in the Addendum to the Compliance report GRECO was informed that the Accounting Chamber was working on draft amendments to the Constitution, including its Article 98, in order to allow it to control local authorities. The recommendation was at the time considered partly implemented.
39. The Authorities of Ukraine report that according to a Decree of the President of 25 January 2012 (No. 31), the Constitutional Assembly was created, dealing with changes of the Constitution, including the powers of the Accounting Chamber. The authorities also refer to administrative changes adopted through a Presidential Decree of 23 April 2011 (No. 499/2011) according to which the *State Finance Inspection*, a central executive body coordinated by the Cabinet of Ministers and the Ministry of Finance, has been provided with powers to carry out state financial control and audits.
40. GRECO takes note of the information provided. It regrets that no tangible developments have been reported concerning external independent control over local authorities. The reorganisation of the former *State Control and Revision Office (KRU)* into the new *State Finance Inspection* does not provide for compliance with this recommendation as this body, like the previous (KRU), is an arm of the executive powers with the main focus on state financing. GRECO notes, however, that

the newly established Constitutional Assembly is mandated, *inter alia*, to examine possible changes of the powers of the Accounting Chamber in respect of auditing local authorities. GRECO therefore maintains its previous conclusion.

41. GRECO concludes that recommendation xviii remains partly implemented.

Recommendation xix.

42. *GRECO recommended that public procurement legislation be thoroughly reviewed in order to bring it into compliance with European norms and standards in respect of policy, accountability and transparency.*
43. GRECO recalls that it assessed this recommendation as partly implemented in the Compliance report, as a former law on procurement had been abolished and the process of preparing a new legislation had been initiated. In the Addendum to the Compliance report, GRECO welcomed that the law “*On the State Procurements*” had been adopted by Parliament (1 June 2010). This law is aimed at ensuring a fair competitive environment and effective use of state funds and to prevent corruption. GRECO considered this a step in the right direction, but was concerned that a number of amendments had been introduced to exclude significant areas from the scope of the application of the law, *inter alia*, procurement relating to the Euro 2012 football championship as well as in the energy area. The recommendation was therefore concluded as partly implemented.
44. The authorities of Ukraine now report that the Law “*On Public Procurement*” has generally been positively evaluated by international expertise, in particular the European Commission and the World Bank, although not all of it has been praised by these institutions (letter dated 16 June 2010). Moreover, on 8 July 2011 some amendments to the Public Procurement Law were adopted, following cooperation with international experts in order to further comply with international/European standards. Also this has been noted in a letter from the World Bank and the European Commission (letter dated 25 July 2011). The authorities also state that the intention is to continue the process of developing public procurement legislation within the framework of a draft Agreement on the Free Trade Area between Ukraine and the EU.
45. GRECO takes note of the information provided and concludes that Ukraine has improved its public procurement legislation with the recent amendments made. However, it would appear from the documents submitted that certain issues are still in need to be aligned with European norms (EU directives), for example, the definition of “*procuring entities*” in relation to state owned enterprises and enterprises of public interest. GRECO understands that legislative reforms are still on-going in order to further improve the public procurement legislation in Ukraine.
46. GRECO concludes that recommendation xix remains partly implemented.

Recommendation xx.

47. *GRECO recommended to introduce a reform process covering an appropriate range of all public officials – and not only civil servants – following the principles foreseen with respect to civil service reforms.*
48. GRECO recalls that at the time of adoption of the Compliance report, a draft law “*On Civil Service*” and several other draft laws were pending before Parliament aiming at modernising public administration, including the conditions for public officials and other employees who are not

civil servants. GRECO noted in the Addendum to the Compliance report that as a result of the change of Government in March 2010, this draft law was withdrawn and replaced by another draft law “*On Civil Service*”, which passed a first reading in Parliament on 7 April 2011, aiming at separating political and administrative posts, reforming the management of the civil service and the procedures of appointment and promotion and raising the salaries of civil servants. In addition, the authorities indicated that two draft laws amending existing legislation (Reg. No. 3155 of 16 September 2008 and Reg. No. 3155 of 3 February 2010) were pending before Parliament, granting the status of public servants to medical and pharmaceutical employees, pedagogical and scientific pedagogical employees of state-owned medical and educational establishments. In essence, GRECO noted that this recommendation calls for broad reforms, covering also public officials who are not part of the civil service and that planned changes in this respect were still at an initial stage; GRECO concluded that this recommendation was partly implemented.

49. The authorities of Ukraine have now added that on 17 November 2011, the draft law “*On Civil Service*” has been adopted and will enter into force on 1 January 2013. Moreover, on 21 December 2011, the Cabinet of Ministers submitted a draft law “*On Service in Self-Government Bodies to Parliament*”, aiming at reforming the areas, such as recruitment, legal status and social security of officers in local authorities.
50. GRECO notes that the reforms of public administration in Ukraine appear to be largely limited to the drafting of new legislation and regulations and that the process is slow. GRECO notes that reform of public administration forms a considerable part of the State Programme against corruption. In this respect, GRECO wishes to stress that an appropriate legal framework is a fundamental requirement for reforms; however, the reforms need to go beyond that. The implementation of new legislation requires, for example, training of staff. There appear to be no moves in that respect, not even foreseen in the State Programme and the legislative initiatives referred to have not yet resulted in adopted legislation. The previous conclusion is therefore maintained.
51. GRECO concludes that recommendation xx remains partly implemented.

Recommendation xxi.

52. *GRECO recommended to introduce clear rules/guidelines for all public officials to report suspicions of corruption and to introduce protection of those who report in good faith (whistle-blowers) from adverse consequences.*
53. GRECO recalls that in the Addendum to the Compliance report, GRECO noted that the law “*On the Principles of Preventing and Combating Corruption*”, adopted by Parliament on 7 April 2011, sets out in its Article 5 a duty for all officials and staff of state and local government bodies to report situations of corruption they come across in the public service. GRECO also noted that Article 20 of the same law establishes the principle that persons assisting with the prevention and detection of corruption offences have to be protected by the state and that the law enforcement authorities are to take the necessary measures in that regard. At the time, the law had not been finally signed by the President and had not entered into force. Moreover, concrete arrangements for the actual protection of whistleblowers were not in place at the adoption of the Addendum and GRECO concluded that the recommendation was partly implemented.
54. The authorities of Ukraine now state that the law “*On the Principles of Preventing and Combating Corruption*” entered into force on 1 July 2011. They furthermore state that the implementation of

some transitional and final provisions of this law are dealt with in draft amendments to the law, aiming at improving the mechanism of the practical implementation of the said legal provisions, currently pending before Parliament.

55. GRECO takes note of the information provided and welcomes the fact that the law “*On the Principles of Preventing and Combating Corruption*” introduces a clear duty upon public officials to report suspicions of corruption and stipulates that persons who report are to be protected from any adverse consequences. However, some subsequent provisions for the practical implementation of the law remain to be adopted and no concrete arrangements for the actual protection of whistleblowers have been adopted. GRECO is therefore of the opinion that Ukraine has not fully complied with the requirements of the current recommendation through the adoption of the law “*On the Principles of Preventing and Combating Corruption*”.
56. GRECO concludes that recommendation xxi remains partly implemented.

Recommendation xxii.

57. *GRECO recommended to establish a new model code of conduct/ethics for public administration to strengthen the education and instruction of public officials on their obligations and related appropriate behaviour with regard to their service, in particular, with respect to reporting suspected corruption, conflicts of interest and properly assisting the public. To enhance the regular rolling training for public officials on anti-corruption measures and ethical conduct in public life as provided for in law, regulations and policy (soft law).*
58. GRECO recalls that this recommendation consists of two parts: i) to establish a model code of conduct/ethics and ii) to enhance regular rolling training for public officials. As far as the first part is concerned (code of conduct), GRECO welcomed in the Addendum to the Compliance report the progress made in the form of the adoption, in 2010, of the General Rules of Conduct for Public Servants as a soft law instrument (Order of the Main Department of Civil Service of 4 August 2010), which appear to offer useful instructions and guidance regarding the prevention of conflicts of interest. GRECO also welcomed the duty of public officials to report suspicions of corruption set out in the Law “*On the Principles of Preventing and Combating Corruption*” (adopted in April 2011). However, the authorities had not addressed matters such as the service conduct of public officials in the form of soft law instruments as foreseen in the recommendation. With respect to the second part of the recommendation, GRECO welcomed that training activities seemed to be available to a large number of officials under the responsibility of Kyiv’s National University of Internal Affairs and the Academy of Governance under the President of Ukraine for managerial staff and for lower grade staff by the relevant ministries or entities which employ them. The training relating to anti-corruption measures and ethical conduct appeared to form part of a systematic and comprehensive approach. The recommendation was concluded as partly implemented.
59. The authorities of Ukraine now submit details of the Law “*On the Principles of Preventing and Combating Corruption*” as well as in the Law “*On Public Service*”, indicating that their provisions to a large degree are comparable with many of the provisions contained in the *Council of Europe Recommendation No. R (2000) 10 on codes of conduct for public officials*. They also report that in order to implement transitional and final provisions of the Law “*On the Principles of Preventing and Combating Corruption*” a new draft law on Amendments to the previous law was submitted by the Cabinet of Ministers to Parliament on 17 November 2011. This draft aims at amending some 44 legislative acts, in particular, to establish rules against conflicts of interest into certain

laws concerning various agencies such as the Customs, the State Security Service, the Tax Service, the Militia, etc. Moreover, the authorities refer to a round table discussion in Parliament held on 2 November 2011, during which the draft law “*On the Rules of Ethical Behaviour*” was discussed. The authorities finally refer to a number of ministerial orders in respect of various personnel within the Ministries of Finance, Internal Affairs, Foreign Affairs and Justice and the Main Administration of Civil Service, which temporarily puts in place codes of ethics awaiting the final adoption of legislation in these areas.

60. GRECO takes note of the new information provided; it welcomes the fact that the area of codes of conduct/ethical codes is considered important in Ukraine and it agrees that the Law “*On the Principles of Preventing and Combating Corruption*” as well as the Law “*On Public Service*” do provide for a number of ethical principles. On the one hand, it appears that massive measures are being implemented in order to establish such codes on a broad scale in public administration. On the other hand, a large number of the initiatives still depend on the adoption of legislation by Parliament. Consequently, the legal reform process appears not to be finalised. In a situation where the normative acts are not completed, it follows that the second part of the recommendation, which is about the implementation of ethical principles through training depends on the establishment of ethical norms and values.
61. GRECO concludes that recommendation xxii remains partly implemented.

Recommendation xxiv.

62. *GRECO recommended to introduce liability of legal persons for corruption offences, including effective, proportionate and dissuasive sanctions, and to consider establishing a registration system for legal persons which would be subject to corporate sanctions.*
63. GRECO recalls that a draft law “*On Responsibility of Legal Person for Committing Corruption Offences*” was pending before Parliament at the time of the adoption of the Compliance report. Subsequently, that draft was adopted by Parliament. However, this law together with other anti-corruption legislation was abrogated by Parliament on 5 January 2011 and replaced by new draft legislation submitted by the President to Parliament in December 2011. However, the latter draft did not include provisions on corporate liability for corruption offences. Consequently, GRECO concluded in the Addendum to the Compliance report that recommendation xxiv had not been implemented.
64. The authorities of Ukraine now report that the introduction of liability of legal persons into the Ukrainian legal system is a priority and that it forms part of the *National Anti-corruption Strategy 2011-2015*; the Ministry of Justice has been tasked to prepare draft legislation to that end during 2012.
65. GRECO takes note of the information provided, which indicates that the issue addressed in this recommendation has also been subject to a number of contradictory measures. Currently, the drafting of new legislation in this area has again been given priority, now in the *National Anti-corruption Strategy 2011-2015*, but no results have been achieved.
66. GRECO concludes that recommendation xxiv has not been implemented.

III. CONCLUSION

67. In addition to the conclusions contained in the Joint First and Second Round Compliance Report on Ukraine and in view of the above, GRECO concludes that recommendations i, ii, xi, xii, xiv, xviii, xix, xx, xxi and xxii have been partly implemented and recommendations iii, v and xxiv have not been implemented.
68. **With the adoption of this Second Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the 25 recommendations issued to Ukraine, in total only twelve recommendations have been implemented satisfactorily or dealt with in a satisfactory manner.** GRECO notes that a framework for anti-corruption reform now is emerging with the development of the *National Committee against Corruption*, the *National Anti-corruption Strategy 2011-2015* and the connected plan of action, ie the *State Programme for Preventing and Combating Corruption 2011-2015*. GRECO is of the opinion that the Strategy and the State Programme now decided upon for a number of years to come, still needs to be adjustable instruments depending on needs expressed by the State institutions, by representatives of the civil society in Ukraine as well as by the international community. Furthermore, GRECO wishes to stress that the National Anti-corruption Committee does not appear to provide sufficient representation of civil society in respect of its executive functions, which raises particular concern in respect of the programming of activities as well as the independence in the monitoring function. The lack of solid civil society representation on the Committee and its execution of tasks is also likely to have a negative impact on the public trust in this institution, which is in direct conflict with one of the objectives of the Strategy against corruption, “*increasing the public trust in public authorities*”. Consequently, GRECO urges the Ukrainian authorities to deal with this issue as a matter of priority.
69. The total number of recommendations that have been complied with – just under half of the recommendations issued – is not impressive and it is noticeable that several fundamental issues, such as the independence of the judiciary, the existence of judicial and administrative processes in parallel, the independence of the auditing of local authorities, public service reform, the administrative decision making process and the liability of legal persons in respect of corruption offences, to mention some of the areas highlighted by GRECO in the Evaluation report, still need considerable attention. GRECO regrets that the pace of reforms so far has been very slow and that the legislative process has been full of obstacles. To conclude, GRECO urges the Ukrainian authorities to take determined action with a view to addressing the pending issues and requests the Ukrainian authorities, in accordance with Rule 31 paragraph 9.1 of its Rules of Procedure, to submit additional information on the further implementation of recommendations i-iii, v, xi, xii, xiv, xviii, xix-xxii and xxiv by 31 December 2012.
70. Finally, GRECO invites the Ukrainian authorities to authorise, as soon as possible, the publication of the Second Addendum, to translate it into the national language and to make the translation public.